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CHAPTER 246

PUBLIC SERVICE

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Act 18 of 2000
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PUBLIC SERVICE

An Act to provide for the Public Service.

PART 1 – PRELIMINARY

1. Purpose
The purpose of this Act is to provide for the Public Service.

2. Public Service
The "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.

3. Objects of the Act
The principal objects of this Act are:

(a) to establish an independent Public Service that is efficient and effective in serving the Government, the Parliament and the public;

(b) to provide a legal framework for the effective and fair employment, management and leadership of employees; and

(c) to establish the rights and obligations of employees.

4. Guiding principles of Public Service
The guiding principles of the Public Service and the Public Service Commission are to.

(a) be independent and perform their functions in an impartial and professional manner;

(b) make employment decisions based on merit;

(c) provide a workplace that is free from discrimination and recognises the diverse background of employees;

(d) have the highest ethical standards;

(e) be accountable for their actions;

(f) be responsive to the Government in providing timely advice and implementing Government's polices and programs;

(g) deliver services fairly, effectively, impartially and courteously to the public and to visitors to Vanuatu;

(h) provide leadership of the highest quality;

(i) establish co-operative workplace relations based on consultation and communication;

(j) focus on achieving results and managing performance;

(k) observe the law; and

(l) ensure transparency in the performance of their functions.

5. Interpretation
In this Act, unless the context otherwise requires –

“appropriate minister” in relation to a ministry means:

(a) the minister responsible for the ministry; or

(b) where 2 or more Ministers are responsible for different functions of a ministry, the Minister responsible for the relevant functions of the ministry.

"Chairman" means the Chairman of the Public Service Commission appointed in accordance with Article 59(2) of the Constitution;

"Commission" means the Public Service Commission established by Article 59 of the Constitution;

"Commissioner" means a member of the Commission;

"director of department" or "director" means a person appointed as director of a department within a ministry;

"director-general" means the head of a ministry;

"employee" means a person employed in the Public Service on a permanent basis;

"Minister" means the minister responsible for the Public Service;

"ministry" means a ministry of the Government and includes a department within the ministry, and includes a State-appointed office, agency or instrument designated by the Prime Minister under the Government Act [Cap. 243] or section 51 of this Act;

"prescribed" means prescribed by regulations under this Act.

6. Application

(1) Unless the context shall otherwise require, this Act shall apply to the Public Service.

(2) This Act shall bind the State.

PART 2 – PUBLIC SERVICE COMMISSION

7. Objectives of Public Service Commission

The objectives of the Commission are to provide a service to the Government and Vanuatu people of the highest professional standard, and to conform to, comply with, and foster within the Public Service, the guiding principles of the Public Service set out in section 4.

7A. Adequate funding to perform functions

The Government must ensure that there is a sufficient budget allocated to the Commission to perform its functions efficiently, effectively and properly.

8. Major functions of the Commission

(1) Subject to Article 60 of the Constitution and to the provisions of this Act, the major functions of the Commission are:

(a) to provide policy advice to Government on matters relating to the efficiency and effectiveness of the Public Service and in human resource development; and

(b) the appointment and promotion of employees on merit; and

(c) the selection or approval of those to undergo training courses overseas and for such purposes may organise competitive examinations; and

(d) the resolution of employment disputes and discipline of employees in accordance with this Act; and

(e) promoting the codes of conduct in Part 5; and

(f) subject to the provisions of any other enactment, to classify and set levels of salary and allowances and other entitlements of employees; and

(g) to review the efficiency and economy of the Public Service in employment matters; and

(h) for the purposes of efficient Government in employment matters, to review the establishment and approve the grading of posts; and

(i) coordinating and providing training programs in Vanuatu for, and assisting with, the training of employees; and

(j) providing guidelines to directors-general, directors and to the Public Service in managing or developing employees in good employer systems and obligations; and

(k) ensuring the observance of the rule of law in public affairs;

(l) to ensure compliance with and be responsible for the administration of this Act;

(m) to set targets for the delivery of services by the Commission;

(n) to provide regular reports in writing to the Minister on the performance of the Commission.

(2) In carrying out its functions, the Commission must have regard to the policies of Government as communicated to the Chairman of the Commission from time to time in writing by the Minister.

(2A) The Commission must perform its functions efficiently, effectively and properly.

(3) Notwithstanding subsection (2), in matters affecting employees (whether matters relating to the appointment, remuneration, promotion, demotion, transfer, disciplining or the cessation of any employee or other matters), the Commission shall act independently but have regard to its obligation to act as a good employer.

(4) Notwithstanding subsection (2), the Commission will not be subject to the direction or control of any other person or body in the exercise of its functions.

