



*Tonga*

**PUBLIC SERVICE (DISCIPLINARY  
PROCEDURES) (AMENDMENT)  
REGULATIONS 2010**





## **PUBLIC SERVICE (DISCIPLINARY PROCEDURES) (AMENDMENT) REGULATIONS 2010**

### **Arrangement of Regulations**

#### **Regulation**

1	Short Title .....	5
2	Regulation 2 amended - Interpretation .....	5
3	General Amendment .....	6
4	Regulation 3 amended .....	6
5	Regulation 4 amended .....	6
6	Regulation 5 amended .....	7
7	Regulation 6 amended .....	8
8	Regulation 7 amended .....	9
9	New Regulation 7A .....	10
10	Regulation 11 amended .....	11
11	Regulation 13 amended .....	11
12	Regulation 14 amended .....	12
13	New Part III .....	12
14	New Schedule I and II .....	15





# **PUBLIC SERVICE (DISCIPLINARY PROCEDURES) (AMENDMENT) REGULATIONS 2010**

## **PUBLIC SERVICE ACT**

*IN EXERCISE of the powers conferred by sections 21 and 22 of the Public Service Act 2002, as amended, the Prime Minister with the consent of Cabinet makes the following Regulations:*

### **1 Short Title**

- (1) These Regulations may be cited as the Public Service (Disciplinary Procedures) (Amendment) Regulations 2010.
- (2) The Public Service (Disciplinary Procedures) Regulations 2003 shall be referred to in these regulations as the Principal Regulations.

### **2 Regulation 2 amended - Interpretation**

Regulation 2 of the Principal Regulations is amended by –

- (a) deleting the definition of “Secretary” and substituting it with the following:  
“**Chief Executive Officer of the Commission**” means the Chief Executive Officer of the Public Service Commission appointed under the Public Service Act 2002; and
- (b) inserting the following new interpretation where appropriate:  
“**Tribunal**” means the Public Service Tribunal established under the Public Service Act 2002.

### 3 General Amendment

The Principal Regulations is amended by –

- (a) deleting “Head of Department”, wherever it appears, and substituting it with “Chief Executive Officer”; and
- (b) deleting “Secretary”, wherever it appears, and substituting it with “Chief Executive Officer of the Commission”.

### 4 Regulation 3 amended

Regulation 3 of the Principal Regulations is repealed and replaced with the following:

#### “3 Determination of a breach of discipline

- (1) Subject to these Regulations, a Chief Executive Officer or the Commission shall decide whether a breach of discipline is minor or serious.
- (2) Notwithstanding sub-regulation (1), the Commission may initiate a disciplinary action on its own motion including any disciplinary action against a Chief Executive Officer.
- (3) A Chief Executive Officer shall refer a matter to the Commission when there is a conflict of interest by reason of any relationship with the employee or any of the employees involved.”

### 5 Regulation 4 amended

Regulation 4 of the Principal Regulations is amended by:

- (a) deleting sub-regulation (1) and substituting it with the following:

“(1) The Chief Executive Officer may, upon finding that an employee has committed a minor breach of discipline, impose on the employee the following sanctions –

- (a) issue written warning;
- (b) reprimand the employee in writing or verbally;
- (c) counsel the employee;
- (d) require the employee to undertake training; or
- (e) transfer the employee within the Ministry.”

- (b) deleting sub-regulation (2) and substituting it with the following:

- “(2) A record of such a minor breach of discipline and action taken by the Chief Executive Officer shall be given to the employee and a copy shall be kept in his personal file.
- (3) After each reprimand the employee shall sign an agreement with the Chief Executive Officer acknowledging that he has been reprimanded.
- (4) The repetition of minor breaches of discipline more than three times shall constitute a serious breach of discipline.
- (5) An employee who has been reprimanded more than 3 times shall be penalised as follows -
  - (a) a deduction from his salary two weeks of his fortnightly pay; or
  - (b) forfeit 10 days of his annual leave entitlement.”

