

PUBLIC SERVICE

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Public Service Act 2016

TABLE OF AMENDMENTS

The Public Service Act 2016 No 11 was certified and commenced on 29 January 2016 (GN No 48/2016; Gaz 10/2016).

Amending Legislation	Certified	Date of Commencement
Public Service (Amendment) Act 2016 No 29	9 June 2016	9 June 2016
Public Service (Amendment) Act 2017 No 11	30 May 2017	30 May 2017
Public Service (Amendment) No 2 Act 2017 No 24	24 November 2017	24 November 2017
Public Service (Amendment) Act 2018 No 3	26 January 2018	26 January 2018
Public Service (Amendment) No 2 Act 2018 No 33	18 December 2018	18 December 2018
Public Service (Amendment) Act 2019 No 1	22 March 2019	22 March 2019
Public Service (Amendment) Act 2020 No 6	4 June 2020	4 June 2020
Public Service (Amendment) No 2 Act 2020 No 36	3 December 2020	3 December 2020
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021
Electoral (Amendment) Act 2021 No 18	14 September 2021	s 23: 14 September 2021
Public Service (Amendment) Act 2022 No 15	8 June 2022	10 June 2022

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An Act to repeal the *Public Service Act 1998* and for its replacement with a new law providing for public service employment, management and certain other employment for public purposes and for related purposes.

Enacted by the Parliament of Nauru as follows:

PART 1 — PRELIMINARY

1 Short title

This Act may be cited as the *Public Service Act 2016*.

2 Commencement

This Act commences on the date on which it is certified by the Speaker and came into effect on 29 January 2016.

3 Application of Act

(1) Unless a contrary intention appears, this Act applies to all public service employees with the following exceptions:

- (a) if a public service employee belongs to a class of employees who are excluded from the application of all or part of this Act by regulations, this Act does not apply to the employee to the extent of the exclusion; or
- (b) if some or all of the terms and conditions of employment of a public service employee are specified in another written law, this Act does not apply to the extent of any inconsistency with the other written law.

[subs (1) am Act 6 of 2020 s 4, opn 4 June 2020]

(2) The Cabinet may make regulations that may apply this Act or specified provisions of this Act to employees of State owned enterprises, or other employees of the Republic who are not public service employees, subject to modifications, if any, specified in the Regulations and to the extent specified in the Regulations, the Regulations will have effect despite the provisions of any other Act.

(3) This Act applies to all foreign service employees employed or posted in Nauru High Commissions, Consulates overseas or any other place as follows:

- (a) provisions relating to Heads of Departments apply to the Heads of Missions; and
- (b) provisions relating to other public service employees apply to all other staff of the Missions or Consulates.

[subs (3) insrt Act 6 of 2020 s 4, opn 4 June 2020]

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PART 2 — INTERPRETATION

4 Definitions

(1) In this Act:

‘absent without leave’, has the meaning as is defined Section 5;

[def subst Act 6 of 2020 s 5, opn 4 June 2020]

‘accrual year’, for a public service employee, means a continuous period of service of 12 months beginning on:

- (a) for the employee’s first year of employment in the public service – the day the employee is appointed as a public service employee; or
- (b) for each following year – the day after the employee completes the previous accrual year;

‘adopted child’

[def rep Act 1 of 2019 s 4, opn 22 Mar 2019; Act 6 of 2020 s 5, opn 4 June 2020]

‘adoption leave’ means the type of leave mentioned in Part 6, Division 3, Subdivision 5;

‘adoption order’, has the same meaning it has in Section 3 of the *Adoption of Children Act 1965*;

[def subst Act 6 of 2020 s 5, opn 4 June 2020]

‘adoptive parent’, has the same meaning it has in Section 3 of the *Adoption of Children Act 1965*;

[def subst Act 6 of 2020 s 5, opn 4 June 2020]

‘recreation leave’ means the type of leave mentioned in Part 6, Division 3, Subdivision 1;

‘balance’, for a type of leave, means the amount of the type of leave an employee has accrued but not used;

‘base hours of attendance’, for a public service employee, means the base hours of attendance that apply to the employee under Section 40;

‘Board’ means the Public Service Appeals Board established by Article 70 of the *Constitution*;

‘Chairman’

[def rep Act 6 of 2020 s 5, opn 4 June 2020]

‘Chairperson’ means the Chairperson of the Public Service Appeals Board referred to in Section 105;

[def insrt Act 6 of 2020 s 5, opn 4 June 2020]

‘classification’, for a public service position, means a description that identifies the class of positions to which the position belongs;

‘Code of Conduct’ means the Code set out in Section 8;

‘continuous period of service’, has the meaning as is defined in Section 6;

[def subst Act 6 of 2020 s 5, opn 4 June 2020]

‘contract employee’ within the public service means a person who is employed under a contract of employment under Section 34;

‘disciplinary action’

[def rep Act 6 of 2020 s 5, opn 4 June 2020]

‘family member’

[def rep Act 1 of 2019 s 4, opn 22 Mar 2019; Act 6 of 2020 s 5, opn 4 June 2020]

‘foreign service employee’ refers to a Nauruan employed by the Government in Nauruan High Commissions or Consular offices overseas and includes Honorary Consuls;

[def insrt Act 6 of 2020 s 5, opn 4 June 2020]

‘information notice’

[def rep Act 6 of 2020 s 5, opn 4 June 2020]

‘leave’ includes paid leave, leave without pay and official leave;

‘leave without pay’ means the type of leave mentioned in Part 6, Division 3, Subdivision 8;

‘furlough leave’ means the type of leave mentioned in Part 6, Division 3, Subdivision 9;

[def am Act 6 of 2020 s 30, opn 4 June 2020]

‘maternity leave’ means the type of leave mentioned in Part 6, Division 3, Subdivision 3;

‘medical certificate’ means a certificate given by a medical practitioner or dentist;

‘Minister’ means the Minister who is responsible for the administration of this Act;

‘misconduct’ means a breach of the Code of Conduct or commission of a disciplinary offence prescribed by Regulations;

[def subst Act 6 of 2020 s 5, opn 4 June 2020]

‘non-standard hours of attendance’ means the hours mentioned in Section 42;

‘paid leave’ means recreation leave, medical leave, maternity leave, adoption leave, paternity leave, special leave or furlough leave;

[def am Act 6 of 2020 s 30, opn 4 June 2020]

‘paternity leave’ means the type of leave mentioned in Part 6 Division 3, Subdivision 4;

‘pay period’ means a consecutive period of 2 calendar weeks over which the payment of salary to public service employees is calculated;

‘permanent employee’ means a person who has completed a probationary period and continuous 12 months service and holds a position in the public service on a permanent basis;

‘medical leave’ means the type of leave mentioned in Part 6, Division 3, Subdivision 2;

‘probationary employee’ means a person who holds a public service position on a probationary period of 6 months or as determined by the Chief Secretary;

‘probationary period’, for a public service employee, means:

- (a) the initial period of probation mentioned in Section 27(2); and
- (b) any extended period mentioned in Section 27(3);

‘public holiday’, see Section 81;

‘public service employee’, unless otherwise stated, means a person employed in a Department of the public service on a permanent basis and does not include a temporary employee, casual employee or a contract employee;

‘public service position’ means a position in the public service created under Section 16(1)(a);

‘public service values’ mean the values of the public service mentioned in Section 7;

‘Registrar’ means the Registrar of Courts;

‘Regulations’

[def subst Act 1 of 2019 s 4, opn 22 Mar 2019; rep Act 6 of 2020 s 5, opn 4 June 2020]

‘remedial action’, is as provided for in Section 95(1);

‘required hours of attendance’, for a public service employee, means:

- (a) the employee’s base hours of attendance; and
- (b) any additional hours the employee is required to attend duty under Section 45(1);

‘relevant Head of Department’, for a public service employee, means the Secretary;

[def am Act 6 of 2020 s 30, opn 4 June 2020]

‘relevant Minister’, for a department, means the Minister to whom the President has assigned the administration of the department under Article 23 of the *Constitution* or an administrative arrangements order;

‘Secretary’ means the Head of Department as appointed under Section 13;

‘standard hours of attendance’ means the hours specified in Section 41;

‘substantive holder’, of a public service position, means the permanent employee who holds the position on a permanent basis;

‘substantive position’, for a permanent employee, means the public service position the employee holds on a permanent basis;

‘supervisor’, of a public service employee, means:

- (a) the relevant Head of Department for the employee; or
- (b) a person authorised by the relevant Head of Department to supervise the employee;

[def am Act 6 of 2020 s 30, opn 4 June 2020]

‘temporary employee’ means a person who does not hold another public service position and who is employed within the public service for a temporary purpose not exceeding 6 months;

‘termination date’ means the date a public service employee’s employment in the public service terminates;

‘termination entitlement’ means an amount a public service employee is entitled to under Part 7, Division 6 when the employee’s employment in the public service terminates;

[def am Act 1 of 2019 s 4, opn 22 Mar 2019]

'outside employment' means employment outside the public service for which the person employed receives a reward; and

'vacant', for a public service position, means that the position is not:

- (a) held by a permanent employee on a permanent basis; or
- (b) occupied by a permanent or temporary employee for a fixed term.

5 **Meaning of 'absent without leave'**

- (1) An employee is **'absent without leave'** if the employee is:
 - (a) absent from duty during the employee's required hours of attendance; and
 - (b) the employee has not been granted leave for the absence.
- (2) The employee is not absent without leave if:
 - (a) the employee informs the employee's supervisor of the absence and the reason for it as soon as practicable;
 - (b) the employee applies for leave for the absence as soon as practicable; and
 - (c) the leave is granted.

6 **Meaning of 'continuous period of service'**

- (1) A *'continuous period of service'*, for an employee means a period during which the employee is continuously employed in the public service.
- (2) Leave without pay does not break a continuous period of service, but the time the employee is on leave without pay does not count towards the period of service.
- (3) An employee who resigns from their employment in the public service but at a future date reapplies for another position in the public service breaks their continuous period of service when they resigned from their first position.

[The next page is 6001]

PART 3 — PUBLIC SERVICE VALUES AND CODE OF CONDUCT

7 Public Service values

The public service:

- (a) is politically neutral, performing its functions in an impartial and professional manner;
- (b) bases employment decisions on merit;
- (c) is free of discrimination;
- (d) has the highest ethical standards;
- (e) provides frank, honest, comprehensive, accurate and timely advice to Government;
- (f) delivers services fairly, effectively, impartially and courteously;
- (g) has leadership of the highest quality;
- (h) provides a fair workplace;
- (i) provides a safe working environment;
- (j) focuses on achieving results and managing performance;
- (k) has the highest standards of accountability and transparency; and
- (l) provides a reasonable opportunity to all eligible members of the community to apply for employment.

8 Code of Conduct

Every employee of the public service shall:

- (a) behave honestly and with integrity;
- (b) act with care and diligence;
- (c) treat everyone with respect and courtesy, and without coercion, harassment or discrimination of any kind;
- (d) comply with all applicable written laws;
- (e) promptly comply with any lawful and reasonable direction given by a person who has authority to give direction;
- (f) maintain appropriate confidentiality about dealings that the employee has in the course of employment;
- (g) disclose details of any material personal interest of the employee in connection with the employee's public service employment;
- (h) take reasonable steps to avoid, any conflict of interest, real or apparent, in connection with the employee's public service employment;
- (i) use resources of the Republic in a proper manner and for a proper purpose;
- (j) not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's public service employment;
- (k) not make improper use of the following to gain a benefit or advantage for the employee or for another person:
 - (i) information gained as a result of the employee's public service employment; and
 - (ii) the employee's duties, status, power or authority;
- (l) at all times behave in a way that upholds the public service values and the integrity and good reputation of the public service;
- (m) not engage in any political activity at all times; and

(n) not engage in outside employment without the Chief Secretary's authorisation under Section 9.

[s 8 am Act 6 of 2020 s 6, opn 4 June 2020]

9 Outside employment

- (1) A public service employee shall apply to the Chief Secretary for authorisation to engage in outside employment.
- (2) The Chief Secretary may only refuse the request if the Chief Secretary believes on reasonable grounds that the outside employment would adversely affect:
 - (a) the performance of the employee's duties in the public service; or
 - (b) the employee's compliance with the Code of Conduct.

[The next page is 6201]

PART 4 — STRUCTURE OF PUBLIC SERVICE

DIVISION 1 — GENERAL PRINCIPLES

10 Composition of Public Service

The public service is constituted by the following:

- (a) permanent employees;
- (b) contract employees; and
- (c) temporary employees.

11 Departments

The Minister may, with the approval of the Cabinet, by Gazette notice:

- (a) establish a department and assign a title to it;
- (b) alter the title of a department; or
- (c) abolish a department.

11A Sections within departments

- (1) The Minister may, with the approval of the Cabinet, by Gazette notice:
 - (a) establish a section within a department and assign a title to it;
 - (b) alter the title of an existing section;
 - (c) transfer an existing section from one department to another department;
or
 - (d) abolish an existing section.
- (2) Where a section is transferred to another department under Section 11A(1)(c), any position created within that section in accordance with Section 16, is also transferred from one department to that other department.

[s 11A insrt Act 29 of 2016 s 4, opn 9 June 2016]

12 Role of Chief Secretary

The Chief Secretary is responsible to the Minister for the overall supervision of the public service, including heads of departments.

DIVISION 2 — HEADS OF DEPARTMENTS

13 Secretary

- (1) The Head of a Department is the Secretary of the Department.
- (2) The office of the Secretary is established by this Section.
- (3) Where a department is abolished or its name is changed, the office of the relevant Secretary is taken to be abolished or its name correspondingly changed.
- (4) Appointments to the office of the Secretary of a department are to be made by the Minister of the relevant department, with the approval of the Cabinet.
- (5) Subject to Section 25, the Cabinet shall determine:
 - (a) the terms and conditions of employment; and

(b) the functions and powers,
of a person appointed as the Secretary of a department.

[subs (5) subst Act 6 of 2020 s 7, opn 4 June 2020]

(6) The Cabinet may:

- (a) in consultation with the relevant Minister, transfer to another department or re-assign duties other than as Head of the department; or
- (b) terminate for misconduct or without any cause,
a Secretary of a department appointed under subsection (4).

[subs (6) insrt Act 6 of 2020 s 7, opn 4 June 2020]

(7) Where the Secretary of a department is terminated without cause, he or she shall be paid 1 month's salary in lieu of notice together with any accrued benefit under this Act.

[subs (7) insrt Act 6 of 2020 s 7, opn 4 June 2020]

14 Appointment of Acting Secretary

- (1) The Minister, with the approval of the Cabinet, may appoint a public service employee to act as the Secretary of a department if the office of the Secretary is vacant or if the Secretary is absent from the Republic or is unable to perform his or her duties due to illness.
- (2) The Cabinet may, at any time, terminate an acting appointment.
- (3) The Cabinet will determine the conditions of employment and the functions of a person acting as the Secretary of a department.

15 General responsibility of a Secretary

- (1) The Secretary of a department is responsible to the relevant Minister and to the Chief Secretary for the general conduct and management of the functions and activities of the Department in accordance with the core values of the public service.
- (2) Any action taken in the exercise of a responsibility under this Section, is not to be inconsistent with the functions conferred by this Act on a Minister administering this Act or on the Chief Secretary.

[subs (2) am Act 6 of 2020 s 8, opn 4 June 2020]

DIVISION 3 — PUBLIC SERVICE POSITIONS

16 Creation, abolition, classification and eligibility requirements of position

- (1) The Minister may, by Gazette notice:
 - (a) create a public service position; or
 - (b) abolish a public service position.
- (2) The Minister shall specify, in the Gazette notice that creates a public service position, the classification of the position.
- (3) The Minister may, by subsequent Gazette notice, change the classification of a public service position.
- (4) The classification specified by the Minister shall be the classification for other positions that:
 - (a) are of a similar kind;
 - (b) have responsibilities of a similar level; and

- (c) require work of similar value.
- (5) The Minister may specify, in the Gazette notice that creates a public service position or in a subsequent Gazette notice, eligibility requirements for a person holding or occupying the position.
- (6) The Minister may, by subsequent Gazette notice, change the eligibility requirements of a public service position.
- (7) The Minister may, in a notice under subsection (3), (5) or (6), declare that the change of classification or the imposition or change of eligibility requirements does not take effect until the position next becomes vacant.

17 Public service position may be held, occupied or vacant

A public service position may be:

- (a) held on a permanent basis by a permanent employee;
- (b) occupied for a fixed term by a permanent or temporary employee;
- (c) held on a fixed term by a contract employee; or
- (d) vacant.

18 Reduction in salary following reclassification

- (1) This Section applies if:
 - (a) the Minister changes the classification of a public service position, other than a vacant position;
 - (b) the rate of salary, or the maximum rate of salary, of the position immediately after the change is lower than the rate of salary, or the maximum rate of salary, of the position immediately before the change; and
 - (c) the Minister does not make the declaration mentioned in Section 16(7).
- (2) A public service employee holding or occupying the position immediately before the change of classification may elect to continue to hold or occupy the position under the new classification.
- (3) Where the public service employee does not elect to continue to occupy or hold the position under the new classification, Part 7, Division 4 applies to the public service employee as if the position had been abolished.