(5) The Commission may at any time in respect of matters referred to in this section or on such other matters as the Minister may request:

(a) carry out such investigations or inspections as the Commission thinks necessary;

(b) require and receive such reports as the Commission thinks necessary;

(c) provide advice to a director-general;

(d) report to the Minister and to the Speaker of Parliament in which event the Speaker shall upon receipt of a report table it in Parliament as soon as practicable.

9. Qualifications of members of the Commission

No person will be appointed or continue to hold office as a member of the Commission under Article 59 of the Constitution unless that person has: –

(a) wide and detailed knowledge or experience in public employment issues, management and policy; and

(b) public confidence and standing in the community and is of good character.

10. Annual report

(1) The Chairman must within 90 days after the end of each financial year furnish a report to the Minister relating to the operations of the Commission for that year.

(2) A copy of the report must be laid before Parliament within 14 days after the date on which it is furnished to the Minister if Parliament is then in session and if not, must be laid before Parliament within 14 days of the commencement of the next ensuing session.

11. Delegation of powers of Chairman

(1) The Chairman may from time to time, either generally or particularly, delegate any of his or her powers to another member of the Commission or, in circumstances where the Chairman in his or her discretion deems necessary, to the holder for the time being of any specified office in the Public Service.

(2) In any case where the Chairman has, pursuant to subsection (1), delegated any of his or her powers to any person, that person may, with the prior approval of the Chairman delegate such of those powers as the Chairman approves to another person who is the holder for the time being of any specified office in the Public Service.

(3) Subject to any general or special directions given by the Chairman to the person to whom any powers are so delegated, that person may exercise those powers in the same manner and with the same effect as if they hall been conferred on him or her directly by this Act and not by delegation.

(4) A person purporting to act pursuant to a delegation under this section will, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(5) Each delegation shall be revocable in writing at will and no delegation will prevent the exercise of any power or function by the Chairman.

(6) Any such delegation will, until it is revoked, continue in force according to its tenor, not withstanding the death or any change of Chairman.

12. Role of Chairman

In addition to the duties and responsibilities of the Chairman established by this Act the Chairman will be the head of the Public Service Commission and must:

(a) call regular meetings of the Commission; and

(b) preside over and chair meetings of the Commission, and

(c) exercise a casting vote at meetings where there is an equality of votes; and

(d) be primarily responsible for the effective operation, management and performance of the Commission.

13. Secretariat

(1) There shall be appointed by the Commission a Secretary who will provide a secretariat and administrative support services to the Commission and who will be the administrative head of the Office of the Public Service Commission.

(2) The Secretary is subject to the direction of the Chairman of the Commission.

14. Employees of the Commission

There will from time to time be appointed by the Commission pursuant to the provisions of this Act such employees as may be necessary to enable the Commission to carry out its functions and duties.

PART 3 – DUTY OF COMMISSION TO ACT AS A GOOD EMPLOYER

15. Duty to act as a good employer

(1) It shall be the duty of each member of the Commission to ensure that the Commission shall, in the performance of its functions, responsibilities and duties, be a good employer.

(2) The Commission shall as a good employer:

(a) ensure the fair and proper treatment of employees in all aspects of their employment; and

(b) require the selection of persons for appointments and promotion to be based upon merit; and

(c) promote good and safe working conditions, and

(d) encourage the enhancement of the abilities of individual employees; and

(e) promote and encourage an equal opportunities programme; and

(f) abide by the principles set out in section 4.

(3) In determining a person's merit for appointment or promotion to a post or salary increment regard must be had to:

(a) skill and ability to perform the duties and responsibilities of the post; and

(b) the standard and efficiency of work performance; and

(c) formal qualifications and training; and

(d) personal qualities including conduct.

(4) For the purpose of subsection (3) where appropriate, the Commission may determine the minimum qualifications for any position.

16. *(Repealed)*

PART 4 – PUBLIC SERVICE

17. Application to Public Service

All appointments, promotions, disciplinary matters, and terminations in respect of the Public Service must be made in accordance with this Act.

18. Appointments of directors-general and directors of departments

(1) An appointment or promotion to the position of director-general or director, regardless of the title or designation, must be made by the Commission.

(2) The Commission must prior to appointing or promoting a person to the position of director-general or director of a department follow the procedure set out hereunder –

(a) advertise the position in a newspaper with a wide circulation in Vanuatu; and

(b) ensure the advertisement allows an applicant a minimum of 2 weeks in which to make an application; and

(c) provide an address as to where to send the application; and

(d) convene a panel of 3 independent persons to interview and require the panel, having regard to section 15 (imposing a duty to act as a good employer), to recommend a short list of the most competent and suitable applicants; and

(e) make the appointment from the short list.

(3) (Repealed)

(4) (Repealed)

19. Delegation by director-general or director of department

A director-general or director may from time to time in writing either generally or particularly, delegate (unless the contrary intention applies) to any employee as he or she thinks fit all or any of the powers exercisable by the director-general or director under this Act or any other enactment, including the powers delegated to the director-general or director under this section including this present power of delegation.