## **6 Regulation 5 amended**

Regulation 5 of the Principal Regulation is amended by deleting sub-regulation (1) and (2) and substituting it with the following:

- “(1) In the case where an employee is alleged to have committed a serious breach of discipline or repeated minor breaches of discipline, the Chief Executive Officer or his authorised representative, shall inquire into the matter.
- (2) If the Chief Executive Officer determines that there has been a serious breach of discipline, or repeated minor breaches of discipline, he shall forward a complete report to the Chief Executive Officer of the Commission, which shall include the following:
  - (a) the allegations against the employee;
  - (b) any complaint made against the employee, whether by a public servant or a member of the public;
  - (c) the reasons that the breach is deemed by the Chief Executive officer as a serious breach of discipline;
  - (d) the facts gathered from the inquiry;
  - (e) official records or documents relevant to the serious breach of discipline;
  - (f) a report from the Auditor General, if there is any;
  - (g) a report from the Tonga Police, if there is any;
  - (h) any internal correspondence with the employee relating to the serious breach, including emails;
  - (i) any representation from the employee;

- (j) any statements from witnesses;
  - (k) any record of previous disciplinary cases committed by the employee; and
  - (l) any other document that is relevant to breach of discipline,
- Provided that the Chief Executive Officer or his Ministry shall not:
- (i) make any recommendations regarding the allegations; or
  - (ii) do anything or omit to do anything or cause another Ministry to do or omit to do anything that amounts to disciplining the employee.
- (3) If the Chief Executive Officer determines during or after an inquiry under sub-regulation (1) that there is no serious breach of discipline has been committed by the employee, he shall end the inquiry or record in writing that the inquiry has concluded that there was no serious breach of discipline, and the reasons for making such determination, and such written determination shall be kept in the employee's personal file.
- (4) Where it appears that a criminal offence may have been committed by an employee, the Chief Executive Officer or the Commission shall report the matter to the Police and the Chief Executive Officer shall forward a complete report under sub-regulation (2) to the Chief Executive Officer of the Commission.”

## **7 Regulation 6 amended**

Regulation 6 of the Principal Regulations is repealed and replaced with the following -

### **“6 Serious financial irregularity**

- (1) In cases of serious financial irregularity, the –
- (a) Auditor General; or
  - (b) a Chief Executive Officer,
- shall initiate disciplinary action by giving a complete report to the Chief Executive Officer of the Commission or by the Chief Executive Officer of the Commission to the Charge Formulation Committee if the breach was committed by an employee of the Office of the Commission.
- (2) The Auditor General or the Chief Executive Officer who made the report under sub-regulation (1) may make recommendations to the Committee or Commission on any serious financial irregularity.”



## 8 Regulation 7 amended

The Principal Regulations is amended by repealing regulation 7 and replacing it with the following:

### “7 Procedures for serious disciplinary charges

- (1) A report of serious breach of discipline or repeated minor breaches of discipline shall be dealt with as follows —
  - (a) within 10 working days of receipt of the report, the Chief Executive Officer of the Commission shall convene the Charge Formulation Committee, to hear the presentation of the report from the relevant Chief Executive Officer or his representative;
  - (b) within 15 working days of receipt of the report, the Charge Formulation Committee shall charge the employee.

Provided that if the Charge Formulation Committee requires further information to clarify aspects of the report, the employee shall be charged within 10 working days from receipt of that further information.

The Charge Formulation Committee shall also recommend to the Commission whether the employee should be suspended from duty without pay. If the Commission decides for the employee to be suspended, the employee shall be informed in writing of his suspension by the same deadline as for the charging of the employee (afore-stated in paragraph 1 and 2 of this same sub-regulation).

- (c) within 10 working days of receiving the charge, the employee may submit a written representation to the Commission in response to the charges, and either:
  - (i) admit the charge, and include mitigation; or
  - (ii) dispute the charge and make submissions as to why he disputes the charges, and may provide other evidence.
- (d) within 10 working days of receipt of the representation from the employee, the Chief Executive Officer of the Commission shall submit the matter to the Commission along with his recommendations;
- (e) within 10 working days of receipt of the recommendations of the Chief Executive Officer of the Commission by the employee, the employee may make further representation in writing or orally to the Commission;

- (f) after receipt of the case under paragraph (d) or hearing further from the employee under paragraph (e) the Commission shall decide the case, and if the employee is found to have committed a serious breach of discipline, the Commission shall impose the appropriate sanctions as set out under these regulations.
- (2) The charge laid against the employee shall include the following:
  - (a) a copy of the report from the Chief Executive Officer;
  - (b) a copy of the report of the Auditor-General, if any;
  - (c) information about the time within which a written reply may be made; and
  - (d) a copy of the Code of Ethics and Conduct and these Regulations.
- (3) Where the employee does not reply within the specified time under this Regulation, the Chief Executive Officer of the Commission shall proceed with the matter as if the reply has been received.
- (4) The Chief Executive Officer of the Commission may extend the time required for a reply but such extension shall not exceed one month.”

