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**An Act to amend the Public Service Act 2009.**

**(26 September 2016)**

**The Parliament of the Cook Islands enacts as follows—**

- 1 Title**  
This Act is the Public Service Amendment Act 2015-16.
- 2 Commencement**  
This Act comes into force on the date it is assented to by the Queen's Representative.
- 3 Principal Act amended**  
This Act amends the Public Service Act 2009.

## Part 1 Amendments to the Principal Act

### 4 Functions of the Commissioner

- (1) Section 6(1) is amended by repealing paragraph (c) and substituting the following paragraph—

“(c) to issue any of the following—

- (i) Written Instructions to heads of department relating to the implementation of government policies to ensure uniformity and cohesion in the Public Service;
- (ii) General Instructions applying to all public servants, which have the status of terms and conditions of employment in the Public Service;
- (iii) Policy and Procedures Manuals, which have the status of General Instructions issued under sub-paragraph (ii);
- (iv) Specific Directives applying to any employee or class of employee, which must be complied with in the course of the employee’s duties as a member of the Public Service;
- (v) Any approved Circular to give public notice of any matter relevant to the Public Service”.

- (2) Section 6(1) is further amended by repealing paragraph (k) and substituting the following paragraph—

“(k) to develop, approve, implement and enforce personnel policies and standards, including performance management systems, processes and requirements applying to heads of departments and employees of the Public Service;”.

- (3) Section 6 is amended by inserting the following subsection after subsection (1)—

“(1A) After conducting a review in accordance with subsection (1)(a), and subject to any decision by Cabinet relating to reform to the machinery of government, the Commissioner may—

“(a) approve the restructuring of any department or agency to give effect to an approved amalgamation of departments, or to the transfer of functions between departments;

“(b) determine that any redundant department or agency is to be disestablished in accordance with any procedure or requirement approved by the Commissioner;

“(c) take, or approve the taking of, any action necessary to give effect to the reform, including—

“(i) requiring modification to staffing structures approved under section 26;

“(ii) authorising the transfer of employees amongst departments or agencies;

“(iii) dealing with redundancies in accordance with section 32;

“(iv) dealing with any disputes or grievances stated by employees arising from the reform.”

**5 Annual reporting by Departments**

The following section is inserted after section 9—

**“9A Annual Reporting by Departments**

- “(1) Each head of department must ensure that an Annual Report is prepared and submitted to the Commissioner in accordance with any timeframe required by the Commissioner and communicated as an Instruction under section 7.
- “(2) Each Annual Report prepared under subsection (1) must contain such information, and be in such form, as the Commissioner determines.
- “(3) Each head of department must prepare and provide to the Commissioner any additional report that is required from time to time.”

**6 Appointment of heads of departments**

Section 14 is amended by adding the following subsections—

- “(5) The requirements of Schedule 2 may be dispensed with by the Commissioner, acting with the approval of Cabinet, in the case of the re-appointment of a current head of department who has served one period of appointment to that office and who has been assessed as having met applicable performance requirements during his or her first term of appointment.
- “(6) Any head of department who has been re-appointed under subsection (5) is only eligible for further re-appointment to the office that he or she holds if the requirements of Schedule 2 are applied.
- “(7) Nothing in this section prevents the transfer of a current head of department from one department to another by the Commissioner, with the approval of Cabinet and the consent of the head of department, and in such a case the processes stated in Schedule 2 do not apply.”

**7 Approved staffing structure**

Section 26 is amended by repealing subsections (3) and (4) and substituting the following subsections—

- “(3) When approving a staffing structure the Commissioner may impose any conditions relating to certain approved positions, including any limitation on the period for which an approved position may be filled by an employee engaged under contract in accordance with section 31.
- “(4) An approved staffing structure may be reviewed and amended—
- “(a) as determined by the Commissioner at any time, after having given notice to the head of department of the intended review:
- “(b) at the request of the head of department by written advice given to the Commissioner stating the grounds and purpose of the review.”

**8 Employment pursuant to written contract**

- (1) Section 31 is amended by repealing subsections (1) and (2) and substituting the following subsections—

- “(1) The Commissioner may approve a position within a staffing structure approved under section 26 to be filled by an employee engaged by written contract if any of the following apply—
- “(a) the position is regarded as being of a special nature requiring specialised skills or expertise:

“(b) the position can only be filled by a suitably qualified and experienced employee engaged under contract containing terms and entitlements which reflect market-based conditions for such employment:

“(c) employment under contract is justified in accordance with any other grounds or requirements provided for in regulations made under this Act, or in an approved Policy and Procedures Manual.