19A. Grounds for removing directors-general and directors

(1) The Commission may remove a director-general or director:

(a) because his or her performance is unsatisfactory; or

(b) because of misconduct on his or her part; or

(c) because of physical or mental incapacity; or

(d) if he or she becomes bankrupt.

(2) For the purposes of subsection (1), a director-general's or director's performance is unsatisfactory if:

(a) he or she has not undertaken all or any of his or her principal responsibilities as set out in subsection 20(1) or (2) for a significant period of time; or

(b) there has been a serious breach of his or her performance agreement.

(3) For the purposes of subsection (1), an act by a director-general or director that would be a serious disciplinary offence under section 36 amounts to misconduct.

(4) A director-general or a director cannot be removed unless the procedure for removal set out in section 19B is followed.

19B. Procedure for removal of directors-general and directors

(1) The Commission must not remove a director-general or director from office unless the Commission has received a complaint in writing from the Prime Minister, a Minister, the Ombudsman or the Auditor-General:

(a) alleging that there is a ground or are grounds for his or her removal under subsection 19A(1); and

(b) setting out the evidence in support of the allegations.

(2) The Commission must:

(a) appoint one or more persons to investigate the complaint; and

(b) send the director-general or director a copy of the complaint; and

(c) give the director-general or director 21 days within which to respond in writing to the allegations.

(3) The Commission may:

(a) dismiss the complaint if the Commission is satisfied that it is frivolous or vexatious;

(b) request additional information from the complainant if the complaint does not contain sufficient information.

(4) The Commission must decide whether or not to remove the director-general or the director:

(a) within 75 days after receiving the complaint; or

(b) if additional information has been requested under paragraph (3)(b) – within 75 days after receiving that additional information.

(5) The person or persons appointed to investigate the complaint must provide a report on the investigation to the Commission. The Commission must take into account the report and any responses made under paragraph (2)(c) in deciding whether to remove a director-general or director.

(6) The Commission must give the director-general or director and complainant written notice of the Commission's decision and the reasons for the decision.

(7) A decision by the Commission to remove a director-general or director takes effect on the day on which the decision is made.

20. Principal responsibilities

(1) A director-general is to be responsible to the appropriate minister for:

(a) carrying out the functions and duties of the ministry including the implementation of Government policies; and

(ab) giving effect to the lawful directions of the minister; and

(ac) providing regular briefings to the minister or his or her political advisors about:

(i) the management of the ministry and the performance of its functions, including the service delivery functions; or

(ii) any other matter relevant to the management or functions of the ministry that is requested by the minister or his or her political advisors; and

(ad) providing a briefing to the minister or his or her first political advisor as soon as possible after each DCO meeting; and

(ae) ensuring that the ministry performs its service delivery functions efficiently and effectively; and

(b) tendering advice to the appropriate minister and other ministers of State in matters pertaining to the ministry; and

(c) complying with the Public Finance and Economic Management Act [Cap. 244]; and

(d) complying with obligations under any enactment pertaining to the functions of his or her ministry; and

(e) the efficient, effective and economic management of the activities of the ministry; and

(f) complying with and observing the rule of law in public affairs; and

(g) providing a corporate plan in a form, content and at a time directed by the Commission; and

(h) providing an annual report in accordance with guidelines set by the Commission (after consultation between the Commission and Director-General of the Ministry of Finance and Economic Management) with the first annual report to be furnished within 90 days of the end of the 1999 financial year; and

(i) supporting and achieving the collective interests of Government.

(2) A director is to be responsible to the director-general of his or her ministry for complying with and observing when applicable the responsibilities set out in subsection (1) in relation to the department.

(2A) Directors-general and directors must work cooperatively with other directors-general and directors, political advisors and the heads of other Government agencies.

(3) The minister must table the annual report provided under subsection (1)(h) in Parliament within 14 sitting days of receipt of the report.

21. Functions, responsibilities, duties and powers

(1) The functions, responsibilities, duties and powers imposed on or given to a director-general or director by this Act are in addition to those imposed on or given to that director-general or director by or under any other Act.

(2) A director-general or director shall have the powers necessary to carry out the functions, responsibilities and duties imposed on that director-general or director by or under this Act as well as the powers necessary to carry out the functions, responsibilities and duties imposed on that director-general or director by or under any other Act.

(3) A director-general or director shall have the powers necessary, including in respect of employees to operate and administer his or her ministry or department including the power of transferring employees within the ministry or department.

(4) In exercising the functions responsibilities and duties as a director- general or director in employment matters he or she must be a good employer as that term is defined in section 15.

