



**Tuvalu**

# **PUBLIC SERVICE ACT**

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**CAP. 4.24**





Tuvalu

## PUBLIC SERVICE ACT

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Tuvalu

## PUBLIC SERVICE ACT

### AN ACT TO MAKE PROVISION ADDITIONAL TO THAT IN THE CONSTITUTION FOR THE ESTABLISHMENT AND REGULATION OF THE PUBLIC SERVICE AND IN RELATION TO THE PUBLIC SERVICE COMMISSION<sup>1</sup>

Commencement [17th April 1979]

#### 1 Short title

This Act may be cited as the Public Service Act.

#### 2 Interpretation of terms

In this Act, to the extent that the following terms appear therein, and in any other statutory or administrative rule, regulation or order relating to the public service, unless such rule, regulation or order otherwise expressly provides or the context in which such terms appear otherwise requires, the following terms shall have the meanings herein respectively ascribed to them —

“**acting appointment**” means either —

- (a) performing the functions of an office while the substantive holder thereof is absent from duty; or
- (b) performing the functions of an office for which there is a substantive vacancy, with a view to promotion to that vacancy;

“**appointment**” means either —

- (a) the conferment of an office of emolument in the public service, whether or not subject to subsequent confirmation, on a person not in the public service; or
- (b) the appointment of a public officer to an office expressly provided for in the Constitution or any Act;

“**charge allowance**” means an allowance paid for the performance of duties additional to those normally required of an officer in any particular post, under the provisions of General Administrative Orders;

“**Chairman**” includes any person appointed to act as Chairman of the Commission under section 12(3)(a), (b) or (c) of Schedule 1 to the Constitution;

“**classified worker**” means an employee of the Tuvalu Government who does not hold an established post, who is not a permanent or contract officer, and whose emoluments are fixed on a daily basis;

“**Commission**” means the Public Service Commission established under section 147 of the Constitution;

“**common cadre post**” means a post at clerical, executive or administrative level for which the recruitment is centralised and in which the holder may be transferred to any Ministry at an equivalent rank without reference to the Commission;

“**confirmation**” means either —

- (a) that an officer who has been acting in a post continues substantively in that post, either on promotion or otherwise; or
- (b) that a probationary officer becomes a permanent officer;

“**contract officer**” means an employee of the Tuvalu Government who is not employed as a permanent officer or classified worker and whose emoluments and other terms and conditions of service are set out either in a written contract (which may be negotiated by the Crown Agents for Overseas Governments and Administrations on behalf of the Tuvalu Government) or a letter of appointment from a Secretary;

“**discipline**” or “**disciplinary action**” means the disciplinary punishments and procedure set out in the Public Service Commission Rules and includes the dismissal of an officer;

“**established post**” means a post shown in the Establishment Register;

“**Establishment Register**” shall have the meaning ascribed to that term by section 4;

“**General Administrative Orders**” means the orders issued by the Minister under the provisions of section 7 and includes any amendment of the same;

“**increment**” means the payment of a higher level of salary at the end of a period of service up to the maximum of any particular salary level;

“**level**” or “**salary level**” means the level of salary or salary scale which a post attracts as set out in General Administrative Orders;

“**non-established post**” means a post not shown in the Establishment Register and remunerated either out of a wages and allowances head or out of savings within a Ministry’s budget;

“**normal working hours**” means such hours as may be prescribed in General Administrative Orders or administrative directions for the public service generally or any section thereof;

“**officer**” means a public officer;

“**permanent officer**” means an employee of the Tuvalu Government who is not a classified worker, a contract officer or a probationary officer and who holds an established post in the public service (which may be either pensionable or superannuable);

“**probationary officer**” means an employee of the Tuvalu Government who is not a classified worker or contract officer but whose appointment as a permanent officer has not been confirmed;

“**promotion**” means the conferment upon a person in the public service of an office to which is attached a higher salary or salary scale than that attached to the office to which he was last substantively appointed;

“**public office**” means an office held by a public officer;

“**public officer**” and “**Public Service**” have the meanings respectively given in section 2(1) of Schedule I to the Constitution;

“**Public Service Commission Rules**” means rules made by the Commission under section 2 of Schedule 3 to the Constitution;

“**Secretary**” means the Secretary or other head of a Ministry or office of Government (being a member of the Public Service) who is directly responsible to a Minister and includes the Secretary to Government as defined in section 2(1) of Schedule I to the Constitution;

“**substantive**” in relation to a post means that an officer is appointed to it other than on probation or in an acting capacity;

“**supervising officer**” means a Head of Division in relation to officers in that Division below him in rank, a Secretary in the case of officers in a Ministry below him in rank, or any officer expressly placed in charge of any group of officers, either permanently or temporarily;

“**station**” means the place in Tuvalu or overseas where an officer is normally required to work.