19 Increase in salary following reclassification

- (1) This Section applies if:
 - (a) the Minister changes the classification of a public service position, other than a vacant position;
 - (b) the rate of salary, or the maximum rate of salary, of the position immediately after the change is higher than the rate of salary, or the maximum rate of salary, of the position immediately before the change; and
 - (c) the Minister does not make the declaration under Section 16(7).
- (2) The position is taken to be vacant 1 month after the change in classification unless a person is appointed to the position before that time.
- (3) Where a public service employee holding or occupying the position immediately before the change of classification is not re-appointed to the position, Part 7, Division 4 applies to the public service employee as if the position had been abolished.

20 Imposition or change of eligibility requirements

Where a declaration is not made under Section 16(7) in relation to the imposition or change of eligibility requirements for a public service position and the public service employee who holds or occupies the position does not meet the eligibility requirements and has not done so within a reasonable period allowed by the Chief Secretary, Part 7, Division 4 applies to the public service employee as if the position had been abolished.

[The next page is 6401]

PART 5 — SELECTION AND APPOINTMENT OF PUBLIC SERVICE EMPLOYEES

DIVISION 1 — PRINCIPLES APPLICABLE TO ALL APPOINTMENTS

21 Merit principle

- (1) The selection of a person for appointment to the public service shall be based on merit alone.
- (2) Where the Chief Secretary considers that more than one candidate for appointment to a particular position is suitable for the appointment, the Chief Secretary shall select the candidate the Chief Secretary reasonably believes has the greatest merit for the appointment.
- (3) The Chief Secretary shall take the following matters into account in deciding the merit of a person for appointment to a position:
 - (a) the extent to which the person has the abilities, aptitude, skills, qualifications, knowledge, experience and personal qualities relevant to performing the duties of the position; and
 - (b) if relevant:
 - (i) the way in which the person performed any previous employment duties; and
 - (ii) the extent to which the person has potential for development.

[subs (3) am Act 6 of 2020 s 9, opn 4 June 2020]

22 Advertising vacant position

The Chief Secretary may make policy about:

- (a) the circumstances in which a vacancy within the public service shall be advertised; and
- (b) the way in which it shall be advertised.

[s 22 am Act 29 of 2016 s 5, opn 9 June 2016]

23 Eligibility for appointment

- (1) A person is not eligible for appointment as a public service employee if the person is:
 - (a) under the age of 18 years;
 - (b) a Member of Parliament; or
 - (c) is not a Nauruan citizen.
- (2) A person who is not eligible under subsection (1)(c), may be appointed as a contract employee.
- (3) Subsection (2) does not limit the eligibility of Nauruan citizens from being employed in the public service as contract employees.
- (4) Upon being appointed as an employee of the public service, a person is required to swear or affirm before the Chief Secretary, an oath or affirmation on appointment as contained in Schedule 1.

[subs (4) insrt Act 29 of 2016 s 6, opn 9 June 2016; revised under powers authorised by Act 10 of 2019]

- (5) All appointments of non-Nauruan employees shall be conducted in a transparent manner and in accordance with best human resources standards, policies and practices.

[subs (5) insrt Act 29 of 2016 s 6, opn 9 June 2016]

DIVISION 2 — APPOINTMENT OF PUBLIC SERVICE EMPLOYEES

24 **Basis of appointment – permanent or fixed term**

- (1) Subject to Sections 23 and 25, the Chief Secretary may appoint a person to a public service position:
- (a) on a permanent basis; or
 - (b) for a fixed term.
- (1A) Subject to Section 13, all appointments to the Public Service may only be made by the Chief Secretary.
- [subs (1A) insrt Act 29 of 2016 s 7, opn 9 June 2016]
- (2) The Chief Secretary shall not appoint a person to a public service position on a permanent basis if another public service employee holds the position on a permanent basis.
- (3) The Chief Secretary may only appoint a person to a public service position for a fixed term if the person enters into a written contract of employment for the appointment.
- (4) Subsection (3) does not apply to temporary or casual employees.

25 **Basis of appointment – Head of Department**

A person appointed as Secretary of a Department under Section 13 may only be appointed for a fixed term.

[s 25 am Act 6 of 2020 s 30, opn 4 June 2020]

26 **Publication of notice of appointment**

The Chief Secretary shall publish notice of each appointment to a public service position in the Gazette within 14 days of the appointment being made.

27 **Probationary period**

- (1) This Section applies:
- (a) if a person is appointed to a public service position; and
 - (b) immediately before the appointment, the person was not a public service employee; or
 - (c) to a temporary employee employed under Section 28.
- [subs (1) subst Act 6 of 2020 s 10, opn 4 June 2020]
- (2) The appointment:
- (a) is subject to an initial appointment of 6 months for a person in subsection (1)(b); and
 - (b) of a temporary employee, who:
 - (i) has served a period of 6 months or any other period as a temporary employee in the public service;
 - (ii) has a satisfactory attendance record; and
 - (iii) the relevant Secretary or Head of Department provides a report of

satisfactory performance, the period of employment as temporary employee shall be credited to or is deemed to have been served as probationary period of 6 months.

[subs (2) subst Act 6 of 2020 s 10, opn 4 June 2020]

- (3) The purpose of the probationary period is to determine whether the person is suitable for the position.
- (4) The Chief Secretary may, before the end of the initial period of probation, extend the period of probation for a further single period of up to 6 months if the Chief Secretary reasonably believes it is necessary to do so to determine whether the person is suitable for the position.
- (5) Before confirming a person's appointment following a probationary period, the Chief Secretary shall conduct or instruct the relevant Secretary to conduct a performance appraisal.
- (6) Subject to subsection (5), the person's appointment is taken to be confirmed at the end of the probationary period unless the Chief Secretary has earlier terminated the person's employment.
- (7) The Chief Secretary may terminate the person's employment at any time during the probationary period.

DIVISION 2A — VACANCIES, PROMOTION AND TRANSFER

[Div 2A insrt Act 29 of 2016 s 8, opn 9 June 2016]

27A Vacancies

- (1) Where a vacancy exists for a position in the public service and, in the opinion of the Chief Secretary, it is necessary to fill the vacancy, the Chief Secretary may:
 - (a) direct that a notification be published in the Gazette inviting applications for transfer, promotion or appointment; and
 - (b) set out the requirements for the position.
- (2) A vacancy for a position in the public service may be filled by:
 - (a) the Chief Secretary transferring or promoting an officer to the vacant position; or
 - (b) the appointment to the vacant position of a person from outside the public service.
- (3) No person from outside of the public service may be appointed to a vacant position unless the Chief Secretary has confirmed in writing that the vacant position cannot be suitably filled by the transfer or promotion of an employee.
- (4) Until regulations have prescribed the method of transfer or promotion, the method of selection of a person to be transferred or promoted to a vacant position may be as determined by the Chief Secretary.
- (5) The promotion or transfer of an employee or the appointment of a person as an employee of the public service shall be published in the Gazette.

27B Power of Chief Secretary to transfer after 3 years

The Chief Secretary may transfer an employee from one position to another:

- (a) if the employee has served in the same position for 3 years or more; and
- (b) the Chief Secretary considers it in the interest of the public service to transfer the employee to that other position.

27C Declining promotion or transfer

- (1) The Chief Secretary may permit an employee to decline a promotion or transfer without prejudice to his or her right of future promotion or transfer.
- (2) Where a decision has been made to transfer an employee due to misconduct, the Chief Secretary shall make an order directing the transfer of the employee and the employee shall comply with the order.
- (3) Non-compliance with a direction given under subsection (2), may result in further disciplinary action being taken against the employee or termination.

DIVISION 3 — TEMPORARY EMPLOYEES

28 Employment of temporary employees

- (1) The Chief Secretary may, to meet temporary circumstances, employ a person as a temporary employee to perform work of a type ordinarily performed by a public service employee other than a Secretary.
- (2) The employment may be on a temporary basis and full-time or part time but shall not exceed 6 months unless extended by the Chief Secretary.
- (3) A person employed under this Section does not, by reason of employment, become a public service employee.
- (4) Part 5, Division 1 applies to the selection and appointment of a temporary employee as if the position were a public service position.

29 Review of status and leave entitlements of temporary employee

- (1) The relevant Secretary shall, 2 weeks before the end of the employment of the temporary employee, decide and inform the Chief Secretary whether:
 - (a) subject to Section 27, the person be employed as a permanent employee;
 - (b) the person's temporary employment be continued for another period of 5 months only; or
 - (c) the person's employment is to end or lapse on the completion of any period or extended period of temporary employment.
- (2) In making a decision under subsection (1)(a), the relevant Secretary shall:
 - (a) prepare a performance appraisal of the employee;
 - (b) ensure there is a relevant vacancy within the public service; and
 - (c) submit to the Chief Secretary for his or her decision.
- (3) Where the relevant Secretary does not make a decision within the period stated in subsection (1), the Secretary is taken to have decided that the person's employment ends.
- (4) The temporary employee shall not be paid any salary or benefit beyond the period when his or her temporary employment ended.
- (5) Notwithstanding any other provisions of this Act, temporary employees shall be eligible for official travel, special leave, medical leave and official leave on the same terms and conditions as public service employees.
- (6) Subject to subsection (1), a temporary employee is eligible for recreation leave if he or she completes 12 months continuous period of service.
- (7) Where a temporary employee is absent from work without the prior leave or approval of his or her reporting officer or the relevant Secretary, he or

she may be summarily terminated by the Chief Secretary on the recommendation of the relevant Secretary.

[s 29 subst Act 6 of 2020 s 11, opn 4 June 2020]

30 Temporary employee – application of Code of Conduct

Section 8 applies to a temporary employee as if the employee were a public service employee.

31 Temporary employees – application of Public Service (Disciplinary) Regulations 2020

The *Public Service (Disciplinary) Regulations 2020* do not apply to a temporary employee.

[s 31 am Act 1 of 2019 s 5, opn 22 Mar 2019]

DIVISION 4 — CONTRACT EMPLOYEES

32 Contract positions

- (1) The Minister may with the approval of the Cabinet, determine any established permanent position in the public service to be held by a public service employee on a contract for a fixed period of time.
- (2) The Chief Secretary may upon the request of a relevant Secretary, establish a new contract position in a Department.
- (3) Where a contract position is vacant, the Chief Secretary may fill the position according to the process set out in Section 34.
- (4) The determination of a position under subsection (1) shall be gazetted.

[s 32 subst Act 6 of 2020 s 12, opn 4 June 2020]

33 Contract position held by a public service employee

- (1) Where an existing position in a Department is determined to be a contract position and that position is held by a public service employee, the following provisions apply:
 - (a) the Chief Secretary shall give the employee notice in writing of the determination;
 - (b) the notice shall state that the change in status of the position will take effect 4 weeks after the date of the notice;
 - (c) the employee is deemed to have resigned from their employment 4 weeks after the date of the notice, and shall be paid the entitlements that would be due to the employee because of their resignation;
 - (d) the Chief Secretary may offer the employee a contract of employment as a contract employee in the position not less than 2 weeks after the date of the notice;
 - (e) where the employee signs the contract of employment before the end of the 4 week period from the date of the notice, the employee becomes a contract employee with effect from the date of signature; and
 - (f) where the employee does not sign the contract before the end of the 4 week period from the date of the notice the offer lapses at the end of the 4 week period.
- (2) Where the offer of contract employment lapses under subsection (1)(f), the Chief Secretary shall advertise the position according to Section 34.

34 Employment of contract employees

- (1) Subject to Section 33, where the Chief Secretary wishes to employ persons in a contract position, the Chief Secretary shall advertise the position.
- (2) The Chief Secretary may determine procedures to be used in determining the relevant person to be offered a contract position, including consulting with the relevant Secretary.
- (3) The contract of employment of every contract employee shall be in writing and shall be signed by the contract employee and the Chief Secretary on behalf of the Government.
- (4) The Code of Conduct applies to a contract employee.

35 Misconduct by contract employees

- (1) The relevant Secretary shall provide a report to the Chief Secretary, if they:
 - (a) become aware that a contract employee has been charged with having committed an offence punishable by more than 1 year of imprisonment; or
 - (b) suspect that a contract employee may have committed any misconduct.
- (2) The Chief Secretary shall use discretion when applying the provisions of the Regulations and of Division 5 of Part 7 to a contract employee suspected of committing a breach of discipline.
- (3) A contract employee has no right to lodge an appeal to the Public Service Appeals Board under Section 109.

36 Managing the work performance of a contract employee

- (1) Where the relevant Secretary considers that a contract employee is not performing their duties at the standard expected of a contract employee of that classification, the relevant Secretary shall provide a report on the matter to the Chief Secretary.
- (2) Sections 95 and 96 apply to the work performance of a contract employee.
- (3) A performance assessment conducted in accordance with this Section shall be conducted by the Chief Secretary in collaboration with the relevant Secretary.

[subs (3) insrt Act 29 of 2016 s 10, opn 9 June 2016; am Act 6 of 2020 s 13, opn 4 June 2020]

37 Termination of employment – contract employee

- (1) A contract employee may be terminated according to the terms and conditions of his or her contract.
- (2) Where a contract employee:
 - (a) abandons work without prior notification;
 - (b) is absent from work for a period of 14 days without prior approval;
 - (c) whilst on a category of leave attempts to extend leave by other forms of leave without any reasonable cause; or
 - (d) leaves the Republic with no intention to return,his or her contract shall be terminated without any notice.

[s 37 subst Act 6 of 2020 s 14, opn 4 June 2020]

[The next page is 6601]

**PART 6 — TERMS AND CONDITIONS OF PUBLIC SERVICE
EMPLOYMENT**

DIVISION 1 — REMUNERATION

38 Determination of salary – public service positions

- (1) The Minister may determine, by Gazette notice, a salary or range of salaries for each public service position.
- (2) If the Minister determines a range of salaries for a class of public service positions:
 - (a) the Minister may also make regulations about:
 - (i) how the Chief Secretary shall decide the salary of a person appointed to a position belonging to the class; and
 - (ii) the circumstances in which the Chief Secretary may increase the person's salary within the range determined;
 - (b) acting in accordance with the regulations, the Chief Secretary may appoint a person to a position belonging to that class on a salary within the range determined; and
 - (c) the person's salary cannot be changed to an amount within the range that is lower than the amount on which the person was appointed except:
 - (i) in the circumstances in Section 18; or
 - (ii) as a form of disciplinary action that may be prescribed by regulations.

39 Determination of allowances

- (1) The Minister may determine, with the approval of the Cabinet:
 - (a) the circumstances in which a public service employee shall be paid an allowance in addition to the employee's salary; and
 - (b) the amount of each allowance.
- (2) A decision made under subsection (1) shall be published by Gazette notice within 7 days of being made.

DIVISION 2 — HOURS OF ATTENDANCE

40 Determination of base hours of attendance

The Chief Secretary may determine that the base hours of attendance that apply to a public service employee are:

- (a) the standard hours of attendance; or
- (b) the non-standard hours of attendance.

40A Reporting requirements for employees working from outside the Republic due to unexpected circumstances or events

- (1) This Section applies where an employee:
 - (a) is outside of the Republic for leave approved under this Act;

- (b) is unable to return to the Republic at the expiry of the approved leave due to prescribed circumstances outside of the employer's or employee's control; and
 - (c) as a result of not being in the Republic, is unable to comply with the requirements of this Division.
- (2) Despite a determination made under Section 40, and where subsection (1) applies, the Minister may:
- (a) authorise in writing that the employee is to perform the employee's duties and responsibilities away from the place of duty;
 - (b) determine in writing, the terms and conditions of employment that the employee is to comply with whilst outside of the Republic and the following applies:
 - (i) the terms and conditions are regarded as a variation to the existing terms and conditions; and
 - (ii) the terms and conditions commence from the date determined by the Minister, and ceases upon the employee's return to the Republic;
 - (c) authorise in writing that the employee be paid the salary determined under Section 38 for that employee, which may be:
 - (i) the full salary; or
 - (ii) partial salary; and
 - (d) make policy for the purpose of this Section notwithstanding existing terms and conditions of employment.
- (3) Where it is authorised that an employee is to be paid a partial salary under subsection (2)(c)(ii), that employee shall be paid in accordance with the original terms and conditions:
- (a) the remaining balance of salary that the employee is entitled to be paid as determined under Section 38; and
 - (b) upon return to the place of duty.
- (4) For the purpose of this Section, *'away from the place of duty'*:
- (a) means any place from where an employee shall perform the duties and responsibilities of his or her employment outside the Republic; or
 - (b) includes a place where the employee is required by the written laws of the Republic or written laws of a foreign jurisdiction to isolate for the purposes of travel, health or safety of the employee or the public.