“(2) The terms and conditions of employment under this section must be consistent with any requirements or procedures applying under regulations made under this Act, and be in accordance with instructions or directives issued by the Commissioner.”

(2) Section 31 is further amended by repealing subsection (5) and substituting the following subsection—

“(5) All persons employed under contract in accordance with this section must be engaged under a contract in the form approved from time to time by the Commissioner”.

## **9 Complaints and disputes**

(1) Section 36 is amended by repealing subsection (7) and substituting the following subsection—

“(7) The recommendations made by the Commissioner in accordance with subsection (6) must be—

“(a) complied with and implemented by the head of department; and

“(b) complied with and actioned by the employee so as to resolve the matters in dispute in accordance with the Commissioner’s directions.”

(2) Section 36 is amended by repealing subsection (9) and substituting the following subsection—

“(9) This section does not apply if the complaint or dispute relates to any of the following—

“(a) termination of employment done in accordance with this Act;

“(b) job sizing;

“(c) any issue involving the commission of a disciplinary offence or a criminal offence by the employee.”

(3) Section 36 is amended by inserting subsection (10) as follows—

“(10) Despite any other provision of this section, the Commissioner may decline to consider a complaint made under this section if the circumstances of the complaint or dispute indicate that there are irreconcilable issues between the employee and the head of department which are not capable of resolution.”

(4) Section 36 is amended by inserting subsection (11) as follows—

“(11) Approved policies can make provision for dealing with any dispute or grievance relating to the termination of employment of employees, and until such time as such policies take effect, the provisions of Part 6 of the Employment Relations Act 2012 can be applied in such cases.”

(5) Section 39 is amended by repealing subsection (1)(a).

**10 Remuneration for Seconded Public Servants**

Section 38 is amended by repealing subsection (3) and substituting the following subsection—

- “(3) Nothing in this section applies to an employee in respect of—
- “(a) the performance of services provided for another Department during a period of temporary secondment to that Department; or
  - “(b) additional services provided to the Government during occasions of national significance as approved by the Commissioner.”

**11 Policies and procedures binding State Services**

The following section is inserted after section 53—

**“53A Policies and procedures binding State Services**

- “(1) Despite section 50, this section may be applied to any agency whether or not it has been prescribed in regulations made under section 48(1)(i).
- “(2) A Policy and Procedures Manual approved under section 6(1)(c)(iii) may state that any or all of its provisions apply to specified State Services.
- “(3) If a State Service is bound by any requirements applying under an approved Policy and Procedures Manual then—
- “(a) the chief executive officer of the State Service must comply with the requirement, and ensure that all employees of the State Service comply with the requirement;
  - “(b) any employee of a State Service who breaches the requirement commits a disciplinary offence and is subject to the punishment provided by regulations made under this Act.
- “(4) If, in accordance with subsection (2), a Policy and Procedures Manual (or any of its provisions) are applied to a State Service which is established under enactment, the applicable provisions of the Policy and Procedures Manual, apply to the State Service despite any provision to the contrary in the law establishing the State Service.”

**12 Suspension of heads of departments**

- (1) Schedule 3 is amended by deleting the words “after consulting the Prime Minister” from paragraph 4(a), and replacing them with the words “after advising the relevant Minister”.
- (2) Schedule 3 is amended by repealing paragraph 4(c) and substituting it with the following—
- “(c) if the Commissioner does not decide that the appointee is to be removed from office within one month from the date on which the statement was laid before Cabinet under paragraph (b), the appointee is deemed to be restored to his or her office from the date of the suspension, unless the Public Service Commissioner determines that a further period, not exceeding 3 months, is required to complete any necessary investigation or inquiry.”

**Part 2**  
**General and miscellaneous provisions**

**13 Savings provisions**

Any Policy and Procedures Manual approved by the Commissioner prior to this Act coming into force, has full force and effect as if it were made in accordance with the provisions of this Act.

**14 Paramount law for the public service**

The following section is inserted—

**“61 Paramount law for the public service**

- “(1) Despite the provision of any other law, this Act is the paramount law applying to the management of the public service.
- “(2) In the event of any inconsistency between a provision of this Act (or any regulation, policy or term and condition of employment applying under the authority of this Act) and the Employment Relations Act 2012, the provisions of this Act (and any regulation, policy or term and condition of employment applying under the authority of this Act) prevail.”

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This Act is administered by the Public Service Commissioner.  
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