22. Director-general, director and employees subject to Ministerial directive

A director-general, director or any other employee is subject to the lawful direction of his or her minister in relation to exercising his or her powers or performing his or her functions under this Act.

23. Appointments to the Public Service

(1) Any appointment to or within the Public Service is to be made by the Commission.

(2) The Commission must prior to making an appointment consult with and take into consideration the views and requirements of a director-general affected by the appointment. The director-general must consult with and take into account the views and requirements of a director affected.

(3) Subject to Article 57(2) of the Constitution, where a position becomes available in the Public Service, whether it is a new or existing position, any person from within or outside of the Public Service may be appointed to that position.

(4) Where a person is first appointed to the Public Service that appointment may, in the discretion of the Commission, be on probation.

24. Evidence of appointments

(1) Any appointment of an employee to the Public Service must be made, confirmed or approved in writing by an instrument or minute signed by the Secretary of the Commission acting with the authority and on behalf of the Commission and, notwithstanding anything to the contrary in any enactment, it will not be necessary for the Commission to execute any formal warrant or other instrument in special form.

(2) A certificate signed by the Secretary of the Commission that any person named in the certificate was appointed to a position in the Public Service from a date stated therein

will be sufficient evidence that the person so named was duly appointed to and continued to hold the office or position from that date unless the contrary is proved.

25. Promotion and salary increments

(1) Subject to the provisions of this Act, the Commission may award to an employee or any employees a promotion or salary increment and any such promotion or salary increment shall be based upon merit.

(2) In awarding a promotion or salary increment the Commission must consult with and take into consideration the views and requirements of a director-general affected. The director-general must consult with and take into consideration the views and requirements of a director affected.

(3) Subsection (4) applies in relation to an employee who has been acting continuously for a period of at least 6 months in a position that is:

(a) in the case of permanent employee – above his or her permanent position; or

(b) in any other case – above the position to which he or she has been appointed.

(4) The Commission may appoint the employee on a permanent basis to the higher position without advertising if the Commission at its meeting convened for that purpose unanimously agrees that there has not been any abuse of the merit and equity selection criteria.

26. Failure to comply with a direction to transfer or posting

(1) The Commission may direct that a director-general, director or an employee transfer or take a posting from one position or locality to another within the Public Service but subject to the Commission's obligations to act as a good employer.

(2) Any employee who fails to comply with a direction of the Commission requiring him or her to transfer or accept a posting may forthwith be dismissed or demoted with a consequent reduction in remuneration unless, in the opinion of the Commission, the employee justifies the non-compliance by adducing some valid and sufficient reason for it.

27. Redundancy

(1) If at any time the Commission finds a greater number of persons are employed in a ministry than is considered necessary for the efficient working of a ministry then the Commission may, subject to the Employment Act [Cap. 160], declare a person or persons as the case may be, redundant and terminate his or her or their employment accordingly.

(2) Where by reason of Government policy or economic necessity the number of persons employed in the Public Service generally or a ministry, department, agency or instrument of Government is to be significantly reduced or where significant changes in the role or functions of a ministry, department, agency or instrument of Government make it desirable to review the staff in particular positions, the Commission may –

(a) issue an information memorandum advising of the pending reduction or review of positions; and

(b) as soon as practicable establish those positions that will be available and to which appointments are to be made.

(3) A person who is employed in the Public Service and who is unsuccessful in being appointed to a position under subsection (2)(b) will be given a notice of termination of employment in accordance with section 28.

(4) For the avoidance of doubt the service of a person previously employed in the Public Service and who is appointed under subsection (3) will be deemed not to have been

interrupted by reason of the appointment and every allowance or payment will be determined without regard to that appointment as if that person's service were continuous.

(5) An employee whose employment is terminated under this section will be entitled to receive a redundancy payment on the date of the termination of his or her employment calculated on the basis of 1 month's pay for every 12 months continuous period of employment.

(6) For every period less than 12 months of employment, a sum equal to 1/12 of the appropriate sum calculated under subsection (5) multiplied by the number of months during which the employee was in continuous employment will be paid.

(7) In addition an employee will be entitled to be repatriated in accordance with sections 58 to 60 of the Employment Act [Cap. 160] or in accordance with any subsequent amendments thereto.

28. Notice of termination of employment and resignation

(1) Subject to the express provisions of any written contract of employment, every employee who is not a temporary salaried employee, probationer, or daily rated worker, shall be deemed to be a permanent employee and his or her employment must be terminated in the following manner:

(a) in respect of an employee who has served less than 12 months continuous employment, he or she shall be given 2 weeks notice;

(b) in respect of an employee who has served not less than 12 months continuous employment, but not more than 2 years continuous employment, he or she shall be given 1 month's notice;

(c) in respect of an employee who has served continuously for not less than 2 years but not more than 3 years, he or she shall be given 2 months' notice;

(d) in respect of an employee who has served continuously for 3 years or more, he or she shall be given 3 months' notice.

