

BILL NO. 16 OF 2016

A BILL

FOR AN ACT TO AMEND THE PUBLIC SERVICE ACT 1999

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Public Service (Amendment) Act 2016.
- (2) This Act comes into force on the date of its publication in the Gazette.
- (3) In this Act, the Public Service Act 1999 is referred to as the “Principal Act”.

Long title amended

2. The Principal Act is amended by deleting the long title and substituting the following—

“AN ACT TO MAKE PROVISION FOR THE PUBLIC SERVICE COMMISSION
AND FOR RELATED MATTERS”.

Section 3 amended

3. Section 3 of the Principal Act is amended by—
 - (a) inserting the following new definitions—

““Commission” means the Public Service Commission continued under section 125 of the Constitution;

“Constitution” means the Constitution of the Republic of Fiji;

“Judicial Services Commission” means the Judicial Services Commission continued under section 104 of the Constitution;

“Minister” means the minister responsible for civil service;

“Ministry” means the Ministry of Civil Service;”;

(b) deleting the definitions of—

(i) “Appeal Board”;

(ii) “delegate”;

(iii) “delegation”;

(iv) “Judicial Service Commission”;

(v) “member”;

(vi) “Public Service Commission”;

(vii) “relevant Commission”;

(viii) “relevant employee”;

(ix) “Senior Executive Service”;

(x) “service Commission”; and

(xi) “statutory functions”;

(c) in the definition of “directions”, deleting “a service Commission under section 20 of this Act” and substituting “the Commission under section 5(1)”;

(d) in the definition of “regulations”, deleting “a service Commission under this Act or section 173(1) of the Constitution” and substituting “the Commission under section 15”; and

(e) in the definition of “public service”, deleting “Service” and substituting “Services”.

Section 4 amended

4. Section 4 of the Principal Act is amended by deleting subsection (5).

Section 5 amended

5. Section 5 of the Principal Act is amended by—

(a) in subsection (1)(a), deleting “employees” and substituting “permanent secretaries”; and

(b) inserting the following new subsection after subsection (1)—

“(1A) All permanent secretaries must comply with any regulations prescribed or directions issued by the Commission under subsection (1).”

Sections 9 and 10 deleted

6. The Principal Act is amended by deleting sections 9 and 10.

Section 11 amended

7. The Principal Act is amended by deleting section 11 and substituting the following—

“Functions of the Commission

11. In addition to its functions under section 126 of the Constitution, the Commission must perform the following functions—

- (a) manage the performance of the permanent secretaries;
- (b) consider and determine appeals against decisions made by a permanent secretary in accordance with guidelines, directions, policies and other rules or regulations issued by the Commission;
- (c) manage the remuneration of permanent secretaries;
- (d) provide a written report to the Minister on any relevant matter or issue, in accordance with the Minister’s request; and
- (e) do all other things necessary for the performance of its functions and the implementation of this Act.”

Section 12 deleted

8. The Principal Act is amended by deleting section 12.

Section 13 amended

9. Section 13 of the Principal Act is amended by—

- (a) deleting subsection (1) and substituting the following new subsection—

“(1) The Commission may, on its own initiative, conduct an inquiry into an alleged breach of the Civil Service Code of Conduct and Civil Service Values by any permanent secretary.”; and
- (b) deleting subsection (7).

Section 14 amended

10. Section 14 of the Principal Act is amended by deleting subsections (1) and (2) and substituting the following new subsection—

“(1) Within 2 months after the end of each year ending on 31 December, the Commission must provide the Minister with an annual report and a report of the performance of each permanent secretary during the year.”

Section 15 amended

11. Section 15 of the Principal Act is amended by—

- (a) deleting in subsection (1)(c), “statutory”; and
- (b) deleting subsections (2), (3), (4) and (7).

*Sections 16, 18, 19, 20 and Part 5 deleted***12.** The Principal Act is amended by—

- (a) deleting sections 16, 18, 19 and 20; and
- (b) deleting Part 5.

