

PUBLIC SERVICE DECREE 1990

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A DECREE GIVING THE PUBLIC SERVICE COMMISSION ADDITIONAL POWERS
AND FUNCTIONS AND RELATED MATTERS

In exercise of the powers vested in me and pursuant to Section 5 of the Constitution of the Sovereign Democratic Republic of Fiji (Promulgation) Decree, 1990 and as amended by Section 2 of the Constitution of the Sovereign Democratic Republic of Fiji (Promulgation) Decree 1990 (Amendment No. 1) Decree 1990, I as the person appointed to perform the functions of the office of the President of the Republic of Fiji and acting in accordance with the advice of the Prime Minister and the Cabinet, hereby make the following Decree—

PART I—PRELIMINARY

Short title

1. This Decree may be cited as the Public Service Decree 1990.

Interpretation

2. In this Decree, unless the context otherwise requires—

"Commission" means the Public Service Commission constituted under section 126 of the Constitution;

"Commissioner" means a member of the Commission;

"Department" means a Ministry or division of a Ministry as may be designated by the Commission;

"employee" means a person employed in the Public Service;

"Gazette" means the Fiji Gazette or the Fiji Republic Gazette published by the order of the Government and includes supplements thereto and any Extraordinary Gazette so published;

"Minister" means the Minister in charge of the Commission;

"Ministry" means a Ministry of the Government in the charge of a Minister pursuant to section 92 of the Constitution;

"Officer" means a person employed in the Public Service who is subject to the jurisdiction of the Commission, but does not include a wage earner;

"Permanent Secretary" means the officer responsible to a Minister for the supervision of a Ministry, a Department or a group of Departments within a Ministry pursuant to section 92 of the Constitution or any officer appointed by the Commission to have the powers and functions of a Permanent Secretary for the purposes of this Decree;

"probation" means the period during which an officer's suitability for permanent appointment is assessed;

"promotion" means the appointment of an officer to a public office to which is attached a higher salary or higher maximum salary than that attached to the public office he last held substantively;

"Public Service" means the service in the Government of Fiji in any capacity in respect of the Government other than in a military capacity;

"statutory body" means any council, board, commission, committee or similar body, whether corporate or unincorporate, established under any written law other than the Companies Act;

"temporary appointment" means the appointment of a person to a temporary office in the Public Service or the appointment of a person temporarily to a permanent office in the Public Service;

"wage earner" means a person employed by reference to any rate of remuneration or payment other than an annual one.

PART II—POWERS AND FUNCTIONS OF COMMISSION

Additional powers of the Commission

3.—(1) The powers and functions vested in the Commission under this Decree shall be in addition to the powers and functions vested in it under the Constitution.

(2) In the discharge of the powers and functions vested in it by this Decree the Commission shall act in accordance with any general directions as to policy given to it by the Minister.

Functions of the Commission in respect of the Public Service

4.—(1) The Commission shall, in respect of the Public Service, be responsible for—

- (a) reviewing the machinery of Government, including the desirability of or need for the creation of new Ministries or Departments within Ministries, the amalgamation or abolition of existing Ministries or Departments the co-ordination of the activities of Ministries and Departments and, subject to the provisions of any other written law the extent and nature of the controls exercised over the operations of a Ministry or Department;
- (b) investigating, approving and reviewing establishments in Ministries and Departments;
- (c) classifying and grading posts in Ministries and Departments and determining the salaries and terms and conditions of employment to be attached to such posts;
- (d) fostering the efficiency and economy of the Public Service, including the discharge by Permanent Secretaries of the responsibilities placed on them under this Decree;
- (e) acting as the central personnel authority for the Public Service;
- (f) prescribing training programmes for and assistance with the training of employees, co-ordinating training activities of Ministries and Departments, conducting service examinations and implementing Government scholarship policies;
- (g) providing suitable office accommodation and prescribing and supervising the physical working conditions of all employees;
- (h) providing or causing to be provided management consultation services, including advice or efficient work and control methods and techniques, data processing equipment and problems of organisation.

(2) The Commission is empowered at all times in respect of the Public Service to carry out such inspections and investigations, and is entitled to receive such reports, as it considers necessary to advise any Permanent Secretary or Head of Department or to report to the Minister regarding the matters dealt with in this section or on such other matters as the Minister may direct.

Powers of the Commission in respect of statutory bodies

5.—(1) The Commission shall, when directed by the Minister at the request of a Minister responsible for any statutory body, associate itself with the head of that statutory body in the investigation of its organisation, methods or procedures:

Provided that, when reporting to the Minister, the Commission shall ensure that a copy of its report is sent to the Minister responsible for the statutory body so investigated.

(2) The Commission shall, when directed by the Minister at the request of a Minister responsible for any statutory body—

- (a) provide or cause to be provided to that statutory body, management consultation services including advice as to efficient work and control methods and techniques, data processing equipment, and problems of organisation; and
- (b) furnish or cause to be furnished advice on and assistance with the training of the staff of that statutory body.

(3) The Commission shall establish a co-ordinating committee for the purpose of advising statutory bodies on levels of emoluments and conditions of service of their employees and in determining such emoluments and conditions of service a statutory body shall consult the co-ordinating committee.

Delegation of powers and functions

6.—(1) The Commission may from time to time, either generally or particularly, delegate in writing any of its powers and functions under this Decree to a Commissioner or to any officer.

(2) In any case where the Commission has, pursuant to subsection (1), delegated any of its powers to a Commissioner or any officer, that Commissioner or officer may, with the prior approval in writing of the Commission, delegate such of those powers as the Commission approves to any other Commissioner or officer.