## 9 New Regulation 7A

The Principal Regulations is amended by inserting the following new regulation 7A:

### **“7A Establishment, functions and powers of the Charge Formulation Committee**

- (1) The Charge Formulation Committee is hereby established and shall consist of the following members:
  - (a) the Chief Executive Officer of the Commission, who shall be the chairman;
  - (b) the Auditor-General or his representative;
  - (c) the Solicitor General or his representative; and
  - (d) the secretariat shall be from the Commission.
- (2) The Charge Formulation Committee shall have the following functions:
  - (a) consider the report received from a Chief Executive Officer or the Commission under regulation 5; and
  - (b) seek further clarification on the report from the Chief Executive Officer or any other person.

- (3) The Charge Formulation Committee shall have the following powers:
  - (a) lay the appropriate charges against the employee;
  - (b) recommend to the Commission to suspend the employee;
  - (c) direct the Chief Executive Officer or his Ministry to provide within 10 working days further information to clarify the report; and
  - (d) dismiss an allegation of serious breach of discipline due to lack of sufficient evidence.”
- (4) Where a report is considered by the Charge Formulation Committee in relation to any employee of a Ministry headed by a member of the Committee, such member shall be present in the meeting only to answer questions from the Committee members, but shall not participate or be present during the discussion of the charges.”

## **10 Regulation 11 amended**

Regulation 11 of the Principal Regulations is repealed and replaced with the following -

### **“11 Service of documents**

- (1) Personal service of any document is required for the purposes of any proceedings before the Charge Formulation Committee, the Commission or the Tribunal.
- (2) Service shall be effected by delivering the document to the person to be served or by bringing it to his notice if he refuses to accept it.
- (3) Where for any sufficient reason personal service of any document cannot be effected in the manner prescribed by sub-regulation (2), the Commission may, on such terms and conditions as it thinks fit, make an order giving leave for steps to be taken to bring the document to the knowledge of the person to be served by advertisement or in some other manner.
- (4) Where any such order has been carried out, the steps taken may be called substituted service, and such service shall have the same effect as personal service.”

## **11 Regulation 13 amended**

Regulation 13 of the Principal Regulations is repealed and replaced with the following -

**“13 Matters before the Commission**

- (1) The Chief Executive Officer of the Commission shall forward a matter under regulation 7A together with the charge, the report from the Chief Executive Officer, the Committee’s recommendation, to the Commission.
- (2) The Commission shall -
  - (a) consider the case within 30 days from the date of filing of the notice of appeal provided that the employee shall have the right to make oral presentation if he so requests; and
  - (b) decide the case and the Chief Executive Officer of the Commission shall advise the employee in writing of its decision.”

**12 Regulation 14 amended**

Regulation 14 of the Principal Regulations is repealed and replaced with the following -

**“14 Effect of dismissal**

An employee dismissed from the Public Service shall forfeit all benefits, privileges and entitlements.”

**13 New Part III**

The Principal Regulations are amended by adding the following new PART III after regulation 14 and numbered accordingly -

**“PART III - APPEAL TO THE TRIBUNAL****15 Interpretation**

In this Part –

“**appellant**” means the employee who is appealing a decision of the Commission to the Tribunal.

**16 Appeals**

- (1) An employee has the right to appeal to the Tribunal against any decision of the Commission.
- (2) An appeal shall be in the prescribed form set out in Schedule I of these Regulations.

- (3) The employee shall lodge his appeal with the Secretary of the Tribunal within 30 days following receipt by the employee of the written communication of the decision of the Commission.
- (4) At the same time as he serves notice on the Tribunal, the employee shall serve a copy of the notice on the Commission.
- (5) The appellant shall pay the prescribed fee set out in Schedule II to these Regulations to the Secretary of the Tribunal.

**17 Contents of notice**

The appellant's notice shall be signed and dated by or on behalf of the appellant and shall state –

- (a) the name and the address for the service of the appellant;
- (b) the name and address of the Tribunal;
- (c) details of the decision of which the application is made; and
- (d) the grounds of appeal.

**18 Action on receipt of application**

The Secretary of the Tribunal shall acknowledge receipt of any notice served under regulation 16.

**19 Appearance before the Tribunal**

The Tribunal may, if it thinks fit, give the appellant an opportunity of being heard.

