



ANALYSIS

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1972, No. 13

An Act to amend the Public Service Act 1969

(29 January 1973)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title and commencement - (1) This Act may be cited as the Public Service Amendment Act 1972 and shall be read together with and deemed part of the Public Service Act 1969 (hereinafter referred to as the principal Act).
 (2) This Act shall come into force on the coming into force of the Constitution Amendment (No. 6) Act 1972.

2. Interpretation - Section 2 of the principal Act is hereby amended by -

- (a) Omitting the term "Commission" and its definition:
- (b) Omitting the term "Commissioner" and its definition:
- (c) Inserting after the term "Expatriate employee" and its definition and before the term "Occupational class" and its definition, the following term and definition:-

" Graded position" means any position on the permanent staff of the Public Service above the trainee and basic grades of each occupational class of the Public Service

- as prescribed by the Public Service Commissioner pursuant to section 24 of this Act and includes special posts and expatriate employees":
- (d) Inserting after the term "Public Service" and its definition and before the term "Service organization" and its definition, the following term and definition:-
- " "Public Service Commissioner" means the Public Service Commissioner appointed under Article 73 of the Constitution".

3. Substitution of terms - The principal Act is hereby further amended by omitting the terms "Commission" and "Public Service Commission" wherever they occur and (except in section 2 of the principal Act) substituting the term "Public Service Commissioner".

4. Delegation of powers - Subsection (1) of section 5 of the principal Act is hereby amended by omitting the words "to any of its members or".

5. Appointments to the Public Service - The principal Act is hereby amended by repealing section 10 and substituting the following section:-

- "10. Appointments to the Public Service - (1) Except as provided in subsection (2) hereof the Public Service Commissioner shall make all appointments to the Public Service and shall, in making such appointments have regard to the need to maintain and develop an efficient career service based on the recruitment of adequately qualified persons. The Public Service Commissioner shall make no appointment to the Public Service unless he is satisfied that such appointment is necessary and that the appointee has clearly more merit for the position to be filled than any other officer who is available for the position; merit to be determined in accordance with section 15 of this Act.
- (2) Subject to subclauses (3) and (4) of Article 74B of the Constitution the Public Service Commissioner together with two departmental heads appointed in accordance with subsections (3) and (4) of this section, shall make all appointments to graded positions of the Public Service and shall in making such appointments have regard to the need to maintain and develop an efficient career service based on the recruitment of adequately qualified persons.

The Public Service Commissioner and departmental heads shall make no appointment to the Public Service unless they are satisfied that such appointment is necessary and that the appointee has clearly more merit for the position to be filled than any other officer who is available for the position; merit to be determined in accordance with section 15 of this Act:

Provided that before making such appointments the Public Service Commissioner and the two departmental heads shall consult with the departmental head within whose department the position to be filled, exists.

(3) The two departmental heads to be appointed for the purposes of making appointments as provided in subclause (2) of Article 74B of the Constitution and subsection (2) of this section shall be appointed as follows:

- (i) One departmental head shall be nominated for the purpose by the Executive of the Cook Islands Public Service Association (Inc.) and appointed by the High Commissioner for a term of not more than two years; and
- (ii) One departmental head shall be nominated for the purpose by a simple majority of all departmental heads and appointed by the High Commissioner for a term of not more than two years:
- Provided that no departmental head shall take part in the making of any appointment as aforesaid when the position to be filled is within his department.

(4) In the event of a departmental head being disqualified from taking part in the making of an appointment by the proviso to subsection (3) of this section, or in the event of his absence from the Cook Islands the position of that departmental head shall be filled for the purpose of making that appointment by a deputy appointed in the same manner as the departmental head."

6. Appointments to vacant positions - The principal Act is hereby amended by repealing subsection (1) of section 15 and substituting the following subsection:-

- (1) Subject to the provisions of subclauses (3) and (4) of Article 74B of the Constitution all appointments to vacant positions in the Public Service other than graded positions shall be made by the Public Service Commissioner

and all appointments to graded positions in the Public Service above the lowest basic grade shall be made by the Public Service Commissioner and two departmental heads appointed in accordance with the provisions of section 10 of this Act."

7. Offence to attempt to influence Public Service Commissioner - Section 59 of the principal Act is hereby repealed and the following section substituted:-

" 59. (1) Every person commits an offence against this section who directly or indirectly solicits or endeavours either to influence the Public Service Commissioner or any departmental head making an appointment pursuant to sections 10 or 15 of this Act to obtain preferment or reward or gain or to influence the Public Service Commissioner or departmental head as aforesaid or any other person to whom the Public Service Commissioner has delegated his powers under section 5 of this Act with respect to decisions on the matters described in the first proviso to subsection (1) of section 3 of this Act.

(2) Every person who commits an offence against this section is liable to a fine not exceeding two hundred dollars.

(3) Nothing in this section shall apply to any person giving information or advice or making representations to the Public Service Commissioner or any departmental head as aforesaid in respect of any appointment, promotion or grading at the request of the Public Service Commissioner or any departmental head as aforesaid.

(4) Nothing in this section shall be construed so as to prevent the service organisation from making representations to the Public Service Commissioner or any departmental head as aforesaid on any matter affecting the salaries, wages, or conditions of employment of any employee or class of employee.

(5) Nothing in this section shall apply to any application made by an employee addressed to the Public Service Commissioner or any departmental head as aforesaid in the manner prescribed by the Public Service Commissioner or any departmental head as aforesaid for such applications."

This Act is administered in the Public Service Commission.