(2) This section shall not derogate in any manner from any other provision of this Act conferring a power to dismiss employees.

(3) An employee may resign his or her employment at any time, and when that occurs the notice period shall be the period specified in the Employment Act [Cap. 160] (and any subsequent amendments thereto).

29. Dismissal for cause

(1) The Commission may dismiss an employee at any time for serious misconduct or inability but subject to its obligations to act as a good employer.

(1A) If the Commission dismisses an employee under subsection (1), the matter is not to be referred to the Board for hearing and determined under section 37.

(2) The Commission may where the past performance of the employee has been exemplary provide to the employee a redundancy payment as if his or her employment had been terminated under the Employment Act [Cap. 160].

29A. Dismissal for criminal conviction

(1) Subject to subsection (2), the Commission may dismiss an employee who is convicted of a criminal offence.

(2) A dismissal is to be made in accordance with the provisions of this Act and the regulations as if the criminal offence were a disciplinary offence.

29B. On-the-spot fines for unauthorized use of motor vehicles

(1) An employee must not use a vehicle belonging to the Government without appropriate authority.

(2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding VT 20,000.

(3) If the Commission is satisfied that an employee has contravened subsection (1), the Commission may issue the person with a penalty notice.

(4) A penalty notice is a notice to the effect that, if the person does not wish to have the matter determined by a court, he or she must, within 7 days after receiving the notice, pay to the Commission the amount specified in the notice which must not exceed VT 20,000.

(5) The use of a vehicle belonging to the Government without appropriate authority by an employee is taken to be a disciplinary offence for the purposes of this Act and the regulations. Nothing in this section is to be construed so as to prevent disciplinary action being taken against the employee in accordance with Part 6.

30. Temporary salaried and contract employees

(1) The Commission may engage such temporary salaried employees as may from time to time be required and may dismiss a person so engaged with not less than 1 week's notice, or, in the case of misconduct or inability, without notice. No action shall lie in any Court in respect of the dismissal of any temporary salaried employee except in the case of a breach of the Commission's obligation to act as a good employer, during the course of the employment.

(2) Temporary salaried employees may be employed for a period not exceeding 6 months and shall be paid such remuneration and be subject to such conditions of employment as may be determined by the Commission.

(2A) To avoid doubt, a temporary salaried employee is not a person employed in the Public Service on a permanent basis.

(3) Where due to the nature of the employment (such as short-term specialist services) to be performed, and where it is inappropriate for that person to be employed on a permanent basis, the Commission may employ persons pursuant to a contract of employment.

(4) The contract may in the discretion of the Commission, exclude the person so employed from being subject to this Act or from provisions of this Act.

31. Daily rated workers

(1) Where any work required to be done by a ministry does not warrant the employment of permanent staff by reason of its temporary, fluctuating, or special nature, the Commission, after consulting and taking into consideration the views and requirements of a director-general affected may authorise the engagement of daily rated workers by the ministry or department.

(2) Daily rated workers may have their employment terminated in accordance with the Employment Act [Cap. 160] by the Commission or in the case of misconduct or inability without notice.

(3) Subject to any enactment or award or settlement providing for the same, the wage rates and conditions of employment of daily rated workers shall be as determined by the Commission.

(4) In the employment of daily rated works, the Commission must comply with its obligation to act as a good employer and the appeal provisions provided in this Act shall be available to any such daily rated worker.

PART 5 – CODE OF CONDUCT

32. Private employment and elections

(1) Except with the express written permission of the Commission, which must consult with the director-general affected, and which may at any time be withdrawn, no employee, director-general or director, shall accept or continue to hold or discharge the duties of any other paid office outside the Public Service, or engage (whether as principal or agent), or be employed in any other paid occupation outside the Public Service, which in the opinion of the Commission is incompatible with the due performance and proper discharge of his or her duties as an employee of the Public Service, provided that a director-general, director or employee shall have the right to bring a complaint under the Trade Disputes Act [Cap. 162] in respect of a decision by the Commission pursuant to this section.

(2) A person who intends becoming a candidate for election to Parliament must resign from the Public Service before accepting nomination as a candidate for election to Parliament.

33. Fees for official services

(1) Unless otherwise provided, in the performance of any service on behalf of the Government no fee, reward, or remuneration of any kind whatsoever, beyond the remuneration and approved allowances, of a person employed in the Public Service may be received by that person or other person for that person's own use or benefit.

(2) Where an employee is required to perform any service for which a charge would lawfully be payable, then that charge must be levied and the amount paid into the Public Fund, or into the account of the ministry concerned.

(3) Subsections (1) and (2) of this section shall apply to directors-general and directors.