[s 40A insrt Act 15 of 2022 s 4, opn 10 June 2022]

41 Base hours of attendance – standard

- (1) Where the standard hours of attendance apply to a public service employee, the employee shall attend work from 9am to 5pm on each working day.
- (2) On each working day, the employee is entitled to a one hour meal break, which shall be taken at a time approved by the employee's supervisor.

42 Base hours of attendance – non-standard

- (1) Where the non-standard hours of attendance apply to a public service employee, the employee shall attend work at the times and on the days specified in advance by the relevant Secretary, excluding meal breaks.
- (2) The employee is entitled to a 1 hour meal break for each unbroken period of 4 hours of work completed.

43 Hours of attendance – Teachers

Despite Sections 41 and 42, the hours of duty for teachers may be determined by the Minister by notice in the Gazette.

44 Failure to comply with required hours of attendance

- (1) A public service employee is not entitled to receive salary or any other remuneration for any time the employee is absent without leave.
- (2) Where an employee fails to attend his or her employment for a continuous period of 14 days and fails to give notice as required under this Act, the employee is deemed to have resigned from his or her position and the position immediately becomes vacant.

[subs (2) subst Act 29 of 2016 s 11, opn 9 June 2016]

- (3) Where an employee is deemed to have resigned from his or her position under subsection (2), the employee shall not be re-employed in the public service within a period of 6 months from the date of deemed resignation.

[subs (3) insrt Act 24 of 2017 s 4, opn 24 Nov 2017]

45 Additional hours of attendance

- (1) A public service employee may be required to attend work for a reasonable number of hours in addition to the employee's base hours of attendance if the employee is compensated for the additional hours by way of:
 - (a) additional remuneration; or
 - (b) time off work at another time.
- (2) The Minister may make regulations about additional hours of attendance, including:
 - (a) the maximum amount of additional hours an employee may be required to attend work; and
 - (b) the compensation the employee shall be given for the additional hours.

46 Record of attendance

- (1) The Chief Secretary shall determine the means of recording the attendance of officers and employees.
- (2) The relevant Secretary is responsible, using the means of record determined by the Chief Secretary, for the recording of attendance in that Department.
- (3) Every person employed in the public service shall record daily by the means of record determined by the Chief Secretary, the actual times of his or her arrival at, and departure from, his or her place of duty.
- (4) The following are exempt from the application of subsection (3):
 - (a) Secretaries of Departments; and
 - (b) public service employees specially exempted by the Chief Secretary.
- (5) The exemption in subsection (4) does not authorise the employee to leave his or her place of duty except on official business within the hours of attendance.

DIVISION 3 — LEAVE

47 Definition of employee

For the purpose of Subdivisions 1 to 8 of this Division, '*employee*' means permanent employees and contract employees.

Subdivision 1 — Recreation leave

48 Purpose of recreation leave

Recreation leave is available to an employee to enable the employee to take leave from duty.

49 Entitlement to recreation leave

- (1) For each year of service, an employee is entitled to 4 weeks of recreation leave on full salary (the employee's **'annual entitlement'**).
- (2) An employee's annual entitlement may be calculated on a pro rata basis.
- (3) [subs (3) rep Act 3 of 2018 s 4, opn 26 Jan 2018]

50 Accumulation of recreation leave – maximum

- (1) Recreation leave accrues cumulatively up to a maximum of 3 years.
- (2) Where an employee reaches the maximum recreation leave balance, the Chief Secretary shall direct the employee to immediately:
 - (a) take an amount of recreation leave that will reduce the employee's recreation leave balance so it does not exceed the maximum annual balance when the employee next accrues recreation leave; or
 - (b) cash out an amount of recreation leave that will reduce the employee's recreation leave so it does not exceed the maximum recreation leave balance when the employee next accrues recreation leave.
- (3) The Chief Secretary may only direct the employee to cash out leave if there are exceptional operational reasons preventing the employee from taking recreation leave.
- (4) An employee may only cash out recreation leave if the Chief Secretary directs the employee to do so under subsection (2)(b).
- (5) For the purposes of this Section, recreation leave is cashed out when:
 - (a) the employee is paid an amount equal to the amount of salary the employee would be entitled to be paid during a period (the **'cashed out period'**) if the employee were on recreation leave; and
 - (b) the employee's recreation leave balance is reduced by the number of days equal to the cashed out period.

51 Taking recreation leave

- (1) The employee shall apply to the Chief Secretary to take recreation leave at least 14 days prior to taking recreation leave.
[subs (1) subst Act 24 of 2017 s 6, opn 24 Nov 2017]
- (1A) [subs (1A) rep Act 6 of 2020 s 15, opn 4 June 2020]
- (2) An employee shall as far as practicable take their recreation leave when it is due.
- (3) An employee seeking to defer their recreation leave shall first obtain the written approval of the Chief Secretary.
- (4) The Chief Secretary shall grant the recreation leave to the extent of the employee's recreation leave balance if:
 - (a) the employee has completed an initial continuous period of service of 3 months; and

(b) the relevant Secretary consents to the grant of leave.

[subs (4) am Act 6 of 2020 s 15, opn 4 June 2020]

- (5) The relevant Secretary may only refuse to consent to the grant of leave for operational reasons.
- (6) Where the relevant Secretary refuses to grant leave for operational reasons, the Secretary shall consult with the employee to determine an alternative time for the employee to take the leave.

52 Public holiday during recreation leave

Where a public holiday occurs during a period an employee is absent from duty on recreation leave, the day shall not be deducted from the employee's recreation leave balance.

53 Recreation leave – Teachers

- (1) Despite Section 47, 'employee' for the purpose of this Subdivision does not include a teacher in the Department of Education.
- (2) An employee who is a teacher in the Department of Education may be granted leave of absence for recreation for such period or periods as the Chief Secretary determines.

Subdivision 2 — Medical leave

54 Purpose of medical leave

Medical leave is available to an employee to enable the employee to be absent from duty because the employee is unfit for duty due to illness or injury.

55 Entitlement to medical leave

- (1) For each year of service, an employee is entitled to 10 days of medical leave on full salary (the employee's 'annual entitlement').
- (2) The employee accrues the annual entitlement:
- (a) on appointment to the public service; and
 - (b) on completing each accrual year.
- (3) Medical leave does not accrue cumulatively.

56 Taking medical leave – evidence

- (1) An employee may apply through the Secretary to the Chief Secretary to take a period of medical leave.
- (2) Subject to subsection (2A), where an employee is absent from duty for 1 day only, on medical leave, he or she shall not be required to produce a medical certificate.

[subs (2) subst Act 24 of 2017 s 7, opn 24 Nov 2017]

- (2A) Subsection (2) applies to 3 non consecutive days out of the total of the 10 days medical leave permitted per year by Section 55.

[subs (2A) insrt Act 24 of 2017 s 7, opn 24 Nov 2017]

- (2B) The remaining 7 days of medical leave whether for 1 or more days shall require the provision of a medical certificate by the employee.

[subs (2B) insrt Act 24 of 2017 s 7, opn 24 Nov 2017]

(3) The Chief Secretary may grant the employee the medical leave provided the employee gives the Chief Secretary any required documentary evidence for the application.

(4) Despite Section 55(1), the Chief Secretary may approve an employee's medical leave up to a maximum of 3 months with full salary for inpatient hospitalisation or for other medical reasons certified by a registered health practitioner.

[subs (4) insrt Act 29 of 2016 s 12, opn 9 June 2016]

(5) Upon the expiration of the term approved in subsection (4) and on the application of the employee, the Minister may grant the employee leave with or without full salary or with or without partial salary for a period not exceeding 12 months to allow the employee to remain away from his or her employment due to prolonged hospitalisation, illness or injury.

[subs (5) insrt Act 29 of 2016 s 12, opn 9 June 2016; am Act 15 of 2022 s 5, opn 10 June 2022]

57 **Taking medical leave – amount**

The Chief Secretary may only grant an employee medical leave to the extent of the employee's medical leave balance.

58 **Public holiday during medical leave**

If a public holiday occurs during a period when an employee is absent from duty on medical leave, the day shall not be deducted from the employee's medical leave balance.

Subdivision 3 — Maternity leave

59 **Purpose of maternity leave**

Maternity leave is available to a female employee to enable the employee to be absent from duty during or immediately after the employee's pregnancy.

60 **Entitlement to maternity leave**

- (1) An employee is entitled to paid maternity leave provided she has completed 6 months of continuous service on the day she begins maternity leave.
- (2) An employee is entitled to 12 weeks of maternity leave:
 - (a) with full salary in relation to the first 4 pregnancies; and
 - (b) on half salary in relation to any subsequent pregnancies.
- (3) The employee is not entitled to maternity leave beyond the date on which she would have ceased employment in the public service had she not taken maternity leave.
- (4) Where the employee completes 6 months of continuous service during the period of maternity leave, she is entitled to be paid her full salary for the remaining period of maternity leave.
- (5) Maternity leave does not accrue cumulatively.

61 **Taking maternity leave**

- (1) An employee may apply to the Chief Secretary to take maternity leave.
- (2) The employee shall apply at least 3 months before she intends to start the leave.

- (3) The Chief Secretary may apply discretion if an application for maternity leave is submitted less than 3 months before the intended start of leave.
- (4) The Chief Secretary shall grant the maternity leave if the employee submits to the Chief Secretary a medical certificate certifying:
 - (a) that the employee is pregnant;
 - (b) the expected date of birth of the employee's child; and
 - (c) the date on which the employee shall cease duties.
- (5) An employee shall proceed on maternity leave no less than 6 weeks prior to the expected date of delivery unless a health practitioner certifies that she is fit to continue duties.

62 Returning to duty after maternity leave

- (1) An employee who has proceeded on maternity leave shall contact the Chief Secretary at least 4 weeks before the end of her leave to confirm that she is returning to work at the end of her maternity leave.
- (2) An employee who returns to her employment after maternity leave shall resume at the same or equivalent position held prior to proceeding on maternity leave, without any loss of salary, benefits and seniority.

[subs (2) am Act 1 of 2019 s 6, opn 22 Mar 2019]

63 Restriction on termination

- (1) No employee shall be terminated from her public service employment on the ground of pregnancy.
- (2) Where a termination occurs while the employee is pregnant, the burden of disproving that the termination was related to that condition rests with the Chief Secretary.
- (3) Where, after 3 months from the expiration of her maternity leave, an employee remains absent from work, as a result of illness, certified by a registered health practitioner, arising out of her pregnancy or the birth of her child rendering her unfit for work, the Chief Secretary may give her notice of termination in accordance with Part 7.

Subdivision 4 — Paternity Leave

64 Purpose of paternity leave

Paternity leave is available to male employees to enable him to be absent from duty immediately after the birth of his child or after the adoption of a child less than 12 months old.

65 Entitlement to paternity leave

- (1) An employee is entitled to 2 weeks of paid paternity leave provided he has completed 6 months of continuous service on the day he begins paternity leave.
- (2) The employee is not entitled to paternity leave beyond the date on which he would have ceased employment in the public service had he not taken paternity leave.
- (3) Where the employee completes 6 months of continuous service during the period of paternity leave, he is entitled to be paid his full salary for the remaining period of paternity leave.

- (4) Paternity leave does not accrue cumulatively.

66 Taking paternity leave

- (1) An employee may apply to the Chief Secretary to take paternity leave.
- (2) An employee shall apply at least 3 months before he intends to start the leave.
- (3) The Chief Secretary may apply discretion if an application for paternity leave is submitted less than 3 months before the intended start of leave.
- (4) The Chief Secretary shall grant the paternity leave if:
 - (a) the employee gives the Chief Secretary a medical certificate stating the expected date of birth of the child; or
 - (b) the employee gives the Chief Secretary a certified copy of the adoption order evidencing the adoption; and
 - (c) the Chief Secretary is satisfied that the employee is a parent or adoptive parent of the child.
- (5) The employee shall provide the Chief Secretary an extract from the Register of Births kept under Section 6 of the *Births, Deaths and Marriages Registration Act 2017* as soon as practicable showing:
 - (a) the birth of the child; or
 - (b) the registration of the child; and
 - (c) that he is the father of the child.

[subs (5) am Act 6 of 2020 s 16, opn 4 June 2020]

Subdivision 5 — Adoption Leave

67 Purpose of adoption leave

Adoption leave is available to a female employee to enable her to be absent from duty immediately after adopting a child less than 12 months old.

68 Entitlement to adoption leave

- (1) An employee is entitled to 12 weeks of paid adoption leave provided she has completed 6 months of continuous service on the day she begins adoption leave.
- (2) An employee who becomes an adoptive parent of a child is entitled to up to 12 weeks of adoption leave in relation to the adoption, if the child:
 - (a) is under the age of 12 months at the time of the adoption; and
 - (b) is not the child or step-child of the employee's spouse.
- (3) The employee is not entitled to adoption leave beyond the date on which she would have ceased employment in the public service had she not taken adoption leave.
- (4) Where the employee completes 6 months of continuous service during the period of adoption leave, she is entitled to be paid her full salary for the remaining period of adoption leave.
- (5) Adoption leave does not accrue cumulatively.

69 Taking adoption leave

- (1) An employee who intends to take adoption leave shall inform the Chief Secretary of the intention as soon as practicable after she applies for the adoption order in relation to the adoption.

- (2) The employee shall apply to the Chief Secretary for the adoption leave as soon as practicable after she becomes an adoptive parent.
- (3) The Chief Secretary shall grant the adoption leave if:
 - (a) the employee gives the Chief Secretary a certified copy of the adoption order evidencing the adoption; and
 - (b) the Chief Secretary is satisfied that the employee is otherwise entitled to adoption leave under Section 68(1).
- (4) The adoption leave shall be granted from the date of the adoption, even if the date of the adoption is before the date of the application for adoption leave.

Subdivision 6 — Special Leave

70 Purpose of special leave

Special leave may be available to an employee to enable the employee to be absent from duty without deduction from the employee's recreation leave balance.

71 Entitlement to special leave

- (1) For each year of service, an employee is entitled to 3 days of special leave on full salary (the employee's '**annual entitlement**').
- (2) The employee accrues the annual entitlement:
 - (a) on appointment to the public service; and
 - (b) on completing each accrual year.
- (3) Special leave does not accrue cumulatively.

72 Application for special leave

An employee may apply to the Chief Secretary to take a period of special leave and the Chief Secretary, upon sufficient cause being shown, may grant to the employee special leave of absence with salary.

Subdivision 7 — Official leave

73 Purpose of official leave

- (1) Official leave may be available to an employee to enable the employee to travel outside of the Republic for an official purpose.
- (2) The Chief Secretary may by notice in the Gazette determine the meaning of '**official purpose**' in subsection (1).
- (3) Where official leave has been granted to an employee, and he or she is for any reason, unable to travel, complete or engage in the purpose for which the leave was approved, the employee shall report to work as soon as practicable despite the prior approval of leave.
- (4) An employee who does not report back to the office as required under subsection (3), will be treated as being absent without leave and subject to disciplinary action under the Regulations.
- (5) [subs (5) rep Act 24 of 2017 s 8, opn 24 Nov 2017]

74 Application for official leave

- (1) An employee shall:

- (a) apply to the Chief Secretary to take a period of official leave; and
 - (b) the Chief Secretary, upon review of the relevant documents and upon sufficient cause being shown, may grant to the employee official leave of absence with salary.
- (2) The Chief Secretary may by notice in the Gazette determine the meaning of ‘**relevant documents**’ in subsection (1)(b).

[subs (2) am Act 24 of 2017 s 9, opn 24 Nov 2017]

75 Allowances for official leave

- (1) A public service employee who has been granted official leave may also be paid an allowance at a rate that is determined by the Minister.
- (2) Any allowance paid to an employee under subsection (1), shall be returned in full or on a pro rata basis to the Head of Department within 5 working days if the employee is unable or does not complete his or her travel.

[subs (2) am Act 6 of 2020 s 30, opn 4 June 2020]

Subdivision 8 — Leave without pay

76 Purpose of leave without pay

Leave without pay may be available to a permanent employee to enable the employee to be absent from duty in circumstances in which the employee cannot access any other type of leave.

[s 76 am Act 3 of 2018 s 6, opn 26 Jan 2018]

77 Taking leave without pay

- (1) An employee may apply to the Chief Secretary to take a period of leave without pay.
- (2) The application shall include:
 - (a) the purpose of the leave; and
 - (b) evidence of the purpose, if available.
- (3) The Chief Secretary may grant the leave if:
 - (a) the Chief Secretary is satisfied that:
 - (i) the purpose for the leave stated in the application is genuine;
 - (ii) the employee cannot access any other type of leave for the purpose; and
 - (iii) the grant of leave is justified in the circumstances; and
 - (b) the relevant Secretary consents to the grant of leave.