### 3 Application of Act

- (1) The powers vested in the Commission or any Minister by or under this Act shall be in addition to and not in derogation or variation of any powers vested in the Commission or any Minister by the Constitution.
- (2) In the event of the powers vested in the Commission or any Minister by or under this Act being in conflict with any such powers vested by the Constitution, the latter powers shall prevail and remain in full force and effect.

#### **4 Establishment Register and the creation of posts**

- (1) There shall be presented to Parliament at the session in which the Appropriation Bill is presented for any financial year and as part of the estimates of expenditure, an Establishment Register showing such posts in the public service with their respective salary levels, as the Minister proposes for that financial year. On passing the Appropriation Bill, Parliament shall be deemed to approve the creation or continuation of such posts as may then remain in the estimates as amended, if that be the case. Such posts shall be deemed to have been created by the Cabinet as offices for Tuvalu under the provisions of section 144(a) of the Constitution, but without prejudice to Cabinet's right to create additional posts or to abolish any post.
- (2) The appearance of a post in the Establishment Register shall not imply an obligation on the Cabinet or the Commission to fill that post at the salary level shown or at all, and shall be without prejudice to the Cabinet's or Commission's power to appoint additional persons to the public service if funds are available for that purpose in any particular Ministry.

#### **5 Employment of persons not paid out of public funds**

- (1) The Minister may make arrangements with any overseas Government, international organisation or commercial undertaking, for the employment in Tuvalu of persons paid wholly or in part by such Government, organisation or undertaking. To the extent that such a person is paid out of public funds of Tuvalu, he shall be treated for all purposes as a public officer but otherwise such a person shall not be treated as a public officer except insofar as his contract of service may provide or as may be agreed in general or in any particular case with such Government, organisation or undertaking.
- (2) A person may be employed in Tuvalu under conditions described in subsection (1) to perform any function, whether that of a permanent or contract officer, an established post or otherwise.

#### **6 Public Service Advisory Committees**

- (1) The Minister may from time to time and on such terms as he shall think fit appoint one or more committees to advise and make recommendations to him on any or all of the following matters —
  - (a) manpower planning for the public service;
  - (b) methods of recruitment to the public service and the need for overseas recruitment;
  - (c) conditions for admission to the public service, by examination or otherwise;
  - (d) the award of scholarships to officers and the selection of officers for overseas or local training;

- (e) terms and conditions of employment in the public service;
  - (f) the appointment, promotion, transfer and discipline of public officers and similar matters on which the Minister may wish to make representations to the Commission or give directions to a Secretary;
  - (g) the establishment and grading of posts in the public service;
  - (h) levels of remuneration for offices in the public service, including those posts for which provision is made in the Prescription of Salaries Act;
  - (i) changes that may be necessary or desirable in legislation relating to the public service, including the Public Service Commission Regulations and General Administrative Orders;
  - (j) appeals on the application and interpretation of General Administrative Orders, other than those relating to discipline;
  - (k) generally, matters pertaining to the well-being, efficiency and economy of the public service.
- (2) The advice and recommendations of any committee established under this section shall not be binding on the Minister, the Governor-General or the Commission, and shall be without prejudice to the powers of Parliament in relation to the provision of finance for salaries and other emoluments.
- (3) A committee appointed under this section shall consist of a chairman and from 2 to 4 other members to be appointed by the Minister, any of whom may be either public officers or not as the Minister may see fit.
- (4) A committee shall in the discharge of its duties and functions be independent of the Commission but shall give due regard to any advice given or recommendations made to it by the Commission and to the advice and recommendations of such other person or body as the committee shall deem appropriate or as the Minister may direct.
- (5) A committee may be appointed either as a standing committee for a period not exceeding 3 years or from time to time on an ad hoc basis, but the members of any committee shall in either case be eligible for re-appointment, and may be appointed to more than one committee.
- (6) Members of a committee may be paid such fees, allowances and expenses as the Minister may from time to time direct.
- (7) Subject to any directions that may be given to it from time to time by the Minister, every committee shall regulate its own procedure.