34. Employees' obligations

(1) Every employee, director-general, director or senior administrator (as the case may be), must in the course of his or her employment in the Public Service: –

(a) comply with generally accepted behaviour in the conduct of his or her employment; and

(b) comply with any reasonable direction given by a director- general, director or the Commission; and

(c) behave honestly and with integrity; and

(d) act with care and diligence; and

(e) treat everyone with respect and courtesy and without coercion or harassment of any kind; and

(f) observe and comply with all applicable laws;

(g) comply with all lawful and reasonable directions given by someone employed in the ministry for which the employee works and who has authority to give the direction; and

(h) maintain confidentiality about dealings that the employee has with any minister or members of staff of a ministry; and

(i) disclose and take reasonable steps to avoid any conflict of interest (real or apparent) in connection with his or her employment; and

(j) use resources and public money in a lawful and proper manner; and

(k) not provide false or misleading information in response to a request for information; and

(l) not make improper use of information or his or her duty, status, power or authority in order to gain or seek to gain a benefit or advantage for himself or herself or for any other person, and

(m) comply with any other requirements imposed by this or any other Act, regulation or instruction.

PART 6 – DISPUTE AND DISCIPLINARY PROCEDURE

35. Dispute resolution

(1) Where a dispute arises between employees or an employee and a person having authority over him or her then that dispute is to be referred to the director-general of the ministry in which each employee or that person is employed.

(2) The director-general must make a genuine attempt to resolve the dispute within the ministry. However, if the dispute cannot be resolved within the ministry, the dispute is to be dealt with as provided for under this Act and the regulations.

(3) An employee can be suspended only by a director-general or a director in accordance with the provisions of this Act and the regulations.

(4) To avoid doubt, disciplinary action may be taken against an employee whether or not the employee has been suspended.

36. Disciplinary matters

(1) An employee commits a disciplinary offence 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 director-general of the ministry in which the employee is employed;

(b) in the course of his or her 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 or her duties;

(d) behaves in a manner calculated to cause unreasonable distress to other employees or to affect adversely the performance of their duties;

(e) uses intoxicating liquors or drugs (including for the avoidance of doubt, kava) to excess or in such manner as to affect adversely the performance of his or her duties;

(f) improperly uses or removes property, stores, monies, stamps, securities or negotiable instruments for the time being in his or her official custody or under his or her 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 or her duties directly or indirectly discloses or for private purposes uses any information acquired by him or her either in the course of his or her duties or in his capacity as an employee;

(h) absents himself or herself from his or her office or from the official duties during hours of duty without leave or valid excuse, or is habitually irregular in the time of his or her arrival or departure from his or her place of employment;

(i) is guilty of any improper conduct in his or her official capacity, either inside or outside of working hours, or of any other improper conduct which is likely to affect adversely the performance of his or her duties or is likely to bring the Public Service into disrepute;

(j) is guilty of any other offence prescribed from time to time by regulations made under this Act.

37. Disciplinary Board to hear and determine offences

(1) There is established a Disciplinary Board which shall be responsible for hearing and determining, subject to subsections 26(2) and 29(1A), disciplinary offences, and which Board shall comprise:

(a) a member of the Commission appointed by the Commission for 3 years;

(b) a member of the public service appointed by the Public Service Staff Association or in the case when no staff association exists, appointed by the Judicial Services Commission for 3 years:

(c) a director appointed by the Judicial Services Commission for 3 years.

(2) A member of the Board shall include an employee, director or member of the Commission (as the case may be) who is nominated by a member of the Board to fill that member's place, during any absence from the Board of that member.

(3) A member of the Board who has an interest over and above the interest of other members in any proceedings before the Board shall disqualify himself or herself from participating in the conduct of those proceedings, in which event, there will be appointed by the Commission or the Judicial Services Commission (as the case may be) for the purposes of those proceedings a person in the place of the disqualified member.

(4) Each member will be paid a sitting allowance and such other allowances as may be prescribed by the Minister subject to an enactment providing for the manner in which those allowances shall be determined.

(5) Every proceeding before the Board shall be commenced by notice of offence in the form prescribed and containing particulars of the offence as will fully and fairly inform the offender of the offence and date of hearing which shall be not less than 28 days from the date of service of the notice on the offender.

(6) The procedure at the hearing will be as the Board may determine.

(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 purposes of the case, and the assessor shall sit with the Board for the hearing and determination of the case, except that he or she will not participate in the Board's deliberations and will have no vote in the determination of the case.

(8) At the hearing a director-general (or representative), and/or the employee will be entitled to be present and may be represented and assisted by an advocate or any other person.

(9) The Board in considering a disciplinary matter before it may:

(a) dismiss the notice; or

(b) issue a warning or reprimand to the offender; or

(c) demote the employee; or

(d) suspend the offender from the Public Service without pay, or

(e) order compulsory retirement; or

(f) dismiss the offender from the Public Service.