[subs (3) am Act 6 of 2020 s 17, opn 4 June 2020]

- (4) The maximum period of leave without pay that the Chief Secretary may grant is 12 months, unless:
 - (a) the purpose of the leave is study that is directly relevant to the employee’s current or future employment in the public service; or
 - (b) in the opinion of the Chief Secretary, exceptional circumstances exist justifying a grant of leave longer than 12 months.
- (5) The Chief Secretary shall not grant leave without pay beyond the date on which the employee would have ceased employment in the public service had the employee not taken leave without pay.

(6) An employee who is on a temporary or probationary appointment shall not be entitled to apply for leave without pay.

[subs (6) subst Act 24 of 2017 s 10, opn 24 Nov 2017]

(7) The Chief Secretary shall not consider an application by an employee on a temporary or probationary appointment for leave without pay.

[subs (7) insrt Act 24 of 2017 s 10, opn 24 Nov 2017]

Subdivision 9 — Furlough and long service leave

[Subdiv 9 subst and am Act 6 of 2020 ss 18, 30, opn 4 June 2020]

78 Purpose of furlough and long service leave

(1) Furlough and long service leave is available on full pay to a public service employee to enable the employee to be absent from duty in recognition of such employee's length of service in the public service.

[subs (1) am Act 6 of 2020 s 30, opn 4 June 2020]

(2) A public service employee becomes entitled to long service leave after completing a continuous period of service of 5 years.

[subs (2) am Act 6 of 2020 s 30, opn 4 June 2020]

(3) A public service employee is entitled to furlough leave after having served in the public service for a continuous period of 10 years.

(4) Where a public service employee who has become eligible for furlough or long service leave dies without taking the same, his or her estate shall be paid a sum equivalent to the amount of the employee's leave.

[subs (4) am Act 6 of 2020 s 30, opn 4 June 2020]

(5) For the purposes of furlough or long service leave:

(a) retirement includes retirement on other grounds such as medical, redundancy or termination without cause but excludes termination for misconduct; and

(b) public service employee includes contract employee.

[subs (5) am Act 6 of 2020 s 30, opn 4 June 2020]

79 Calculation of long service leave

(1) The Chief Secretary shall grant long service leave as follows:

(a) where the period of service is not less than 5 years but is less than 8 years, 20 working days; and

(b) where the period of service is not less than 8 years but is less than 10 years, 40 working days.

(2) Long service leave accrued under subsection (1), shall only be granted by the Chief Secretary on the expiry of contracts, retirement or resignation of a public service employee.

(3) The Chief Secretary may allow the encashment of any accrued long service leave.

[s 79 subst Act 36 of 2020 s 4, opn 3 Dec 2020]

80 Calculation and taking of furlough leave

(1) A public service employee who has served in the public service for a continuous period of 10 years is eligible for furlough leave of 60 days and 9 days after completion of each additional year of service.

- (2) Subject to subsection (3), any accrued furlough leave may be taken by an employee on the approval of the Chief Secretary and relevant Head of Department.
- (3) The Chief Secretary may allow the encashment of any accrued furlough leave.

[s 80 subst Act 36 of 2020 s 5, opn 3 Dec 2020]

Subdivision 9A — Other Leave of Absence

[Subdiv 9A insrt Act 11 of 2017 s 4, opn 30 May 2017]

80A Leave of absence for public service employees called as witnesses

- (1) A public service employee who is subpoenaed or called as a witness in any court proceeding shall promptly notify his or her Head of Department.
- (2) A public service employee who is subpoenaed or called as a witness on behalf of the Republic shall be granted leave with pay for the period necessary for his or her attendance as a witness.
- (3) Where it is necessary for the employee to travel to attend the court proceeding, the employee is entitled to the payment of travelling allowances and expenses as if he or she were travelling in the course of his or her duties.
- (4) A public service employee who, by reason of attending to give evidence in the circumstance referred to in subsection (2) receives payment, other than payment of travelling allowances and expenses by reason of the operation of that subsection, of witnesses' expenses, shall pay the amount received to the Republic.
- (5) Where a public service employee is subpoenaed or called as a witness in any other circumstances, he or she may be granted leave without pay and any fees received as a witness may be retained by the employee.

Subdivision 10 — Public holidays

81 Public holidays

- (1) The following days ('public holidays') each year are holidays in the public service:
 - (a) 1 January;
 - (b) 31 January (Independence Day);
 - (c) 1 February;
 - (d) Good Friday;
 - (e) Easter Monday;
 - (f) the Tuesday following Easter Monday;
 - (g) 17 May (Constitution Day);
 - (h) 26 October (Angam Day);
 - (i) 25 December (Christmas Day);
 - (j) 26 December (Boxing Day); and
 - (k) any other day declared to be a public holiday by the Minister by Gazette notice.
- (2) Where:
 - (a) a public holiday other than Independence Day or Christmas Day falls

- on a Saturday or Sunday, there is no holiday on the day and instead the following Monday is a holiday in the public service;
- (b) Independence Day falls on a Saturday or Sunday, there is no holiday on the day and instead the following Monday and Tuesday are holidays in the public service;
 - (c) Christmas Day falls on a Sunday, there is no holiday on the day and instead the following Tuesday is a holiday in the public service; and
 - (d) Christmas Day falls on a Saturday, there is no holiday on the day or for Boxing Day on the following Sunday and instead the following Monday and Tuesday are holidays in the public service.
- (3) The Minister may, by Gazette notice, declare that a specified day in a particular year is a holiday in the public service in substitution for a specified day that would otherwise be a public holiday in the year.

[The next page is 6801]

**PART 7 — TERMINATION OF PUBLIC SERVICE EMPLOYMENT AND
DISCIPLINE**

DIVISION 1 — PRELIMINARY

82 How employment terminates

An employee's appointment terminates:

- (a) if the employee resigns, or is taken to have resigned;
- (b) upon the expiry of the employee's contract;
- (c) if the employee voluntarily retires under Section 85;
- (d) if the Chief Secretary retires the employee under Section 88;
- (e) if the employee is terminated on the ground of redundancy;
- (f) if the employee is terminated for misconduct;
- (g) where he or she is convicted of a criminal offence; or
- (h) if the Chief Secretary terminates the employee under Section 27(7).

[s 82 am Act 6 of 2020 s 19, opn 4 June 2020]

82A Criminal offences

- (1) Where a public service employee is charged with a criminal offence, he or she shall be suspended without remuneration from the public service pending the final determination of the criminal case.
- (2) Where a public service employee has been convicted of a criminal offence, irrespective of the sentence imposed by the court, he or she shall be summarily terminated from employment in the public service.
- (3) This Section applies to a person employed in the public service.

[s 82A insrt Act 6 of 2020 s 20, opn 4 June 2020]

DIVISION 2 — RESIGNATION

83 Resignation of employee

- (1) A public service employee, other than a probationary employee, may resign by written notice, through the relevant Secretary to the Chief Secretary:
 - (a) at least 4 weeks before the notice is to take effect; or
 - (b) within a shorter period approved by the Chief Secretary.
- (2) A probationary employee may resign by written notice, through the relevant Secretary to the Chief Secretary:
 - (a) at least 2 weeks before the notice is to take effect; or
 - (b) within a shorter period approved by the Chief Secretary.
- (3) A notice of resignation takes effect from the date of receipt by the relevant Secretary.

84 Election candidates, resignation and re-employment

- (1) An employee who intends to contest in an election shall resign in accordance with Section 59 of the *Electoral Act 2016*.
- (2) An employee who resigns may apply to be re-employed in the public service, if he or she:

- (a) is a candidate at an election and fails to be elected at such election;
 - (b) applies in writing to the Chief Secretary for re-employment in the public service not earlier than 30 days from the first sitting of the Parliament after the election; and
 - (c) gives a written undertaking that he or she does not intend to challenge the results of the election.
- (3) For the purpose of this Section, ‘**employee**’ includes a public service employee, contract employee, temporary employee, head of department or such other office prescribed as office of profit under this Act or any other written law.

[s 84 rep Act 18 of 2021 s 23(2), opn 14 Sep 2021; insrt Act 15 of 2022 s 6, opn 10 June 2022]

84A By-Elections – Candidates

[s 84A rep Act 1 of 2019 s 8, opn 22 Mar 2019]

84B Re-employment of employees resigning to contest elections

[s 84B rep Act 1 of 2019 s 9, opn 22 Mar 2019]

DIVISION 3 — RETIREMENT

85 Voluntary retirement of employee

- (1) A public service employee who is at least 60 years of age may voluntarily retire from the public service by written notice of retirement given to the Chief Secretary through the relevant Secretary:
- (a) at least 4 weeks before the notice is to take effect; or
 - (b) within a shorter period approved by the Chief Secretary.
- (2) The notice takes effect from the date of receipt by the relevant Secretary.

86 Chief Secretary may require medical examination

- (1) This Section applies to a public service employee, other than a probationary employee, if:
- (a) either:
 - (i) the employee is absent from duty; or
 - (ii) the Chief Secretary believes on reasonable grounds that the employee is not performing his or her duties satisfactorily; and
 - (b) the Chief Secretary reasonably suspects that the employee’s absence or unsatisfactory performance is caused by a mental or physical illness or disability.
- (2) The Chief Secretary may:
- (a) appoint a health practitioner to examine the employee and give the Chief Secretary a written report on the examination; and
 - (b) require the employee to undergo the medical examination.

87 Medical examination report

- (1) The report on the medical examination conducted in Section 86 shall include the health practitioner’s opinion about whether the employee has a mental or physical illness or disability that may adversely affect the employee’s performance of his or her duties.

- (2) Where the health practitioner considers that the employee has a mental or physical illness or disability that may adversely affect the employee's performance of his or her duties, the report shall also include the health practitioner's opinion about:
- (a) the likely direct or indirect effect of the illness or disability on the employee's performance of his or her duties; and
 - (b) an estimate of how long the illness or disability or its effects are likely to continue.

88 Medical retirement of employee

The Chief Secretary may retire the employee from the public service if, after considering the report of the medical examination, the Chief Secretary is reasonably satisfied that:

- (a) the employee's absence or unsatisfactory performance is caused by mental or physical illness or disability; and
- (b) the illness or disability or its effects will not end within a reasonable time.

DIVISION 4 — REDUNDANCY

89 Abolition of permanent employee's substantive position

- (1) This Section applies if the Minister abolishes a permanent employee's substantive position under Section 16(1)(b).
- (2) The employee's employment is terminated on the ground of redundancy.

90 Abolition of position occupied by permanent employee for fixed term

- (1) This Section applies if:
 - (a) the Minister abolishes a public service position under Section 16(1)(b); and
 - (b) immediately before it was abolished, the position was occupied by a permanent employee for a fixed term.
- (2) Unless the employee is appointed to another public service position for a fixed term, the employee shall return to the employee's substantive position.

91 Return of substantive holder – position occupied by permanent employee

- (1) This Section applies if:
 - (a) a public service position is occupied by a permanent employee ('**employee A**') for a fixed term; and
 - (b) the substantive holder of the position returns to the position.
- (2) Employee A shall return to employee A's substantive position.

92 Return of substantive holder – position occupied by temporary employee

- (1) This Section applies if:
 - (a) a public service position is occupied by a temporary employee; and
 - (b) the substantive holder of the position returns to the position.

- (2) The temporary employee's employment is terminated on the ground of redundancy.

93 Abolition of position occupied by temporary employee

- (1) This Section applies if:
- (a) the Minister abolishes a public service position under Section 16(1)(b); and
 - (b) immediately before it was abolished, the position was occupied by a temporary employee for a fixed term.
- (2) The employee's employment is terminated on the ground of redundancy.

94 Requirement to give notice

- (1) This Section applies if:
- (a) the Minister abolishes a public service position under Section 16(1)(b); and
 - (b) the abolition of the position results in the termination of a public service employee's employment under this Division.
- (2) The Chief Secretary shall give the employee notice for the decision to abolish the position.

[subs (2) am Act 29 of 2016 s 17, opn 9 June 2016; Act 6 of 2020 s 21, opn 4 June 2020]

DIVISION 5 — UNSATISFACTORY PERFORMANCE AND DISCIPLINE

95 Unsatisfactory performance – remedial action

- (1) Where, in the opinion of the relevant Secretary, a public service employee is not performing the employee's duties in a satisfactory way, the Secretary shall take action aimed at improving the performance of the employee ('**remedial action**').
- (2) Remedial action may include any of the following:
- (a) providing performance counselling to the employee;
 - (b) providing training and development for the employee; or
 - (c) developing and implementing a performance management plan for the employee.

96 Unsatisfactory performance – alternative action

Where the relevant Secretary has taken remedial action under Section 95 and is of the opinion that the employee is still not performing their duties in a satisfactory way, the Secretary may treat the case as a misconduct and take any necessary action under the Regulations.

[s 96 am Act 6 of 2020 s 22, opn 4 June 2020]

97 Disciplinary matters and procedure

- (1) The Minister may, by regulations prescribe misconduct, the procedure for investigating and determining disciplinary charges and other disciplinary matters relating to misconduct.
- (2) For the purposes of Articles 68(1)(c) and 68(2) of the *Constitution*, the Chief Secretary shall have the power to discipline a Head of Department or

a person in charge of a department and report his or her findings and recommendations to the Minister for consideration by the Cabinet.

[s 97 subst Act 6 of 2020 s 23, opn 4 June 2020]

DIVISION 6 — TERMINATION ENTITLEMENTS

98 Termination entitlements cumulative

Subject to the provisions of this Act, if a public service employee's employment terminates, the employee is entitled to receive each of the termination entitlements that apply to the employee.

99 Notice requirement – termination of probationary employee

(1) This Section applies to a probationary employee if the Chief Secretary terminates the employee's employment for any reason other than misconduct.

[subs (1) am Act 6 of 2020 s 24, opn 4 June 2020]

(2) The employee shall be given:

- (a) 1 week notice of the termination; or
- (b) an amount equal to the employee's salary over a 1 week period.

100 Notice requirement – for termination of employee

(1) This Section applies to a public service employee if:

- (a) the employee's employment is terminated on the ground of redundancy under Division 4; or
- (b) the employee is terminated without cause.

(2) The employee in subsection (1) shall be given:

- (a) 4 weeks' notice of the termination; or
- (b) an amount equal to the employee's salary of 1 month.

(3) For the avoidance of doubt, an employee who is terminated on the ground of misconduct is not entitled to any period of notice or payment of salary in lieu.

[s 100 subst Act 6 of 2020 s 25, opn 4 June 2020]

101 Notice requirement – medical retirement

(1) This Section applies to a public service employee if the Chief Secretary retires the employee under Section 88.

(2) The employee shall be paid an amount equal to the employee's salary over a 4 week period instead of notice of the retirement.

102 Severance entitlement – redundancy

(1) This Section applies to a permanent employee whose employment is terminated on the ground of redundancy under Division 4.

(2) The employee shall be paid an amount equal to the employee's salary over a 12 week period.

103 Payment of accrued entitlements

(1) This Section applies to a public service employee if the employee's employment terminates for any reason.

- (2) A public service employee, who is terminated under subsection (1), shall be paid for the accrued:
- (a) annual leave; and
 - (b) long service leave.

[subs (2) subst and am Act 6 of 2020 ss 26, 30, opn 4 June 2020]

- (3) Where, before an employee has completed 12 years' service in the Public Service and either before or after he or she has attained the age of 60 years:
- (a) the employee dies; or
 - (b) the Chief Secretary, after consideration of all the circumstances, directs that the death of the employee be presumed, the Chief Secretary may authorise payment to the dependants of the employee of a sum equivalent to the amount of salary which the Chief Secretary could have authorised to be paid to the employee under subsection (2), where:
 - (i) he or she had retired from the Public Service on the date of his or her death or, where the Chief Secretary has directed that the death of the employee be presumed, on a date determined by the Chief Secretary; and
 - (ii) in the case of an employee who had not attained the age of 60 years at that date, he or she had attained that age.

[subs (3) insrt Act 3 of 2018 s 7, opn 26 Jan 2018]

103A Non-payment of accrued long service leave entitlements

[s 103A rep Act 36 of 2020 s 6, opn 3 Dec 2020]

104 Deduction of amount if notice not given

- (1) This Section applies to a public service employee if:
- (a) the employee resigns under Section 83 or voluntarily retires under Section 85; and
 - (b) the employee gives the Chief Secretary less than the required period of notice of the resignation or retirement under Section 83 or 85.
- (2) The Chief Secretary may deduct from the payment of the employee's accrued entitlements under Section 103 an amount equal to the employee's salary over the period of notice the employee failed to give.

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PART 8 — PUBLIC SERVICE APPEALS BOARD

[Pt 8 subst Act 6 of 2020 s 27, opn 4 June 2020]

DIVISION 1 — ADMINISTRATIVE MATTERS

105 Election of member and term of office

- (1) The Board shall be constituted in accordance with Article 70 of the *Constitution* which shall consist of:
 - (a) the Chairperson appointed under Article 70(1) of the *Constitution*;
 - (b) a person to be appointed by the Cabinet; and
 - (c) a person elected by public officers.