*Section 17 amended***13.** The Principal Act is amended by deleting section 17 and substituting the following new section—*“Other staff of the Commission*

17. The Commission must, in order to perform its functions be provided with staff from the Ministry to act as the secretariat of the Commission or for any other purposes the Commission deems necessary.”

*Section 21 amended***14.** The Principal Act is amended by deleting section 21 and substituting the following new section—*“Powers of the permanent secretary*

21. In accordance with section 127(7) and (8) of the Constitution, a permanent secretary must exercise all of his or her powers in relation to the employment, recruitment, discipline and removal of any staff in accordance with guidelines, directions, policies and other rules or regulations issued by the Commission.”

*Section 22 amended***15.** The Principal Act is amended by deleting section 22 and substituting the following new section—*“Improperly influencing the Commission*

22. Any person who seeks to, directly or indirectly, improperly influence the Commission or a member, employee or agent of the Commission commits an offence and is liable upon conviction to a fine not exceeding \$20,000.”

*Section 23 amended***16.** The Principal Act is amended by deleting section 23 and substituting the following new section—*“Protection of members of the Commission*

23. A member, employee or agent of the Commission will not be liable for any act done or omitted to be done by that person in good faith, in relation to the performance or purported performance of a function or the exercise of a power, of the Commission.”

*Section 31(d) amended***17.** Section 31(d) of the Principal Act is amended by deleting “Secretary for the Public” and substituting “Ministry of Civil”.*Section 33 amended***18.** Section 33 of the Principal Act is amended by deleting subsection (2).

References to Public Service Commission amended

19. The Principal Act is amended by deleting all references to—

- (a) “Public Service Commission”; and
- (b) “relevant Commission”,

and substituting “Commission”, wherever they appear, unless the context otherwise requires.

Consequential amendments

20.—(1) The Principal Act is amended by deleting all references to the provisions of the Constitution adopted under the Fiji Constitution Amendment Act 1997 and, unless the context otherwise requires, such references must be construed as references to the Constitution adopted under the Constitution of the Republic of Fiji (Promulgation) Decree 2013.

(2) The Principal Act, all State documents of any nature whatsoever and all written laws, including any Act, Proclamation, Promulgation, Decree and subsidiary legislation (including the titles of any written law) are consequently amended by deleting “public service” and substituting “civil service” wherever it appears, unless the context otherwise requires.

PUBLIC SERVICE (AMENDMENT) BILL 2016

EXPLANATORY NOTE

(This note is not part of the Bill and is only intended to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Public Service (Amendment) Bill 2016 (**‘Bill’**) seeks to amend the Public Service Act 1999 (**‘Act’**).
- 1.2 The Act provides guidelines for the management of the public service.
- 1.3 The provisions of the Act were superseded by the promulgation of the Constitution which delegates greater flexibility and autonomy to the permanent secretaries for the recruitment and management of the public service.
- 1.4 Section 127 of the Constitution empowers a permanent secretary (with the agreement of the Minister) to—
- (a) appoint, remove and institute disciplinary action against all staff of the ministry; and
 - (b) to determine matters pertaining to employment, including salaries and benefits payable, in accordance with the budget approved by Parliament.
- 1.5 In 2015, Government endorsed the Civil Service Reform (**‘Reform’**) which amongst other things, provides for the restructure of the Public Service Commission (**‘Commission’**) and the establishment of the Civil Service Reform Management Unit (**‘Unit’**). In conjunction with the establishment of the Unit the public service is now referred to as the civil service. The role of the Unit is to foster a more effective and efficient civil service.
- 1.6 In light of the above, the intention of the Bill is to—
- (a) ensure that the Act is consistent with the provisions of the Constitution with regard to the management of the civil service; and