(10) Proceedings before the Board shall not be bad for want of form.

(11) Unless an appeal has been lodged in accordance with section 38, all decisions of the Board shall be subject to confirmation by the Commission not later than 45 days after they have been published or notified to the employee concerned.

(12) The Commission may confirm decisions of the Board, vary such decisions or quash them.

(13) If the Commission fails to confirm, vary or quash a decision of the Board within the time provided in subsection (11), it shall be considered to have quashed the decision.

(14) The member or the Commission who sits on the Board must not participate nor confer with other members of the Commission when the Commission is exercising its functions under subsections (11), (12) and (13).

38. Right of appeal

(1) A person who is dissatisfied with a decision of the Board may appeal to the Supreme Court.

(1A) An appeal must be made within 21 days after the person is given written notice by the Board of its decision.

(2) The Supreme Court may affirm, vary or quash the decision of the Board.

39. Powers of the Board to summon witness

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

PART 7 – MISCELLANEOUS PROVISIONS RELATING TO THE PUBLIC SERVICE

40. Membership and recognition of Staff Association

For the purpose of enabling employees to bring to the notice of the Commission any matter affecting their service apart from matters of discipline employees may belong to a Public Service Staff Association, or organisation representing the interests of employees, whether specifically in the Public Service or otherwise.

41. Medical examinations

The Commission may require any applicant for appointment to the Public Service or any employee to submit to a medical examination by a registered medical practitioner at the applicant's own expense.

42. Savings

All subordinate legislation (including for the avoidance of doubt, regulations) made under any of the enactments repealed by this Act and in force immediately before the coming into force of this Act, so far as it is not inconsistent with the provisions of this Act, shall continue in force as if made under this Act.

43. Regulations

(1) The Commission may from time to time, by order, make regulations so as to give effect to all or any of the purposes of this Act, including regulations for all or any of the following –

(a) relating to the conduct of employees or of any class thereof, the maintenance of integrity, the control of activities which are or may be detrimental to the performance of official duties, the furnishing of official information and the maintenance of impartiality in the performance of official duties; and

(b) prescribing conditions of retirement (including for compulsory and early retirement); and

(c) prescribing the form of documents to be employed in dealing with staff and employment and disciplinary matters; and

(d) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof; and

(e) prescribing procedures in disciplinary action; and

(f) prescribing penalties for offences against the regulations, being penalties that are punishable on conviction by a court by a fine not exceeding VT 50,000.

(2) Every regulation made under this section shall come into force on a date to be specified therein in that behalf (whether before or after the date of the Order making the regulation), and if no such date is specified shall come into force on the date on which the regulation was made.

(3) Upon the coming into force of regulations made pursuant to this section every determination, decision, matter or thing made or done before the date of their coming into force and affected by those regulations and not inconsistent therewith shall remain in force and be deemed to have been determined, decided or made pursuant to those regulations but where inconsistent shall cease to exist unless otherwise provided by those regulations.

44. Public Service Staff Manual and instructions

(1) Subject to the provisions of this Act and any regulations prescribed, the Commission may from time to time publish a Public Service Staff Manual to provide for:

(a) eligibility for appointment to the Public Service;

(b) procedure for such appointment (including probationary appointments and periods);

(c) salaries, allowances and payments in respect of overtime;

(d) mileage allowance and use of vehicles;

(e) subsistence, posting and travelling allowances;

(f) travel allowances beyond Vanuatu;

(g) housing benefits;

(h) general conduct;

(i) discipline;

(j) leave entitlements;

(k) medical entitlements;

(l) training and courses;

(m) cessation of service;

(n) superannuation;

(o) employment of contract employees.

(2) Subject to the provisions of this Act and regulations prescribed, the Commission may from time to time issue instructions relating to any matter in this Act and the Staff Manual and every instruction if lawfully made shall be complied with by every employee.

45. Notices to directors-general and employees

Where any notice has to be given under this Act to any director-general, director or employee, it may be given –

(a) by delivering it to the director-general, director or employee; or

(b) by sending it to the director-general, director or employee in a letter addressed and posted to him or her at his or her usual place of employment or at his or her last known place of abode.

46. Offence to attempt to influence Commission

(1) Except as provided in subsection (3) no person shall in any way attempt to influence the Commission, or any member of the Board in respect of any disciplinary case, or influence the Commission or any member of the Commission or the Board in the exercise of its or his or her functions, powers and duties.

(2) A person who acts in Contravention of the provisions of this section commits an offence and is liable on conviction to a fine not exceeding VT 500,000 or a term of imprisonment not exceeding 1 year or both, and where applicable the person found to be in breach, will be in breach of the Leadership Code [Cap. 240] and that person is liable to be dealt with under the Leadership Code in addition to any penalty imposed under this section.