## **7 Minister may issue General Administrative Orders**

- (1) The Minister may from time to time issue orders relating to the administration of the public service to be known as General Administrative Orders.
- (2) General Administrative Orders may cover every aspect of the work and privileges of all employees of the Tuvalu Government for their guidance,

assistance and control, but shall be without prejudice to the provisions of the Constitution, this Act, the Public Service Commission Rules, financial instructions and regulations and any express contractual term relating to any such employee.

- (3) Different orders may be made for and in respect of different classes of employees.
- (4) Save as provided in subsection (2), an order made under this section shall be deemed to form part of the conditions of service of all employees to whom it is expressed to relate, as from the date of its general distribution or any other date provided by such order:

Provided that no order which has an adverse effect on the terms and conditions of service of any employee shall take effect at any earlier date than that of its general distribution.

- (5) The Minister may delegate to any public officer the application, interpretation and enforcement of any provision of General Administrative Orders from time to time.
- (6) Any dispute as to the application or interpretation of General Administrative Orders shall be referred to the relevant Public Service Advisory Committee, which shall make a recommendation to the Minister. The Minister's decision thereon shall be final.

## **8 Civil List and Gazette**

- (1) There shall be published annually a Civil List showing the current holder of every established post in the public service by name, age, marital status, country of origin, salary and qualifications.
- (2) All new and acting appointments, all transfers and promotions and all retirements or departures from established posts shall be published in the Gazette and in such other manner as the Minister may from time to time direct.

## **9 Additional functions of the Commission**

- (1) In addition to the functions assigned to it by Part VIII of the Constitution, the Commission shall have power —
  - (a) to advise the Governor-General at his request on any matter arising out of powers given to him by General Administrative Orders;
  - (b) to give advice if so requested to the Governor-General, a Minister or any Secretary on any matter concerning the public service, including but not limited to the matters set out in section 6(1) in relation to Public Service Advisory Committees;
  - (c) to advise the Governor-General on any appeal relating to discipline arising out of the application of General Administrative Orders.

- (2) Whenever it is proposed to send any officer for overseas training which will substantially improve his prospects of future promotion, the Commission shall be informed by the Secretary concerned and may make its own recommendations in respect of such proposal, but may not prohibit such training.

## **10 Commission may seek legal advice**

- (1) The Commission may at any time seek the legal advice of the Attorney-General, provided that the Attorney-General shall be free to inform the Secretary to Government and any Minister of any advice he may give to the Commission.
- (2) The Secretary to Government or a Secretary shall refer to the Attorney-General any action which it is proposed to take in relation to any public officer if there is any doubt whether such action is lawful under the terms of any contract.

## **11 Granting and withholding of increments**

Without prejudice to any provisions of the Public Service Commission Rules relating to increments, a Secretary may recommend to the Minister that an officer's increment be withheld for inefficiency short of misconduct or that an additional increment be granted for exemplary service or for additional qualifications. Such recommendation may be made without reference to the Commission but shall be subject to procedures to be set out in General Administrative Orders.

## **12 Annual Confidential Reports**

The Minister may make provision in General Administrative Orders for the preparation and submission by Secretaries of Annual Confidential Reports on all permanent and probationary officers. Such reports shall be retained only by the Secretary to Government and respective Secretary and shall only be used in connection with recommendations for promotion, transfer and disciplinary proceedings and as the basis for any testimonial in respect of such officer.

## **13 Classified documents**

The Minister may give directions that any particular document or class of documents in circulation in the public service shall be classified as either secret, confidential or restricted, and any officer who deals with such documents or discloses the contents thereof in a manner inconsistent with such classification shall be liable to disciplinary proceedings.

**14 Participation in politics**

The Minister may give directions as to the procedure by which public officers may stand for election to Parliament, consistent with any provision in the Public Service Commission Rules relating to participation in politics and with the provisions of section 97(1)(f) of the Constitution as to qualifications for election to Parliament. Such directions shall be framed so as to restrict to the minimum extent possible a public officer's active preparation for and participation in a local or parliamentary election, and so as to preserve his seniority in the event of his not being elected.

**ENDNOTES**

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<sup>1</sup> Acts 4 of 1979, 5 of 1984, and LN 8/1987

Cross references to the repealed 1986 Constitution, have been changed to references to the new Constitution, in accord with Schedule 5 clause 2 of the 2023 Constitution