- (b) facilitate the changes necessary to ensure that whilst the Reform is being carried out, the delivery and performance of government services is continuously improved.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement.
- 2.2 Clauses 2 and 3 of the Bill provide for amendments to the long title and to the interpretation section within the Act to ensure consistency with the Constitution.
- 2.3 Clause 4 of the Bill amends section 4 of the Act to remove a provision which fosters recruitment based on ethnic grounds. This is discriminatory and contradictory to the principle of non-discrimination based on ethnicity within the work environment.
- 2.4 Clause 5 of the Bill amends section 5 of the Act to reflect that the Commission is responsible only for permanent secretaries, whilst permanent secretaries are responsible for all staff within the ministries.
- 2.5 Clause 6 of the Bill removes sections 9 and 10 from the Act which provide for a Senior Executive Service and implies closed merit selection as the Reform is moving towards position based and open merit selection.
- 2.6 Clause 7 of the Bill substitutes section 11 of the Act with a new section to reflect the functions of the Commission as provided for by the Constitution. Amongst other things, this section also provides for appeal mechanisms against decisions made by a permanent secretary in accordance with guidelines, directions, policies and other rules or regulations issued by the Commission.
- 2.7 Clause 8 of the Bill removes section 12 of the Act which empowers the Minister to give directions to the Commission. This will no longer be necessary given that the Commission is an independent body.
- 2.8 Clause 9 of the Bill amends section 13 of the Act to ensure that the Commission only has authority to conduct an inquiry into an alleged breach of the Civil Service Code of Conduct and Civil Service Values by a permanent secretary as opposed to all civil servants.
- 2.9 Clause 10 of the Bill amends section 14 of the Act to allow the Commission to manage and assess the performance of each permanent secretary, and provide the Minister with an annual report of the Commission and a report of the performance of all permanent secretaries. Overall, this will give an indication of the performance of each ministry within Government for each year.
- 2.10 Clause 11 of the Bill amends section 15 of the Act to ensure that the regulation making power under the Act given to the Commission is limited in its scope in accordance with its limited functions.

- 2.11 Clause 12 of the Bill removes sections 16, 18, 19, 20 and Part 5 of the Act. These provisions have either been phased out or are not in accordance with the functions of the Commission as specified in the Constitution and elsewhere in the Act.

For example, section 16 of the Act gives the Commission very broad powers to delegate its functions and powers. However, given that the Commission now has lesser responsibilities and is mostly limited to managing permanent secretaries, its power to delegate functions and powers has been removed.

- 2.12 Clause 13 of the Bill amends section 17 of the Act to abolish the Ministry of Public Service and to replace it with the Ministry of Civil Service, while at the same time providing for staff from the Ministry of Civil Service to act as the secretariat of the Commission.
- 2.13 Clause 14 of the Bill amends section 21 of the Act to state that a permanent secretary is responsible under the Constitution for the management of each ministry in accordance with guidelines issued by the Commission. This amendment also removes the power of the Commission to delegate powers to the permanent secretaries.
- 2.14 Clauses 15 of the Bill states that it is an offence for a person to directly or indirectly improperly influence the Commission or a member, employee or agent of the Commission.
- 2.15 Clause 16 of the Bill provides for the protection of a member, employee or agent of the Commission from any liability arising out of any act done or omitted to be done by that person in good faith, in relation to the performance or purported performance of a function or the exercise of a power, of the Commission.
- 2.16 Clause 17 of the Bill amends section 31 of the Act to ensure that any reference to the position of the Secretary of the Public Service Commission is construed as a reference to the Ministry of Civil Service, given that the Ministry of Civil Service will now act as the secretariat of the Commission.
- 2.17 Clause 18 of the Bill amends section 33 of the Act for the purposes of clarity, by deleting subsection (2) which caters for appeals to be brought before the Appeal Board. Under the State Services Decree 2009, the Appeal Board was abolished but necessary amendments were not made.
- 2.18 Clause 19 of the Bill enables all references in the Act to “Public Service Commission” and “relevant Commission” to be replaced with “Commission”, wherever it appears, unless the context otherwise requires. This is for the purpose of clarity and consistency within the Act.

- 2.19 Clause 20 of the Bill provides for consequential amendments to the Act, any written law and subsidiary legislation (including the titles of any written law) which are necessary to ensure consistency for the use of the term “civil service” instead of “public service”, wherever it appears, unless the context otherwise requires.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the minister responsible for civil service.

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Attorney-General