[subs (1) am Act 15 of 2022 s 7, opn 10 June 2022]

- (2) The election of the member of the Board shall be conducted in accordance with the rules that may be prescribed by the Cabinet.

- (3) The term is 3 years for a member of the Board:
 - (a) appointed under subsection (1)(b); or
 - (b) elected under subsection (1)(c).

[subs (3) subst Act 15 of 2022 s 7, opn 10 June 2022]

- (4) The Chairperson or a member of the Board whose term of office has expired may be reappointed or re-elected.

[subs (4) insrt Act 15 of 2022 s 7, opn 10 June 2022]

106 Secretary to the Board

The Deputy Registrar of Courts shall serve as secretary to the Board.

107 Oath and affirmation of member

- (1) Each member of the Board, shall take an oath or make an affirmation as provided in Schedule 2, before exercising a power or performing a function as a member of the Board.

[subs (1) am Act 15 of 2022 s 8, opn 10 June 2022]

- (2) The oath or affirmation shall be taken or made before the President.

[subs (2) am Act 15 of 2022 s 8, opn 10 June 2022]

108 Allowances for members

A member of the Board shall be paid the fees and allowances determined by Cabinet and published in the Gazette.

DIVISION 2 — APPEALS

109 Appealable decisions

- (1) An aggrieved public service employee may appeal any of the following decisions made by the Chief Secretary:
 - (a) appointment of a person or promotion of another public service employee;
 - (b) where the employee was found to have committed a misconduct and a penalty imposed by the Chief Secretary;

- (c) transfer of the employee for reasons other than as a penalty for misconduct; or
 - (d) reduction of the employee's classification.
- (2) Where an aggrieved public service employee has appealed against a decision to appoint or promote another person to a position, the appeal lapses where:
- (a) the employee is promoted to a position of the same or equivalent classification;
 - (b) the appointment or promotion of the other person is cancelled; or
 - (c) that position becomes vacant.

110 Decisions not appealable

- (1) A public service employee is not entitled to appeal a decision:
- (a) for the appointment or promotion of a person to a position unless:
 - (i) the employee was an applicant for that position; or
 - (ii) the position applied for would have resulted in a promotion;
 - (b) to terminate the employment without any cause; or
 - (c) where the employee was terminated after a criminal conviction.
- (2) Where an employee admits an allegation of misconduct, the right of appeal shall be limited to the penalty.

111 Procedure for commencing an appeal

- (1) An aggrieved public service employee shall commence an appeal by filing a notice of appeal with the secretary to the Appeals Board within 14 days of the receipt of the decision of the Chief Secretary.
- (2) A copy of the notice of appeal in subsection (1) shall be served to the Chief Secretary.
- (3) The notice of appeal shall be in writing and include the grounds for the appeal.

112 Chief Secretary to provide documents

The Chief Secretary shall:

- (a) file the relevant documents or evidence, with the secretary to the Board, which were submitted to him or her for consideration in making the decision; and
- (b) provide a copy of the documents under paragraph (a) to the appellant, within 14 days of the receipt of the notice of appeal.

113 Hearing of appeal

- (1) The Board shall:
- (a) list the notice of appeal before it by no later than 30 days from the date of the filing of the notice of appeal under Section 111 with the secretary to the Board; and
 - (b) issue notice to parties to attend before the Board.
- (2) At the hearing of the appeal, the aggrieved public service employee may appear in person, be assisted by another person or represented by a legal practitioner.

- (3) The hearing of the appeal may be by written or oral submissions or as the Board may direct.
- (4) No additional or fresh evidence shall be permitted for an appeal hearing without the prior leave of the Board.
- (5) The Board shall not grant leave under subsection (4), to adduce evidence which was not adduced before the Chief Secretary, unless the party seeking to adduce the evidence demonstrates that:
 - (a) the evidence could not have been earlier obtained with reasonable diligence;
 - (b) the evidence is likely to materially influence the outcome of the appeal; and
 - (c) the evidence is credible.
- (6) The hearing shall not be open to the public.
- (7) No appeal or proceedings before the Board shall be dismissed for want of any form or procedure.
- (8) The Board may set its own procedure for the hearing of appeals.

114 Decision on appeal

- (1) The Board may:
 - (a) confirm part or whole of the decision;
 - (b) set aside part or whole of the decision and substitute its own decision; or
 - (c) refer the decision back to the Chief Secretary for re-determination with appropriate directions.
- (2) For the purposes of subsection (1)(b), the Board in substituting its own decision has the same power vested to the Chief Secretary to make the decision.

115 Orders for reinstatement or compensation

- (1) Where the Board sets aside a decision to terminate the aggrieved public service employee, the Board may:
 - (a) reinstate the employee to the same position which he or she occupied immediately before the decision appealed against; or
 - (b) reinstate the employee but demote to a position lower than what he or she occupied immediately before the decision was made.
- (2) Subject to subsection (4), where the Board makes a decision to reinstate the aggrieved public service employee, the Board may make the following orders:
 - (a) in case of subsection (1)(a), to reinstate the salary and benefit to which the employee was entitled for his or her position held immediately prior to termination; or
 - (b) in case of subsection (1)(b), where an employee is demoted, payment of salary and benefit based on the demoted position with retrospective effect from the date of the decision to terminate, or where suspended to the date of such suspension.
- (3) Where the Board sets aside a decision to terminate the aggrieved public service employee and the position which the public service employee had occupied immediately before the decision to terminate was made, is

abolished or it is otherwise not practical to reinstate the public service employee, he or she shall be paid compensation equivalent to 3 months salary to which the public service employee was entitled on the date of termination.

- (4) The Board may order compensation to be paid to an aggrieved public service employee under subsection (1), a sum of money not exceeding 6 months salary.
- (5) Any period of time which is treated as leave without pay under subsection (4) shall not affect the calculation and determination of the continuous period of service in the public service.
- (6) The redundancy payment or any accrued benefit after demotion, shall be on the demoted position.

116 Compliance with order for reinstatement

- (1) Where a decision for reinstatement is made, the Board shall direct the Chief Secretary to comply with the decision within 30 days of the date of the delivery of the decision.
- (2) The employee shall be paid salary and benefit with effect from the date of the delivery of the decision whether or not the employee is reinstated with immediate effect.

117 Decision

- (1) The Board shall deliver its decision in writing within 14 days of the hearing of the appeal.
- (2) A copy of the decision shall be provided to the Chief Secretary and the aggrieved public service employee.
- (3) The Board shall have no power to order costs against either party.

117A Limitation on appealing decision of Board

- (1) There shall be no appeal against the decision of the Board.
- (2) The decision of the Board is subject to judicial review on the grounds of:
 - (a) jurisdictional error; and
 - (b) error of law.

[The next page is 7201]

PART 9 — SAVINGS AND TRANSITIONAL PROVISIONS

118 **Repeal of Public Service Act 1998**

The *Public Service Act 1998* is repealed.

119 **Definitions**

'changeover day' means the day this Act comes into force and this Part commences; and

'repealed Act' means the *Public Service Act 1998*.

120 **Existing officers and employees - general**

- (1) Subject to this Act, a person who was an officer or employee under the repealed Public Service Act immediately before the changeover date is taken to be a public service employee under this Act.
- (2) The person's employment and conditions of employment are not affected by any discontinuance of public service positions because of the enactment of this Act.
- (3) Where there is doubt about whether a person is an existing officer or employee, a Secretary may, if the person asks, declare the person to be an existing public service employee.
- (4) On making the declaration, subsections (1) and (2) are taken to have always applied to the person.
- (5) The repealing of the *Public Service Act 1998* does not affect the length of employment of any existing officer or employee but this Act (*Public Service Act 2016*) applies to that officer or employee from the date of commencement stated in Section 2.

121 **Existing Secretary**

- (1) Where immediately before the changeover day, a person held appointment under the repealed Public Service Act as the Secretary of a department, the person is taken to have been appointed under this Act as a Secretary for the remainder of the person's term of appointment.
- (2) An appointment in existence immediately before the changeover day is taken to have been made under this Act.
- (3) An appointment in existence immediately before the changeover day for a person to act as a Secretary of a department, continues as if it had been made under this Act.
- (4) Any contract of employment of a Secretary of a department made under the repealed Act is deemed to have been made under this Act and subject to any amendments made by this Act.

122 **Existing contracts of employment**

- (1) This Section applies if a person, other than a Secretary, was employed under the repealed *Public Service Act 1998* under a contract of employment immediately before the changeover day.

- (2) The contract of employment is deemed to have been made under this Act between the person and the Government and subject to any amendments made by this Act.
- (3) Where the person was a public service employee immediately before the changeover day, the employment of that person under this Act is taken to be on contract for a fixed term.

123 Existing temporary employees

- (1) A person who was employed under the repealed *Public Service Act 1998* as a temporary employee immediately before the changeover day is taken to be a temporary employee under this Act.
- (2) The person's employment and conditions of employment are not affected by the repeal of the *Public Service Act 1998*.
- (3) [subs (3) rep Act 29 of 2016 s 19, opn 9 June 2016]
- (4) [subs (4) rep Act 29 of 2016 s 19, opn 9 June 2016]

124 Existing rulings and decisions

- (1) A ruling or decision made under the repealed *Public Service Act 1998* immediately before the changeover day remains in force as a ruling or decision of the same type under this Act.
- (2) The continued ruling or decision:
 - (a) is to be read with the changes necessary to make it consistent with, and adapt its operation to, this Act; and
 - (b) may be amended or repealed by a ruling or decision under this Act made by the person or body who can make that type of ruling under this Act about the matters provided for under the continued ruling.
- (3) Subsection (2) applies *mutatis mutandis* to any amendment to this Act.

[subs (3) insrt Act 6 of 2020 s 28, opn 4 June 2020]

125 Existing disciplinary action

Where disciplinary action had been started, but not completed, under the repealed Act before the changeover day, the action may be completed under this Act.

126 Existing suspensions

Where, immediately before the changeover day, a person was suspended from duty under the repealed Act, the suspension continues to have effect as a suspension under this Act.

127 Reference to repealed Act

- (1) A reference in another written law or a document to the repealed Act may, if the context permits, be taken as a reference to this Act.
- (2) A reference in another Act or a document to a particular provision of the repealed Act may, if the context permits, be taken as a reference to any provision of this Act all or part of which corresponds, or substantially corresponds, to the repealed provision.
- (3) This Section is subject to the other provisions of this Part.

128 Corresponding approvals, decisions and notices

- (1) This Section applies if:
 - (a) a provision of the repealed Act provides for an approval, decision, declaration or a Gazette notice or other notice to be made or given for a matter;
 - (b) an approval, decision, declaration or notice of that type is in force under the repealed Act immediately before the changeover day; and
 - (c) a provision of this Act corresponds or substantially corresponds to the old provision.
- (2) On the changeover day, the approval, decision, declaration or notice is taken to be an approval, decision, declaration or notice made or given for the matter under this Act.

129 Transitional regulations

[s 129 omitted by the Law Revision Commission under powers authorised by Act 10 of 2019]

129A Saving and transition

- (1) Any directions given to the parties to an appeal by the Board with the Chief Justice sitting as the Chairperson, shall be complied with by the parties and an appeal related to such direction shall proceed to be heard by the Board constituted under this Act.
- (2) A pending decision of the Board on an application or appeal in which the Chief Justice presided as the Chairperson, shall be delivered within 30 days of the coming into effect of this Act, otherwise any such application or appeal shall be heard *de novo*.

[The next page is 7401]

PART 10 — MISCELLANEOUS

130 Regulations

- (1) The Cabinet may make regulations under this Act.
- (2) Without limiting subsection (1), the regulations may:
 - (a) provide for part-time employment and modify the application of this Act to a part-time employee;
 - (b) specify maximum periods for fixed terms under this Act;
 - (c) provide for additional leave entitlements;
 - (d) provide exemptions, conditional or absolute, from the application of a provision of this Act;
 - (e) provide the procedure for investigating and determining charges under this Act; and
 - (f) provide for any other matters.
- (3) The regulations may:
 - (a) be of general application or vary in their application according to prescribed factors; and
 - (b) give a person discretion to decide a matter.
- (4) For the purposes of interpretation, Public Service Circulars issued by the Chief Secretary have the same effect as regulations made under this Act.

[subs (4) insrt Act 6 of 2020 s 29, opn 4 June 2020]

[The next page is 7601]

SCHEDULE 1



**REPUBLIC OF NAURU
PUBLIC SERVICE ACT 2016**

[Section 23(4)]

OATH OR AFFIRMATION ON APPOINTMENT

[Sch 1 subst Act 29 of 2016 s 21, opn 9 June 2016]

Oath

I,*, do swear that I will render true and faithful service as an officer of the Public Service of the Republic of Nauru. SO HELP ME GOD!

.....
[insert name of employee]

The above Oath was administered by me under the *Public Service Act 2016*.

Before me:
[insert name of Chief Secretary]

CHIEF SECRETARY

DATE:/...../20.....

Affirmation

I,*, affirm that I will render true and faithful service as an officer of the Public Service of the Republic of Nauru.

.....
[insert name of employee]

The above Affirmation was administered by me under the *Public Service Act 2016*.

Before me:
[insert name of Chief Secretary]

CHIEF SECRETARY

DATE:...../...../20.....

[The next page is 7801]

SCHEDULE 2



REPUBLIC OF NAURU
PUBLIC SERVICE ACT 2016

[Section 107]

OATH OR AFFIRMATION OF MEMBER OF PUBLIC SERVICE APPEALS BOARD

[Sch 2 subst Act 29 of 2016 s 22, opn 9 June 2016]

Oath

I,* swear that I will perform the functions and exercise the powers conferred on me as a member of the Public Service Appeals Board lawfully, impartially and in good faith. So help me God.

.....
[insert name of Board member]

The above Oath was administered by me under the *Public Service Act 2016*.

Before me:

[insert name of President]

PRESIDENT

DATE:/...../20.....

Affirmation

I,* affirm that I will perform the functions and exercise the powers conferred on me as a member of the Public Service Appeals Board lawfully, impartially and in good faith.

.....
[insert name of Board member]

The above Affirmation was administered by me under the *Public Service Act 2016*.

Before me:

[insert name of President]

PRESIDENT

DATE:/...../20.....

* State name

[The next page is 9001]

Public Service (Additional Hours of Attendance) (Immigration Officers) Regulations 2017

TABLE OF PROVISIONS

<i>Regulation</i>	<i>Title</i>
1	Citation
2	Commencement
3	Interpretation
4	Maximum amount of additional hours of attendance
5	Allowances for additional hours of attendance
	SCHEDULE — ALLOWANCES FOR ADDITIONAL HOURS OF ATTENDANCE

[The next page is 9201]

Public Service (Additional Hours of Attendance) (Immigration Officers) Regulations 2017

TABLE OF AMENDMENTS

The Public Service (Additional Hours of Attendance) (Immigration Officers) Regulations 2017 SL 6 were notified and commenced on 14 March 2017 (GN No 160/2017; Gaz 39/2017).

Amending Legislation	Notified	Date of Commencement
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

[The next page is 9401]

The Minister makes the following Regulations under Section 45 of the *Public Service Act 2016*:

1 Citation

These Regulations may be cited as the *Public Service (Additional Hours of Attendance) (Immigration Officers) Regulations 2017*.

2 Commencement

These Regulations commence on the day they are notified in the Gazette and came into effect on 14 March 2017.

3 Interpretation

In these Regulations:

‘additional hours of attendance’ means hours in addition to the normal working hours on a normal working day and all work performed on days other than a normal working day;

‘immigration officer’ means any immigration officer irrespective of rank but does not include the Director of Immigration;

‘public holiday’ means any of the days specified or notified in the Gazette under Section 81 of the Act as a public holiday;

‘the Act’ means the *Public Service Act 2016*; and

‘the Minister’ means the Minister for Public Service.

4 Maximum amount of additional hours of attendance

Despite Regulation 5, the maximum amount of additional hours of attendance permitted for any immigration officer per week is 18 hours.

5 Allowances for additional hours of attendance

Any immigration officer, who is required to work additional hours of attendance as specified in column 1 of the Schedule, shall be compensated according to the rate specified in column 2 of the Schedule.

[The next page is 9601]

SCHEDULE

[Regulation 5]

ALLOWANCES FOR ADDITIONAL HOURS OF ATTENDANCE

HOURS	ALLOWANCE
Outside normal working hours (5pm to 9am – Monday to Friday)	\$20 per officer, per hour
Weekends and Public holidays	\$40 per officer, per hour

[The next page is 11,001]

Public Service (Government Vehicles) Regulations 2017

TABLE OF PROVISIONS

Regulation

Title

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1	Citation
2	Commencement
3	Definitions
4	Application

PART 2 — VEHICLES

5	Vehicle Colour Codes
6	Responsibilities
7	Authorised use of Government issued vehicles
8	Rental vehicles
9	Vehicles for consultants
10	Use and possession of vehicle during leave
11	Prohibited use
12	Motor traffic laws
13	Registration and insurance
14	Accidents or incidents reports
15	Penalties
16	Existing policies
17	Restriction on the use of tint on window
18	Prohibition on the use of tint on windscreen
19	Restriction on modifying vehicle

SCHEDULE — ACCIDENT/INCIDENT REPORT FORM

[The next page is 11,201]

Public Service (Government Vehicles) Regulations 2017

TABLE OF AMENDMENTS

The Public Service (Government Vehicles) Regulations 2017 SL 13 were notified and commenced on 25 July 2017 (GN No 512/2017; Gaz 109/2017).