(3) Nothing in this section shall be so construed as to prohibit any person from giving or making representations in respect of any case or appeal at the request or invitation of the Commission or the Board or as a witness or as a defendant or appellant or the representative of a director-general, director or employee appearing at a hearing before the Commission or Board or providing a reference or acting as a referee in any employment application.

47. Obligation to report

(1) An employee, director-general or director, who has knowledge of any circumstances, which may cause him or her to consider that a breach of this Act or any other enactment has occurred must report those circumstances to either the director-general or the Commission.

(2) Where an alleged breach is reported under subsection (1) the person making the allegation shall not be penalised in any way whether the allocation is proven or not unless it is proved beyond reasonable doubt that the report was made maliciously and in bad faith.

PART 8 – MISCELLANEOUS

48. Redundancy in public sector

Notwithstanding the provisions of any other Act in redundancy matters, and subject to any written contract of employment, sections 27 and 28 will apply to all those people employed by Government or a Government agency, corporation, company or body whatsoever, that are not subject otherwise to the provisions of this Act.

48A. Time provisions for remote communities

The Commission may extend any period of time provided for under this Act or the regulations (other than a period of time relating to a disciplinary matter) for a person who ordinarily lives outside Port Vila or Luganville if the Commission is satisfied that the person would be disadvantaged if an extension were not given.

49. Duty of Commission to consult with director-general

(1) The Commission must consult with the relevant director-general in relation to any action it proposes to take involving any ministry or department prior to taking the proposed action.

(2) The Commission must take into consideration the views and requirements of the director-general prior to taking the proposed action, and must cooperate and be prepared to compromise where appropriate in the action initially proposed.

50. Transitional

(1) From the date of commencement of this Act every decision, determination, matter or thing not inconsistent with this Act and made or done pursuant to the enactments repealed or revoked by this Act, shall be deemed to have been made or done under this Act and shall continue to apply to all employees affected.

(2) The Public Service Commission, and every employee, director-general or director in the Public Service holding office before the commencement of this Act shall, after the commencement of this Act continue to hold office subject to the provisions of this Act.

(3) Every person employed in the Public Service immediately before the commencement of this Act shall, after the commencement of this Act and if employed within a ministry established by the Prime Minister under any enactment, continue to be employed subject to the provisions of this Act.

(4) In any case in which immediately before the commencement of this Act a disciplinary case or an appeal or action before the Supreme Court of Vanuatu or the Court of Appeal of Vanuatu or Commission was pending, that case or appeal as the case may be, may be continued after the commencement of this Act, and shall be heard and disposed of under the law in force immediately before the commencement of this Act as if the law had continued in force.

(5) The Staff Manual of the Public Service and the matters prescribed therein so long as they are not inconsistent with this Act, shall remain in full force and effect until revoked and a new manual published.

51. Ministries and the Public Service

(1) The Prime Minister may, by notice published in the Gazette designate ministries, departments, State appointed offices, agencies, instruments, authorities, commissions and corporations as being within the Public Service in which event every person employed therein shall from the date of publication of the notice be employed as an employee in the Public Service.

(2) Where the Prime Minister is empowered to designate a ministry by more than one enactment the exercise of that power pursuant to the empowering provision of one enactment will be deemed to be the exercise of that power under the corresponding provision in the other enactments and the Prime Minister shall not be required to specify under which enactment the power has been exercised.

52. Repeals

The Public Service Act [Cap. 129] is hereby repealed.

Table of Amendments

5	*Amended by Act 8 of 2001*	*29(1)*	*Amended by Act 8 of 2001*
7A	*Inserted by Act 37 of 2000*	*29(1A)*	*Inserted by Act 8 of 2001*
8(1)(m),(n)	*Inserted by Act 37 of 2000*	*29A, 29B*	*Inserted by Act 37 of 2000*
8(2A)	*Inserted by Act 37 of 2000*	*30(2A)*	*Inserted by Act 8 of 2001*
16	*Repealed by Act 18 of 2000*	*35(2)*	*Substituted by Act 37 of 2000*
18(3),(4)	*Repealed by Act 37 of 2000*	*35(3),(4)*	*Inserted by Act 37 of 2000*
19A, 19B	*Inserted by Act 37 of 2000*	*37(1)*	*Amended by Act 8 of 2001*
20(1)(ab)-(ae)	*Inserted by Act 37 of 2000*	*37(11)*	*Amended by Act 37 of 2000*
20(2A)	*Inserted by Act 37 of 2000*	*38(1A)*	*Inserted by Act 37 of 2000*
22	*Substituted by Act 18 of 2000, then Act 37 of 2000*	*43(1)(f)*	*Inserted by Act 37 of 2000*
		48A	*Inserted by Act 37 of 2000*
25(3),(4)	*Inserted by Act 37 of 2000*		