**20 Decision of the Tribunal**

- (1) The Tribunal shall give its decision within 14 days of receipt of the application.
- (2) The decision shall be given in writing, signed and dated by the President of the Tribunal and shall contain a summary of its reasons.
- (3) A copy of the decision shall be sent to the applicant and the Commission.

**21 Extension of time**

The Tribunal may extend any time specified by these Regulations upon such terms as it thinks fit, if it considers that the justice of the case requires it.

**22 Disclosure of documents**

- (1) The Commission and any party shall comply with any request in writing by the Tribunal to deliver to it any document within their power or control.
- (2) The Secretary of the Tribunal may supply copies of any documents obtained under sub-regulation (1) to the parties and any such copy document shall be used only for the purposes of the case.

**23 Withdrawal of proceedings**

- (1) The appellant may withdraw his case by the service on the Tribunal of written notice to that effect.
- (2) The Secretary of the Tribunal shall send a copy of a notice served under sub-regulation (1) to the Commission.

**24 Arrangements for hearings**

- (1) The Tribunal may determine a case before it without an oral hearing if all the parties so agree in writing.
- (2) The Tribunal shall set a date, time and place for a hearing.
- (3) The Secretary of the Tribunal shall send to the parties, notice of the date, time and place fixed for the hearing.
- (4) The Tribunal may –
  - (a) adjourn a hearing to such date or time as it may determine; or
  - (b) alter the place of any hearing;and, if any of the above take place, the Secretary shall notify those persons notified under sub-regulation (2), of the revised arrangements.

**25 Conduct of proceedings at hearings**

- (1) The Tribunal may issue directions as to the conduct of hearings.
- (2) The Tribunal may adopt any method of proceeding at a hearing that it considers to be fair.
- (3) Hearings will be informal.

**26 Representation at hearings**

At any hearing, a party may conduct his case himself or may be represented by counsel, a solicitor, or, with the permission of the Tribunal, any other person whom he appoints for that purpose.

**27 Failure to attend**

If any party fails to appear at a hearing, without reasonable cause, the Tribunal may hear and determine the case in the party's absence and, if the party is the appellant and the hearing is the final hearing of the case, it may dismiss the case.

**28 Decision of the Tribunal**

- (1) At the conclusion of any hearing the Tribunal may announce its decision orally.
- (2) A decision of the Tribunal which finally determines an appeal shall be recorded in an order.
- (3) The Tribunal shall send a copy to the appellant and to the Commission,

of the order referred to in sub-regulation (2), and a summary of the facts and reasons on which the decision is based, signed and dated by the President.

- (4) Except where the Tribunal provides for the decision to have effect on a specified date, the decision shall have effect on the date of the order or, if no order was made, on the date when it was notified to the appellant.
- (5) The Commission shall publish the decision of the Tribunal, after removing the identity of the employee or all material particulars which may lead to the employee being identified.

## **29 Recovery of loss**

- (1) Where an employee has been disciplined under these Regulations and the Committee, Commission or Tribunal is satisfied that the breach has resulted in an assessable loss to Government, it may direct that any amount up to the full extent of the loss be recovered from the employee by deduction from the employee's salary or entitlements.
- (2) The deduction referred to in sub-regulation (1) shall be no more than 30% of the gross payable salary of the employee, provided that if the employee is dismissed, the total amount of the assessable loss owing shall be deducted."

## **14 New Schedule I and II**

The Principal Regulations are amended by adding the following new Schedules I and II -

### **“SCHEDULE I**

#### **NOTICE OF APPEAL**

#### **1. To**

**Secretary of the Public Service Tribunal  
NUKU‘ALOFA**

**I / We** \_\_\_\_\_

**of** \_\_\_\_\_

hereby give notice that I/we appeal to the Public Service Tribunal under section \_\_\_\_\_ of the Public Service Act, against the decision made by the Public Service Commission on :

**Date** \_\_\_\_\_ **Decision number** \_\_\_\_\_

**2 Grounds of Appeal**

**The grounds of appeal are as follows:**

**3 Address for Service**

All communications regarding the Appeal should be addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

If the notice is signed on behalf of the appellant, the person who signs it must state below in what capacity or authority they sign.

\_\_\_\_\_

**SCHEDULE II**

**FEES**

Appeal to the Public Service Tribunal \$100''

Made at Nuku'alofa this 8<sup>th</sup> day of December 2010.