Amending Legislation	Notified	Date of Commencement
Public Service (Government Vehicles) (Amendment) Regulations 2018 SL 27	20 November 2018	20 November 2018
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021
Public Service (Government Vehicles) (Amendment) Regulations 2021 SL 23	6 August 2021	6 August 2021

[The next page is 11,401]

The Cabinet makes the following Regulations under Section 130 of the *Public Service Act 2016*:

PART 1 — PRELIMINARY

1 Citation

These Regulations may be cited as the *Public Service (Government Vehicles) Regulations 2017*.

2 Commencement

These Regulations commence on the day they are notified in the Gazette and came into effect on 25 July 2017.

3 Definitions

In these Regulations:

‘employee’ includes public service employees, contract employees, temporary employees and all other persons and officers employed under the Act and whom are authorised to drive Government vehicles;

‘leave’ includes recreation leave, study leave, official leave, special leave and leave without pay;

‘Motor traffic laws’ means the *Motor Traffic Act 2014* and any other relevant law;

‘Public service’ subject to the provisions of the *Constitution*, means the service of the Republic of Nauru;

‘the Act’ means the *Public Service Act 2016*;

‘use’ includes to drive; and

‘vehicle’ means a Government issued or Government owned vehicle and includes a vehicle funded or donated under a Project or Programme or a vehicle provided by Development Partners.

4 Application

These Regulations apply to all employees who have been assigned or have the use of or access to a vehicle.

[The next page is 11,601]

PART 2 — VEHICLES

5 Vehicle Colour Codes

- (1) All vehicles shall be coded with coloured labels as follows:
 - (a) Green – full use by Heads of Departments and employees who have a contractual entitlement to the personal use of vehicle;
 - (b) Yellow – emergency service workers, shift workers;
 - (c) Red – limited use for official purposes between 9am to 5pm only on Monday to Friday; and
 - (d) Blue – use for personal or official purposes between 8am to 10pm from Monday to Sunday.

[subreg (1) subst SL 27 of 2018 reg 4, opn 20 Nov 2018]

- (2) All vehicles with Red labels shall be parked at the car parks allocated by the Heads of Departments after 5pm every day including the weekends.

6 Responsibilities

- (1) The Heads of Departments shall:
 - (a) monitor the usage of vehicles, where necessary; and
 - (b) display the Regulations conspicuously on a notice Board or in a place the employees can easily access.
- (2) An employee who is assigned or has access to a vehicle shall:
 - (a) only use the vehicle for public service related purposes, unless expressly excluded in the Regulations or under his or her contract of employment;
 - (b) not use the vehicle for any activities which are in violation of the laws of the Republic;
 - (c) keep the vehicle clean and in good repair;
 - (d) have a valid Nauruan driver's licence with a photocopy of the licence provided to his or her Head of Department;
 - (e) not transfer or tamper with the colour code of any vehicle;
 - (f) not remove the vehicle registration number plate; and
 - (g) not drive a vehicle without a vehicle registration number plate affixed at both the front and rear of the vehicle.

7 Authorised use of Government issued vehicles

- (1) All employees assigned or having access to a vehicle shall ensure the vehicles are used in accordance with the authorisation given by the Chief Secretary, applicable laws and the terms and conditions of their contracts.
- (2) The personal use of a vehicle extends only to:
 - (a) a Head of Department; and
 - (b) an employee who has a contractual entitlement to the personal use of a vehicle.
- (3) The Chief Secretary may vary the authorisation for the use of a vehicle on an application by an employee on any terms as the Chief Secretary thinks fit.

- (4) An approval under subregulation (3) shall be in writing and issued to the employee prior to the use of a vehicle.
- (5) An authorisation to drive a vehicle may be cancelled by a Head of Department in consultation with the Chief Secretary if an:
 - (a) employee's driver's licence expires;
 - (b) employee's driver's licence has been revoked;
 - (c) employee has been disqualified from driving by the Court; or
 - (d) employee breaches any:
 - (i) condition of the authorisation for the use of the vehicle;
 - (ii) motor traffic law; or
 - (iii) terms and conditions of his or her contractual use of the vehicle.

8 Rental vehicles

A Head of Department shall not hire a rental vehicle for public service use without the prior approval of the Chief Secretary.

9 Vehicles for consultants

A consultant engaged by the Republic shall not have the use of a vehicle or a rental vehicle paid for by a department unless provided for under his or her contract.

10 Use and possession of vehicle during leave

- (1) An employee shall return the keys to the vehicle in his or her possession to his or her Head of Department before going on leave unless the Chief Secretary has provided written consent for the use of the vehicle during the period of leave.
- (2) The employee shall ensure that the vehicle is parked in a safe place during the period of his or her leave or absence from office.

11 Prohibited use

- (1) The following are prohibited conduct for the use of Government vehicles:
 - (a) smoking in vehicles;
 - (b) drinking alcohol in vehicles;
 - (c) driving of vehicles while under the influence of alcohol or narcotic or intoxicating drugs;
 - (d) using the vehicles as transport to go to places where alcohol is sold for the purposes of consumption on site including nightclubs, public bars, licenced restaurants or any other licenced premises under the *Liquor Control Act 2017*;
 - (e) using the vehicle as transport to attend public or private functions or events where alcohol is offered or served for consumption on site with or without any cost;
 - (f) using the vehicles for leisure activities including, but not limited to gambling;
 - (g) using the vehicles for commercial activities or secondary employment;
 - (h) using the vehicles to tow boat trailers or to transport other fishing gear; and
 - (i) permitting unauthorised persons to drive the vehicles.

[subreg (1) subst SL 27 of 2018 reg 5, opn 20 Nov 2018]

- (2) For the purposes of this Regulation, *'permitting'* means express or implied authority or allowing access to a vehicle to unauthorised persons which includes the failure to store the vehicle keys safely.
- (3) A contravention of subregulation (1) may result in the employee being summarily dismissed from public service employment.

12 Motor traffic laws

- (1) All employees shall act in accordance with all motor traffic laws.
- (2) An employee who contravenes any motor traffic law shall:
 - (a) defend himself or herself if any prosecution is undertaken; and
 - (b) pay any fine, penalty or compensation ordered by the court.

13 Registration and insurance

- (1) The Republic shall ensure that all vehicles have:
 - (a) valid motor vehicle registration certificates; and
 - (b) third party insurance pursuant to the *Motor Traffic Act 2014*.
- (2) The Heads of Departments are responsible for any fines relating to the condition of the vehicles including the renewal of annual registration and third party insurance.

14 Accidents or incidents reports

- (1) The employee shall report in writing including by electronic means, to his or her Head of Department, within 24 hours if the vehicle is involved in an accident or is stolen.
- (2) The Head of Department shall submit the report to the Chief Secretary for his or her consideration.
- (3) Where a vehicle is damaged as a result of an act or an omission of the employee, the employee shall pay for:
 - (a) the damage to the vehicle; and
 - (b) any expenses incurred by the Government for any rental vehicles acquired as replacements for the damaged vehicles.
- (4) Where a vehicle is involved in an accident without any act or omission of the employee, the employee shall pay for the damage to the vehicle, which sum shall be reimbursed by the Government upon identification of the person who caused the damage.
- (5) An employee, who is the driver of a vehicle involved in an accident shall provide an accident or incident report in the prescribed form in the Schedule to his or her Head of Department within 5 days from when the accident or incident took place.

15 Penalties

- (1) In addition to the penalty prescribed in Regulation 11(3), if an employee breaches these Regulations, the employee's vehicle privileges shall be withdrawn either permanently or for a term determined by the Chief Secretary.
- (2) A breach of these Regulations shall be a ground:

- (a) for disciplinary action under the Act; or
 - (b) a surcharge for loss or destruction of or damage to a vehicle.
- (3) For the purposes of these Regulations, ignorance of the law is not a defence to any action which may be taken by the Republic against an employee for any breach of the Regulations.

16 Existing policies

These Regulations supersede all vehicle policies in effect prior to the notification of these Regulations.

17 Restriction on the use of tint on window

- (1) An employee, who is assigned a vehicle shall not without the prior written approval of the Chief Secretary, permit or cause any window of the vehicle to be tinted.
- (2) Where approval is given by the Chief Secretary under subregulation (1), the visible light transmittance shall be:
 - (a) for each front window, at least 35%; and
 - (b) for each rear window, at least 20%.
- (3) An employee who contravenes this Regulation commits a disciplinary offence.
- (4) An employee who permits or causes any window of a vehicle to be tinted:
 - (a) with the prior written approval of the Chief Secretary, shall bear the full cost of the tinting without any claims or reimbursements from the Republic; or
 - (b) without the prior written approval of the Chief Secretary, shall pay for the cost of the removal of such tint and any cost is recoverable by deduction from the employee's salary.

[reg 17 insrt SL 23 of 2021 reg 4, opn 6 Aug 2021]

18 Prohibition on the use of tint on windscreen

- (1) An employee who is assigned a vehicle shall not permit or cause any windscreen of the vehicle to be tinted unless the tint is installed by the manufacturer of the vehicle.
- (2) An employee who contravenes subregulation (1), commits a disciplinary offence.
- (3) An employee who permits or causes any windscreen of a vehicle to be tinted shall pay for the cost of the removal of such tint and any cost is recoverable by deduction from the employee's salary.

[reg 18 insrt SL 23 of 2021 reg 5, opn 6 Aug 2021]

19 Restriction on modifying vehicle

- (1) An employee, who is assigned a vehicle shall not without the prior written approval of the Chief Secretary, permit or cause another person to make any modification to the vehicle.
- (2) An employee who contravenes subregulation (1), commits a disciplinary offence.
- (3) An employee who permits or causes any modification of a vehicle:

- (a) with the prior written approval of the Chief Secretary, shall bear the full cost of the modification without any claim or reimbursement from the Republic; or
- (b) without the prior written approval of the Chief Secretary, shall pay for the cost of the removal of such modification and any cost is recoverable by deduction from the employee's salary.

[reg 19 insrt SL 23 of 2021 reg 6, opn 6 Aug 2021]

[The next page is 11,801]

SCHEDULE



REPUBLIC OF NAURU

PUBLIC SERVICE ACT 2016

Public Service (Government Vehicles) Regulations 2017

[Regulation 14]

ACCIDENT/INCIDENT REPORT FORM

Date and time of accident/incident	Driver's Name	Department
Driver's contacts (phone and email)		
Details of vehicle concerned (registration number, colour, make etc.)		
Driver's Statement: <i>Please explain fully and clearly what happened. Continue on a separate sheet of paper if needed. (Provide location, names, other vehicles involved etc.)</i>		
Did you report this to the Police? If yes, when? If no, why not?	Who were the witnesses if any?	
If possible, provide diagram of the scene of the accident/incident.		
Circle where the vehicle was damaged.		
Describe full extent of damage to the vehicle:		
Date/Time and signature by driver upon submitting this form.	Date/Time and signature of Head of Department upon receiving this report.	

[The next page is 13,001]

Public Service (Disciplinary) Regulations 2020

TABLE OF PROVISIONS

Regulation

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1	Citation
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3	Objectives
4	Application of Regulations
5	Interpretation

PART 2 — CHIEF SECRETARY TO DEAL WITH MISCONDUCT

6	Powers of the Chief Secretary and Heads of Departments
7	Refusal by Head of Department to exercise power

PART 3 — MISCONDUCT

8	Misconduct
9	Multiplicity of disciplinary offences

PART 4 — PROCEDURE FOR COMPLAINTS AGAINST EMPLOYEES EXCEPT HEADS OF DEPARTMENTS OR CHIEF SECRETARY

10	Complaint
11	Head of Department may initiate investigation
12	Complaint against Head of Department and Chief Secretary
13	Complaint against an employee of the Department of Chief Secretary

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14	Complaints with no merit
15	Complaints warranting investigation
16	Employee admits to complaint
17	Employee denies complaint
18	Investigation report to be provided to Chief Secretary
19	Formal charges
20	Employee admits charge
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22	Committee to recommend
23	Chief Secretary to consider the penalty
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28	Chief Secretary to determine charge

PART 6 — MISCELLANEOUS

29	Resignation pending disciplinary proceeding
30	Resignation pending criminal proceeding
31	Forms
32	Rules of evidence
33	Rules of natural justice
34	Repeal of Public Service (Disciplinary Procedure) Regulations 2016
35	Disciplinary proceedings under repealed Regulations to continue

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SCHEDULE 2 — FORMS

FORM 1 — COMPLAINT FOR ALLEGED MISCONDUCT

FORM 2 — SUSPENSION BY HEAD OF DEPARTMENT

FORM 3 — SUSPENSION BY CHIEF SECRETARY

FORM 4 — INVESTIGATION REPORT

FORM 5 — DISCIPLINARY CHARGE

FORM 6 — NOTICE OF HEARING

FORM 7 — DECISION ON DISCIPLINARY CHARGES

FORM 8 — DECISION ON PENALTY

FORM 9 — SUMMARY TERMINATION

[The next page is 13,201]

Public Service (Disciplinary) Regulations 2020

TABLE OF AMENDMENTS

The Public Service (Disciplinary) Regulations 2020 SL 14 were notified and commenced on 24 June 2020 (GN 402/2020; Gaz 126/2020).

Amending Legislation	Notified	Date of Commencement
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

[The next page is 13,401]

The Cabinet makes the following Regulations under Section 97 of the *Public Service Act 2016*:

PART 1 — PRELIMINARY

1 Citation

These Regulations may be cited as the *Public Service (Disciplinary) Regulations 2020*.

2 Commencement

These Regulations come into effect on the day they are notified in the Gazette and came into effect on 24 June 2020.

3 Objectives

The objectives of these Regulations are to:

- (a) foster professional employment relations in the public service;
- (b) promote mutual respect between employees and between employer and employees;
- (c) provide a framework for acceptable conduct in the workplace and the consequences of deviating from acceptable conduct;
- (d) ensure there is mutual knowledge and understanding between the employer and employees of the application of the disciplinary procedure and penalty for misconduct by an employee; and
- (e) provide a fair and impartial determination of any misconduct at the workplace.

4 Application of Regulations

- (1) These Regulations apply to all persons employed in the public service which include:
 - (a) public service employees;
 - (b) temporary employees;
 - (c) contract employees;
 - (d) Heads of Departments as specified in the Act and these Regulations;
 - (e) foreign service employees; and
 - (f) service providers whose terms and conditions of engagement is subject to the Act.
- (2) These Regulations may not apply to a persons employed under a written law which specifically provides for the terms and conditions of such employment.

5 Interpretation

In these Regulations:

‘Code of Conduct’ refers to the Code of Conduct in Section 8 of the Act;

‘disciplinary proceedings’ means the process of receiving complaint, investigation, hearing and determination of a misconduct;

'employee' includes persons referred to in Regulation 4;

'legal practitioner' has the same meaning it has in the *Legal Practitioners Act 2019*;

'Minister' means the Minister responsible for the Public Service unless stated otherwise;

'misconduct' has the meaning given to it in Regulation 8; and

'relevant Head of Department' refers to the Secretary or person in charge of a Department in which a particular employee is employed.

[The next page is 13,601]

PART 2 — CHIEF SECRETARY TO DEAL WITH MISCONDUCT

6 Powers of the Chief Secretary and Heads of Departments

- (1) Subject to subregulation (2), the Chief Secretary shall exercise disciplinary control over persons employed in the public service under the Act or any written law.
- (2) Subregulation (1) shall not apply to an employee whose employment is specifically governed by a written law, which provides for its own disciplinary procedure, process or penalty.
- (3) The Chief Secretary may in writing delegate powers to the Heads of Departments to exercise disciplinary control over employees.
- (4) The delegation of powers under subregulation (3), shall not prohibit the Chief Secretary from exercising such powers independent of the Head of Department, subject to an employee's right to protection under the principle of double jeopardy.
- (5) The Head of Department shall not exercise powers delegated to him or her under subregulation (3), where the Chief Secretary has already exercised or is in the process of exercising such powers.

7 Refusal by Head of Department to exercise power

Where the Chief Secretary reasonably believes that the Head of Department wilfully fails or neglects to exercise the power delegated to him or her under the Act or these Regulations, the Chief Secretary may:

- (a) direct the Head of Department to exercise such power and where the Head of Department fails to do so, the Chief Secretary may discipline the Head of Department and submit a report to the Minister; and
- (b) concurrently exercise such power himself or herself.