(3) Subject to any general or special directions given by the Commission, the Commissioner or officer to whom any powers or functions are so delegated may exercise those powers or functions in the same manner and with the same effect as if they had been conferred on him directly by this Decree and not by delegation.

(4) Every Commissioner and every officer purporting to act pursuant to any delegation under this section, shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(5) Any delegation to an officer under this section may be made to a specified officer or to officers of a specified class, or to the holder or holders for the time being of a specified office or of specified classes of offices.

(6) Every such delegation shall be revocable in writing at will and no delegation shall prevent the exercise of any power or function by the Commission or by the person otherwise delegating the power or function.

(7) Any such delegation shall, until it is revoked, continue in force notwithstanding any changes in the membership of the Commission.

(8) Any investigation or inquiry which the Commission is empowered to conduct under this Decree may be conducted by the Commission acting in its own right or by a Commissioner or by an officer or any other person specially or generally appointed by the Commission to conduct the investigation or inquiry and to report thereon to the Commission and for the purposes of any such investigation or inquiry all of the powers and authority conferred on the Commission by section 7 shall attach to and may be exercised by the officer or other person so appointed and the provisions of the Commissions of Inquiry Act referred to in section 7 shall in like manner apply in relation to the exercise of such powers and authority.

(9) In this section "officer" includes a person subject to the jurisdiction of the Judicial and Legal Services Commission or the Police Service Commission.

Power to summon witness, etc.

7. For the purposes of carrying out its powers, duties and functions under this Decree and the Constitution, the Commission shall have the same powers and authority to summon witnesses and to admit and receive evidence as are conferred upon the Commissioners of a Commission of Inquiry by section 9 of the Commissions of Inquiry Act and the provisions of sections 14 and 17 of that Act shall apply *mutatis mutandis* in relation to the powers and authority vested in the Commission under this section.

PART III—MISCELLANEOUS

Annual Report

8.—(1) The Commission shall as soon as is practicable after 31 December in each year furnish to the Minister a report on the state of the efficiency and economy of the Public Service, and on the operations of the Commission under this Decree for the year ending with that date.

(2) The Minister shall cause a copy of the report to be laid before the Cabinet.

Regulations

9.—(1) The Commission may with the approval of the Minister make regulations generally for the purpose of carrying out its functions under this Decree.

(2) Different regulations may be made in respect of different classes of employees.

(3) Without prejudice to the generality of subsections (1) and (2) the Commission may in particular make regulations for all or any of the following purposes—

- (a) promoting efficiency and economy in the Public Service;
- (b) prescribing standards of and conditions relating to office accommodation and the physical working conditions of employees;
- (c) facilitating the classification and grading of posts;
- (d) subject to the Higher Salaries Commission Act, 1983, prescribing the remuneration and terms and conditions of service and employment of employees;
- (e) prescribing fees, allowances and expenses that may be paid to any person for carrying out any functions or duties under this Decree;
- (f) prescribing the responsibilities and duties of employees;
- (g) providing for the training of employees, the co-ordination of the training activities of Ministries and Departments, the award of scholarships and the conduct of service examinations

General orders and saving

10.—(1) The Commission may, in addition to making regulations under section 9, from time to time make general orders covering the work and privileges of employees for their guidance, assistance and conduct.

(2) Different general orders may be made for and in respect of different classes of employees.

(3) It shall not be necessary for general orders made under this section, which shall be for the internal use, guidance, assistance and general conduct of employees, and which shall form part of the conditions of service of employees, to be published in the Gazette.

(4) For the avoidance of doubt, it is hereby declared that the General Orders in existence at the commencement of this Decree shall be deemed to have been made under this section and shall remain as general orders made under this section until amended, superseded or revoked.

Instructions

11.—(1) Subject to this Decree and any regulations made or continuing in force under this Decree, and without restricting the powers of the Commission, it is hereby declared that the Commission may from time to time issue circulars or manuals containing instructions which shall be observed by employees.

(2) The provisions of an instruction issued under subsection (1) shall be deemed to have been communicated to an employee when the instruction has been published in the Public Service Official Circular or in General Orders or any circular or manual made and issued by the Commission or, failing any such publication or issue, when it has otherwise been brought to his personal notice.

Protection of members of Commission

12. No matter or thing done by or on behalf of the Commission shall if the matter or thing was done in good faith for the purpose of this Decree subject to any member or agent of the Commission personally to any action, liability, claim or demand whatsoever in respect thereof.

Offence to attempt to influence Commission

13.—(1) Except as provided in subsections (3) and (4), any person who directly or indirectly solicits or endeavours to influence the Commission or any Commissioner (or any officer to whom any of the powers or functions of the Commission have been delegated under section 6) with respect to its or their decisions under this Decree is guilty of an offence.

(2) Any person who is guilty of an offence against this section is liable to a fine not exceeding \$1,000.

(3) Nothing in this section shall apply to any person giving information or advice or making representations to the Commission in respect of any matter whatsoever at the request or invitation of the Commission or in compliance with regulations made or procedures established by the Commission.

(4) Nothing in this section shall be construed so as to prevent any organisation, being a recognised organisation representing employees of the Public Service or any class or classes thereof, from making representation to the Commission on any matter affecting the salaries, wages or conditions of employment of any employee or class of employees.

Coming into force

14. This Decree shall be deemed to have come into force on the 25th day of July 1990.

Made this 15th day of November 1990.

INOKE TAKIVEIKATA
Person appointed to perform the functions of
the office of the President