[The next page is 13,801]

PART 3 — MISCONDUCT

8 Misconduct

A misconduct consists of:

- (a) a breach of the Code of Conduct;
- (b) a commission of a disciplinary offence in Schedule 1; or
- (c) a combination of both (a) and (b).

9 Multiplicity of disciplinary offences

- (1) Where misconduct may constitute a number of breaches of the Code of Conduct or disciplinary offences, the employee may be charged with the most serious of the disciplinary offences.
- (2) Where an employee is charged with multiple disciplinary offences arising from the same facts or conduct, the penalty shall reflect the most serious of the charges so that the penalty imposed is reasonably appropriate for the gravity or impact of such offence or offences.

[The next page is 14,001]

**PART 4 — PROCEDURE FOR COMPLAINTS AGAINST EMPLOYEES
EXCEPT HEADS OF DEPARTMENTS OR CHIEF SECRETARY**

10 Complaint

- (1) A person may lodge a complaint in respect of an employee:
 - (a) to the relevant Head of Department in relation to an alleged misconduct of an employee; or
 - (b) to the Chief Secretary.
- (2) Where a complaint is lodged with the Chief Secretary, against an employee other than that of the Department of Chief Secretary, he or she shall refer the complaint to the relevant Head of Department for his or her consideration.
- (3) The complaint, insofar as practicable, shall be in writing and accompanied by available supporting evidence.
- (4) A complaint made under subregulation (1) or (2), shall be acknowledged in writing by the Head of Department or the Chief Secretary respectively.

11 Head of Department may initiate investigation

Notwithstanding Regulation 10, a Head of Department may initiate an investigation for any alleged misconduct in relation to any one or more of the employees in his or her Department, without a formal complaint.

12 Complaint against Head of Department and Chief Secretary

- (1) A complaint against a Head of Department may be made to the Chief Secretary in writing and accompanied by available supporting evidence.
- (2) A complaint against the Chief Secretary may be made to the Minister in writing and accompanied by available supporting evidence.

13 Complaint against an employee of the Department of Chief Secretary

For the purposes of investigating or considering a complaint against an employee of the Department of Chief Secretary, the reference to Head of Department in these Regulations, where applicable refers to the Chief Secretary.

[The next page is 14,201]

PART 5 — DECISION TO INVESTIGATE

14 Complaints with no merit

Where a complaint against an employee is received by a Head of Department, he or she:

- (a) may summarily dismiss the complaint, with or without investigation, where it lacks merit;
- (b) shall inform the complainant of the decision; and
- (c) provide a copy of the decision to the Chief Secretary.

15 Complaints warranting investigation

(1) Where a Head of Department is of the opinion that a complaint be investigated, he or she shall provide to the respective employee:

- (a) a summary of the complaint including the alleged misconduct;
- (b) where practicable, a copy of the complaint made against the employee including available supporting evidence; and
- (c) a directive that the employee shall within 7 days from the date of the service of the documents provide a written response admitting or denying each and every allegation.

(2) In providing the information under subsection (1), the Head of Department shall:

- (a) inform the employee that based on the complaint and the response, disciplinary charges may be laid against him or her; and
- (b) inform the employee that the employee may represent in person or be assisted by another person or a legal practitioner at any stage of the investigation, hearing or determination of a complaint.

16 Employee admits to complaint

(1) Where the allegation is admitted by the employee, he or she shall:

- (a) admit the respective facts provided with or without any variations; and
- (b) provide information or matters in Regulation 23, which the Chief Secretary may take into account as mitigation, when considering an appropriate penalty.

(2) The Head of Department shall provide a report to the Chief Secretary.

17 Employee denies complaint

(1) Where an allegation is denied, the employee shall:

- (a) provide detailed reasons of the denial of the allegations;
- (b) submit available supporting evidence including any statement of a person he or she may rely on for the purposes of paragraph (a); and
- (c) provide name, telephone, email or any other form of contact of a person he or she has obtained a statement from under paragraph (b).

(2) Where necessary, the Head of Department may refer a summary of the employee's response to the complainant for any clarification.

18 Investigation report to be provided to Chief Secretary

The Head of Department within 7 days of the receipt of the employee's response in Regulation 17 shall provide to the Chief Secretary:

- (a) the complaint;
- (b) the response from the employee; and
- (c) a report in Form 4 of Schedule 2 containing the following:
 - (i) a summary of the complaint and response;
 - (ii) the opinion of the Head of Department on the merits of the complaint;
 - (iii) the relevant employment records of the employee, if any, kept by the Department;
 - (iv) the alleged misconduct committed by the employee;
 - (v) the possible outcome of the complaint; and
 - (vi) the recommended penalty.

19 Formal charges

- (1) Upon receipt of the report in Regulation 18, and where the Chief Secretary is of the opinion that a misconduct has allegedly been committed, he or she shall formally charge the employee for such misconduct in Form 5 in Schedule 2.
- (2) The Chief Secretary shall cause the charge to be served to the employee within 10 days from the receipt of the report in Regulation 18.
- (3) The Chief Secretary shall provide to the relevant Head of Department a copy of the charge in subregulation (1).

20 Employee admits charge

Where the employee admits the allegations in the formal charge, the Chief Secretary shall:

- (a) subject to Regulation 16(1)(b), require the employee to provide any submissions on any matters in Regulation 23 he or she may consider for the purposes of penalty, if the same was not earlier provided; and
- (b) on receipt of any submissions, proceed to imposing an appropriate penalty under Regulation 24.

21 Employee denies charge

- (1) Where the employee denies the allegations in the formal charge:
 - (a) the Chief Secretary may consider the allegations on the report and accompanying documents provided by the Head of Department in Regulation 18 and find the employee guilty or not guilty on one or more of the charges; or
 - (b) the Chief Secretary, may establish a committee comprising of no more than 3 members to hear and recommend to the Chief Secretary on the formal charges.
- (2) The committee in subregulation (1)(b) shall, insofar as practicable, consist of a member who has at least 5 years of legal practice.

22 Committee to recommend

- (1) The committee shall hear and provide a report with a recommendation of its

decision to the Chief Secretary no later than 10 days from the receipt of the directive in Regulation 21(1)(b) by the Chief Secretary.

- (2) On receiving the report from the committee, the Chief Secretary may consider all information and report of the committee, to make a determination as to whether the employee is guilty or not guilty of misconduct.

23 Chief Secretary to consider the penalty

- (1) Where an employee admits any allegation of misconduct or is found to have committed misconduct, the Chief Secretary in considering the penalty may direct the respective employee to provide mitigation submissions within 5 days, where the employee has not earlier provided the same under these Regulations.
- (2) In determining the penalty, the Chief Secretary may take into account one or more of the following matters:
 - (a) nature of misconduct in particular, fraudulent conduct, politicising public service, bringing disrepute to the Executive, Judiciary or Legislature;
 - (b) malice with which the employee acted;
 - (c) time and place of misconduct;
 - (d) the employee taking advantage of his or her official position;
 - (e) taking advantage of the unique position of the victim;
 - (f) use of Government property to commit the offence;
 - (g) habituality or frequency of the commission of misconduct, despite counselling and irrespective of whether charged or not;
 - (h) a first time offender;
 - (i) education or qualification;
 - (j) competence in the performance of work;
 - (k) length of public service;
 - (l) physical or mental impairment or illness; and
 - (m) any other matters.

24 Penalties

- (1) Where an employee is found guilty of misconduct, the Chief Secretary may impose one or more of the following penalties:
 - (a) caution or reprimand the employee;
 - (b) reduce the salary payable to the employee within the applicable salary band;
 - (c) surcharge with mandatory deduction from salary by way of restitution any sum of money for the loss or damage caused by the employee to any Government property or consequential loss or damage to other property or person to which the Government may become liable to pay;
 - (d) forfeit any remuneration for the period of suspension without any remuneration before reinstating the employee;
 - (e) freeze any increments in the remuneration for a specified period of time;
 - (f) freeze any promotion in the public service for a specified period of time;
 - (g) impose a monetary fine;

- (h) demote the employee;
 - (i) suspend the employee for a specified period of time not exceeding 6 months without remuneration and such period shall include any period of suspension prior to the determination of the misconduct;
 - (j) transfer the employee to any other Department or position in the public service;
 - (k) offer an opportunity to the employee to resign in lieu of being terminated;
 - (l) terminate the employment;
 - (m) retire the employee in the public interest;
 - (n) a combination of one or more of the penalties; and
 - (o) any other penalty that the Chief Secretary may deem necessary.
- (2) Where an employee:
- (a) was suspended with half pay or without any remuneration;
 - (b) was demoted following the determination of the disciplinary offence for which he or she was suspended; and
 - (c) is entitled to receive any remuneration which was not paid during the period of suspension,
- he or she shall be paid remuneration based on the demoted position from the date of such suspension.

25 Failure of employee to respond or attend to any hearing

Where an employee, who has received a formal charge under Regulation 19 fails to respond to any request or direction by the Chief Secretary, the Chief Secretary may after the lapse of the specified time determine the charge and the appropriate penalty respectively.

26 Notification of decision

- (1) The Chief Secretary shall notify the employee in writing of his or her decision on the misconduct or penalty or both.
- (2) The decision of the Chief Secretary shall be kept as a record in the personal records of the employee kept by the Department of Chief Secretary, whether or not the employment is terminated.

27 Suspension

- (1) Where a Head of Department causes an investigation as to the conduct of an employee for breach of the Code of Conduct or commission of a disciplinary offence, he or she may suspend such employee with half pay pending investigation or final determination of the disciplinary proceeding.
- (2) Where the employee is suspended under subregulation (1) and the disciplinary proceeding has commenced, the Chief Secretary may, on the recommendation of the relevant Head of Department vary the suspension to be without remuneration pending the final determination of the disciplinary proceeding.
- (3) The Chief Secretary may suspend an employee, with or without remuneration, where the employee in the first instance was not suspended by the relevant Head of Department pending an investigation and the final determination of the disciplinary proceeding.

- (4) An employee may request the Chief Secretary to review the decision of suspension without remuneration, where no formal charges have been served to the employee or disciplinary proceeding has not commenced within 60 days of the date of suspension.

28 Chief Secretary to determine charge

- (1) The Chief Secretary shall within 90 days from the date of suspension or the service of the charge on an employee, whichever occurs first, make a final determination on such charge and penalty.
- (2) Where the Chief Secretary fails to comply with subregulation (1), the employee may be permitted to resume duties, pending final determination of the disciplinary proceeding.

[The next page is 14,401]

PART 6 — MISCELLANEOUS

29 Resignation pending disciplinary proceeding

Where an employee resigns pending final determination of a disciplinary proceeding, such proceeding shall cease forthwith.

30 Resignation pending criminal proceeding

Where an employee resigns pending final determination of a criminal proceeding, any disciplinary proceeding arising out of or related to such criminal proceeding, if commenced, shall cease forthwith.

31 Forms

The forms in Schedule 2 may be modified as may be necessary.

32 Rules of evidence

- (1) The strict rules of evidence shall not apply to disciplinary proceedings.
- (2) Subject to Regulation 33, a disciplinary proceeding shall not be void for any want of form or procedure.

33 Rules of natural justice

- (1) A disciplinary proceeding conducted under these Regulations shall be in compliance with the rules of natural justice.
- (2) Where an employee is given the right to natural justice and if he or she fails to exercise such right, it shall not constitute a breach of the rules of natural justice.

34 Repeal of Public Service (Disciplinary Procedure) Regulations 2016

The *Public Service (Disciplinary Procedure) Regulations 2016* are hereby repealed.

35 Disciplinary proceedings under repealed Regulations to continue

Where disciplinary proceedings have been commenced under the *Public Service (Disciplinary Procedure) Regulations 2016*, such proceedings shall continue and be completed under these Regulations.

[The next page is 14,601]

SCHEDULE 1

[Regulation 8]

DISCIPLINARY OFFENCES

The disciplinary offences which constitute misconduct are:

1. Habitual late attendance to work or official functions;
2. Absence from work without prior leave or permission;
3. Disobeying instructions of superiors or insubordination;
4. Failing to exercise proper supervisory functions;
5. Concealing defective or substandard work;
6. Malingering at the work place or inefficient use of time;
7. Verbal and physical fighting at the work place;
8. Use of indecent or vulgar language;
9. Giving wrong information for official purposes;
10. Neglect or dereliction of duties;
11. Failure to follow or obey written laws and public service policies;
12. Breach of trust and confidence;
13. Theft, fraud, irregularity, embezzlement, bribery, corruption or misappropriation of funds;
14. Breach of duty of official secrecy under the *Official Information Act 1976*;
15. Failure to protect or wilfully divulging information contained in data protection mechanisms including in electronic mails, cloud or other digital or electronic storage programs, laptops, iPads, phones and computers;
16. Falsification of records or violation or misuse of official information;
17. Misuse of electronic equipment including unauthorised access to computers and other records and files;
18. Reporting to work under the influence or consuming alcohol or illicit drugs at the work place;
19. Discrimination, bullying, harassment including sexual harassment;
20. Nepotism;
21. Failing to comply with the requirements of all different types of leave under Part 6 of the Act;
22. Failure to disclose conflicts of interest;
23. Damage to Government property including motor vehicles;
24. Arrogant, abusive or violent behaviour towards the members of the public or other employees;

25. Breach of *Public Service (Government Vehicles) Regulations 2017*;
26. Digital or electronic publishing, posting or messaging in social or mass media of any political, misleading or false information or any information which is likely to bring disrepute to the Government, President, Ministers or other employees;
27. Uttering, recording or livestreaming of any official information without prior approval of the Head of Department by means of social or mass media or any other electronic or digital form;
28. Immoral, indecent or disgraceful conduct at the work place;
29. Tampering with or entering of false entries into the attendance register; and
30. Failure to promptly answer or respond to telephone calls to 557 numbers, electronic mails, IMO, messenger, hang outs, whatsapp, viber, text messages.

[The next page is 14,801]

SCHEDULE 2

FORMS

FORM 1



REPUBLIC OF NAURU

PUBLIC SERVICE ACT 2016

Public Service (Disciplinary) Regulations 2020

[Regulation 15]

COMPLAINT FOR ALLEGED MISCONDUCT

[Insert Letterhead]

MEMORANDUM

FROM : Secretary for [insert Department]
TO : [insert name of employee] [insert position of employee]
DATE : [insert date]
RE : **COMPLAINT FOR ALLEGED MISCONDUCT**

1. This memorandum is issued to you under *Regulation 15* of the *Public Service (Disciplinary) Regulations 2020*. Pursuant to this Regulation, I am formally informing you of a complaint made against you for an alleged misconduct under the *Public Service Act 2016* and *Public Service (Disciplinary) Regulations 2020*.
2. It is alleged that on *[insert date]*, you *[insert actual allegations]*.
3. A copy of the complaint and supporting documents are attached [or a summary of the complaint is as follows. . .].

[NOTE: a summary is only necessary if the complaint cannot be attached for reasons of confidentiality or at the request from the complainant.]

4. Pursuant to *Regulation 15(2)*, you are required within 7 days from the date on which you were served or received this memorandum, [and the attached documents (if any)] to provide a response in writing to each of the allegations.

5. **TAKE NOTICE** that based on the complaint and any response by you, this complaint may be referred to the Chief Secretary for the commencement of disciplinary proceedings. If you fail to respond, the allegations will be referred to the Chief Secretary, who shall then proceed to deal with the matter under the *Public Service (Disciplinary) Regulations 2020*. A copy of the list of disciplinary offences contained in Schedule 1 of the *Public Service (Disciplinary) Regulations 2020* is attached for your information. Therefore, it is in your interest to timely respond to the allegations.

[insert name of Head of Department]

Secretary for [insert Department]

Attached:

FORM 2



REPUBLIC OF NAURU

PUBLIC SERVICE ACT 2016

Public Service (Disciplinary) Regulations 2020

[Regulation 27(1)]

SUSPENSION BY HEAD OF DEPARTMENT

[Insert Letterhead]

MEMORANDUM

FROM : Secretary for [insert Department]
TO : [insert name of employee] [insert position of employee]
DATE : [insert date]
RE : **SUSPENSION FOR ALLEGED MISCONDUCT**

1. This memorandum is issued pursuant to *Regulation 27(1)* of the *Public Service (Disciplinary) Regulations 2020*. By virtue of the powers vested to me under *Regulation 27*, I suspend you from work pending the investigation [or final determination of any contemplated disciplinary proceedings]. You will be paid 50% of your basic salary [or wages].
2. You are to hand over all the office equipment, passwords, keys to *[insert name of officer to whom the hand over is to be given]*. During the period of suspension, you will have no access to the office as such you shall remove all your personal belongings from the office.
3. Whilst on suspension, you may be contacted by *[insert name of officer]* for the purposes of investigation.
4. Your suspension without remuneration shall continue until it is revoked by the Chief Secretary. In the event you are charged for a disciplinary offence, your suspension without remuneration shall continue unless you seek to have the decision to suspend remuneration reviewed by the Chief Secretary under *Regulation 27(4)* after a lapse of 60 days from the date of suspension.

[insert name of Head of Department]

Secretary for [insert Department]

Attached:

14,803

Service 0

NOTE: Regulation 27(4) provides: 'An employee may request the Chief Secretary to review the decision of suspension without remuneration, where no formal charges have been served to the employee or disciplinary proceeding has not commenced within 60 days of the date of suspension.'

FORM 3



REPUBLIC OF NAURU

PUBLIC SERVICE ACT 2016

Public Service (Disciplinary) Regulations 2020

[Regulation 27(3)]

SUSPENSION BY CHIEF SECRETARY

[Insert Letterhead of Department of Chief Secretary]

MEMORANDUM

FROM : Chief Secretary
TO : *[insert name of employee]* *[insert position of employee]*
DATE : *[insert date]*
RE : **SUSPENSION FOR ALLEGED MISCONDUCT**

1. This memorandum is issued pursuant to *Regulation 27(3)* of the *Public Service (Disciplinary) Regulations 2020*. By virtue of the powers vested to me under *Regulation 27(3)*, I suspend you from work pending the investigation [or final determination of any contemplated disciplinary proceedings]. You are suspended without any salary [or you will be paid 50% of your basic salary (or wages)].
2. You are to hand over all the office equipment, passwords, keys to *[insert name of officer to whom the hand over is to be given]*. During the period of suspension, you will have no access to the office as such you shall remove all your personal belongings from the office.
3. Whilst on suspension, you may be contacted by *[insert name of officer]* for the purposes of investigation.
4. Your suspension shall continue until it is revoked by me. In the event you are charged for a disciplinary offence, your suspension without remuneration shall continue, unless you seek to have the decision to suspend remuneration reviewed by me under *Regulation 27(4)* after a lapse of 60 days from the date of suspension.

[insert name of Chief Secretary]

Chief Secretary

Attached:

NOTE: Regulation 27(4) provides: 'An employee may request the Chief Secretary to review the

decision of suspension without remuneration, where no formal charges have been served to the employee or disciplinary proceeding has not commenced within 60 days of the date of suspension.'

FORM 4



REPUBLIC OF NAURU
PUBLIC SERVICE ACT 2016
Public Service (Disciplinary) Regulations 2020

[Regulation 18]

INVESTIGATION REPORT

[Insert Letterhead of Department of Chief Secretary]

MEMORANDUM

FROM : Secretary for [insert name of Department]
TO : Chief Secretary
DATE : [insert date]
RE : **INVESTIGATION REPORT FOR ALLEGED MISCONDUCT –**
[insert name of employee]

Pursuant to Regulation 18(c) of the Public Service (Disciplinary) Regulations 2020, find enclosed herewith is a duly completed form containing the following:

- (i) ...
- (ii) ...
- (iii) ...
- (iv) ...
- (v) ...
- (vi) ...
- (vii) ...
- (viii) ...

[insert name of Head of Department]
Secretary for [insert Department]

Attached:

Complete and attach this Form

<p>FULL NAME OF EMPLOYEE:</p> <p>POSITION:</p>
--

Department of [insert name of Department]

SUMMARY OF COMPLAINT:

.....
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.....
.....
.....
.....

SUMMARY OF EMPLOYEE'S RESPONSE:

.....
.....
.....
.....
.....
.....

OPINION ON THE MERITS OF THE COMPLAINT:

.....
.....
.....
.....
.....
.....

RELEVANT EMPLOYMENT RECORDS OF EMPLOYEE: [Attach separately if needed]

.....
.....
.....
.....
.....
.....

NATURE OF ALLEGED MISCONDUCT: [Tick the applicable misconduct]

- Breach of code of conduct
- Habitual late attendance to work or official functions
- Absenteeism without prior leave or permission

- Disobeying instructions of superiors or insubordination
- Failing to exercise proper supervisory functions
- Concealing defective or substandard work
- Malingering at the work place or inefficient use of time
- Verbal and physical fighting at the work place
- Use of indecent or vulgar language
- Giving wrong information for official purposes
- Neglect or dereliction of duties
- Failure to follow or obey written laws and public service policies
- Breach of trust and confidence
- Theft, fraud, irregularity, embezzlement, bribery, corruption or misappropriation of funds
- Breach of duty of official secrecy under the *Official Information Act 1976*
- Failure to protect or wilfully divulging information contained in data protection mechanisms including in electronic mails, cloud or other digital or electronic storage programs, laptops, iPads, phones and computers
- Falsification of records or violation or misuse of official information
- Misuse of electronic equipment including unauthorised access to computers and other records and files
- Reporting to work under the influence or consuming alcohol or illicit drugs at the work place
- Discrimination, bullying, harassment including sexual harassment
- Nepotism
- Failing to comply with the requirements of all different types of leave under Part 6 of the Act
- Failure to disclose conflicts of interest
- Damage to Government property including motor vehicles
- Arrogant, abusive or violent behaviour towards the members of the public or other employees
- Breach of *Public Service (Government Vehicles) Regulations 2017*
- Digital or electronic publishing, posting or messaging in social or mass media of any political, misleading or false information or any information which is likely to bring disrepute to the Government, President, Ministers or other employees
- Uttering, recording or livestreaming of any official information without prior approval of the Head of Department by means of social or mass media or any other electronic or digital form
- Immoral, indecent or disgraceful conduct at the work place
- Tampering with or entering of false entries into the attendance register
- Failure to promptly answer or respond to telephone calls to 557 numbers, electronic mails, IMO, messenger, hang outs, whatsapp, viber, text messages

POSSIBLE OUTCOME OF THE COMPLAINT:

.....
.....
.....

RECOMMENDED PENALTY: *[Tick the recommended penalty or penalties]*

- Caution or reprimand the employee
- Reduce the salary payable to the employee within the applicable salary band
- Surcharge with mandatory deduction from salary by way of restitution any sum of money for the loss or damage caused by the employee to any Government property
- Forfeit any remuneration for the period of suspension without any remuneration before reinstating the employee
- Freeze any increments in the remuneration for a specified period of time
- Freeze any promotion in the public service for a specified period of time
- Impose a monetary fine
- Demote the employee
- Suspend the employee for a specified period of time not exceeding 6 months without remuneration and such period shall include any period of suspension prior to the determination of the misconduct
- Transfer the employee
- Offer an opportunity to the employee to resign in lieu of being terminated
- Terminate the employee
- Retire the employee in the public interest

ANY OTHER PENALTY: *[state below any other penalty you may wish to recommend to the Chief Secretary]*

.....
.....
.....

Head of Department *[Insert name]*:

Signature: Date:

FORM 5



REPUBLIC OF NAURU

PUBLIC SERVICE ACT 2016

Public Service (Disciplinary) Regulations 2020

[Regulation 19]

DISCIPLINARY CHARGE

[Insert Letterhead of Department of Chief Secretary]

MEMORANDUM

FROM : Chief Secretary
TO : *[insert name of employee]* *[insert position of employee]*
DATE : *[insert date]*
RE : **DISCIPLINARY CHARGES FOR MISCONDUCT**

1. I have considered the complaint, *[response if provided]*, information provided by the Secretary for *[insert Department]*. Based on the powers vested in me under *Regulation 19*, I am of the opinion that the complaint constitutes an alleged misconduct.
2. Pursuant to the powers vested in me under *Regulation 19(1)* of the *Public Service (Disciplinary) Regulations 2020*, I formally charge you for the following disciplinary offence *[offences]* under the *Public Service (Disciplinary) Regulations 2020*:

Statement of Offence

MISCONDUCT contrary to *Section 8* of the *Public Service Act 2016*, *Regulation 8* and *Schedule 1* of the *Public Service (Disciplinary) Regulations 2020*.

Particulars of Offence

[Insert name of the employee], it is alleged against you as a public service employee serving as the *[insert position of the employee]* in the Department of *[insert name of the Department]* that on or about *[insert date]*, you *[insert details of the alleged misconduct]*.

3. This disciplinary charge is served to you under *Regulation 19(2)* of the *Public Service (Disciplinary) Regulations 2020*.
4. *Regulation 20* provides you with an opportunity to admit the charge. You may also deny the charge under *Regulation 21*. You are required to provide your response either admitting or denying the charge to me within 7 days of the receipt of this formal charge. You may also provide any information, evidence or facts which in your view is necessary for my deliberation.

5. After receiving your response, I will deliberate upon the charges. You may be required to attend in person before me or I may deliberate on the charges based on the information already provided.
6. Pursuant to *Regulation 21(1)(b)*, I may exercise my discretion to refer the charges to a committee for a recommendation.
7. If you are found guilty of any disciplinary offence, you will be informed of the same under *Regulation 26*.
8. In the event you admit the charges, you may make submissions for mitigation as to the penalty which I may impose. *Regulation 23* provides for matters which I shall consider for the purposes of the penalty.
9. **TAKE NOTICE** that if you fail to respond under *Regulation 20* or *Regulation 21*, I will proceed to deliberate upon the disciplinary charges based on the information already provided to me. Therefore, it is in your interest and in compliance with the requirements of natural justice under *Regulation 33* for you to provide all the information that you deem appropriate.

[insert name of the Chief Secretary]

Chief Secretary

FORM 6



REPUBLIC OF NAURU
PUBLIC SERVICE ACT 2016
Public Service (Disciplinary) Regulations 2020

[Regulation 21]

NOTICE OF HEARING

[Insert Letterhead of Department of Chief Secretary]

MEMORANDUM

FROM : Chief Secretary
TO : [insert name of employee] [insert position of employee]
DATE : [insert date]
RE : NOTICE OF HEARING

TAKE NOTICE that the disciplinary proceedings commenced against you will be heard before me [committee] on [insert date]. You are required to attend the hearing.

Please note that you may defend yourself in person or engage the services of a legal practitioner or another person. During the hearing, you are also allowed to call witnesses, tender documents and make submissions which you intend to be considered for the decision.

It is in your interest to attend the hearing as I will make a decision under *Regulation 25* even if you fail to attend the hearing.

[insert name of the Chief Secretary]
Chief Secretary

NOTE: Regulation 25 provides: 'Where an employee, who has received a formal charge under Regulation 19 fails to respond to any request or direction by the Chief Secretary, the Chief Secretary may after the lapse of the specified time determine the charge and the appropriate penalty respectively.'

FORM 7



REPUBLIC OF NAURU

PUBLIC SERVICE ACT 2016

Public Service (Disciplinary) Regulations 2020

[Regulation 28]

DECISION ON DISCIPLINARY CHARGES

[Insert Letterhead of Department of Chief Secretary]

MEMORANDUM

FROM : Chief Secretary
TO : *[insert name of employee]* *[insert position of employee]*
DATE : *[insert date]*
RE : **DECISION ON DISCIPLINARY CHARGES**

Pursuant to the powers vested in me under *Regulation 28* of the *Public Service (Disciplinary) Regulations 2020* and based on the information or evidence provided by the *[insert names of any persons]* and you, I have reached the following conclusion:

- (a) I find you not guilty and acquit you on all counts; or
- (b) I find you guilty on counts XXX and not guilty on counts YYY, as such acquit you on counts YYY and proceed to considering the penalty on count XXX.

I am attaching a copy of my decision and the reasons for the same.

[insert name of the Chief Secretary]
Chief Secretary

Attached: Decision on disciplinary charges.

NOTE: *You have been found guilty of XX offence. You have the right to appeal the decision but this right can only be exercised after the penalty has been given.*

FORM 8



REPUBLIC OF NAURU
PUBLIC SERVICE ACT 2016
Public Service (Disciplinary) Regulations 2020

[Regulation 24]

DECISION ON PENALTY

[Insert Letterhead of Department of Chief Secretary]

MEMORANDUM

FROM : Chief Secretary
TO : [insert name of employee] [insert position of employee]
DATE : [insert date]
RE : **DECISION ON PENALTY**

After considering the matters which I am required to under *Regulation 23* and pursuant to the power vested in me under *Regulation 24* of the *Public Service (Disciplinary) Regulations 2020*, I impose the following penalties:

[insert the penalties]

I am attaching a copy of my decision and the reasons for the same.

[insert name of the Chief Secretary]
Chief Secretary

Attached: Decision on penalty.

NOTE: Pursuant to Part 8 of the Act, you have the right to appeal within 14 days of the decision being made.

FORM 9



REPUBLIC OF NAURU
PUBLIC SERVICE ACT 2016
Public Service (Disciplinary) Regulations 2020

[Section 82A]

SUMMARY TERMINATION

[Insert Letterhead of Department of Chief Secretary]

MEMORANDUM

FROM : Chief Secretary
TO : [insert name of employee] [insert position of employee]
DATE : [insert date]
RE : **SUMMARY TERMINATION**

Pursuant to Section 82A of the *Public Service Act 2016*, you committed a [insert offence] for which you are liable to be summarily terminated.

Based on the following information [insert list of information], you are formally dismissed from employment with immediate effect.

You will be paid your accrued benefits and entitlements under the *Public Service Act 2016*.

[insert name of the Chief Secretary]
Chief Secretary

[The next page is 16,001]

Public Service (Appeals) Regulations 2020

TABLE OF PROVISIONS

<i>Regulation</i>	<i>Title</i>
1	Citation
2	Commencement
3	Interpretation
4	Commencing an appeal
5	Notice to Attend
6	Appeal out of time
7	Withdrawal of appeal
8	Severance of appellants
9	Interlocutory decision not appealable
	SCHEDULE — FORMS
	FORM 1 — NOTICE OF APPEAL
	FORM 2 — NOTICE TO ATTEND

[The next page is 16,201]

Public Service (Appeals) Regulations 2020

TABLE OF AMENDMENTS

The Public Service (Appeals) Regulations 2020 SL 22 were notified and commenced on 24 July 2020 (GN 473/2020; Gaz 145/2020).

Amending Legislation	Notified	Date of Commencement
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

[The next page is 16,401]

The Cabinet makes the following Regulations under Section 130 of the *Public Service Act 2016*:

1 Citation

These Regulations may be cited as the *Public Service (Appeals) Regulations 2020*.

2 Commencement

These Regulations come into effect on the day they are notified in the Gazette and came into effect on 24 July 2020.

3 Interpretation

In these Regulations:

‘*Board*’ means the Public Service Appeals Board constituted in Section 105 of the Act; and

‘*secretary*’ means the secretary to the Public Service Appeals Board.

4 Commencing an appeal

A person aggrieved by a decision of the Chief Secretary made under the *Public Service (Disciplinary) Regulations 2020*, may appeal such decision of the Chief Secretary to the Board in Form 1 in the Schedule.

5 Notice to Attend

For the purpose of Section 113(1)(b) of the Act, a notice in Form 2 in the Schedule shall be issued to the parties to attend before the Board.

6 Appeal out of time

- (1) No appeal shall be permitted to be lodged after the time for lodging the appeal has lapsed.
- (2) Subject to subregulation (3), an aggrieved employee may seek leave to lodge an appeal out of time with the approval of the Chairperson of the Board.
- (3) Where the Chairperson of the Board grants leave to file an appeal out of time, the Chief Secretary may apply to have the appeal struck out summarily on the grounds that:
 - (a) the appeal was not filed within the stipulated time;
 - (b) there is an inordinate delay; and
 - (c) there is prejudice or it is detrimental to good administration of public service.

7 Withdrawal of appeal

- (1) An appellant may withdraw or discontinue the appeal in writing at any time prior to the delivery of the decision of the Board.

- (2) Where an appeal against a decision of the Chief Secretary is withdrawn or discontinued under subregulation (1), no further appeals shall be filed by the appellant without the prior leave of the Board.

8 Severance of appellants

Where in an appeal there is more than one appellant and any one or more of the appellants exercise their right to withdraw or discontinue an appeal under Regulation 7, any remaining appellant may continue with the appeal.

9 Interlocutory decision not appealable

There shall be no appeal of any interlocutory decision or a decision to suspend an employee by the Chief Secretary or Head of Department pending the investigation or the final determination of a disciplinary proceeding.

[The next page is 16,601]

**SCHEDULE
FORMS**

FORM 1



[Section 111; Regulation 4]

NOTICE OF APPEAL

Appeal No . . . /20. . . .

IN THE MATTER of the *Public Service Act 2016*

AND IN THE MATTER of an Appeal to the Public Service Appeals Board pursuant to Section 109 of the *Public Service Act 2016*

BETWEEN: *[INSERT NAME OF APPELLANT]* of *[insert address]*

APPELLANT

AND: **THE CHIEF SECRETARY**, Government Buildings, Yerevan District

RESPONDENT

Details of Appellant	<i>[insert full name]</i> , <i>[insert residential and email addresses]</i> , <i>[insert phone number]</i> <i>[insert position or job title]</i> , <i>[insert Section]</i> , <i>[insert Department]</i> .
Employment status	I am a: <input type="checkbox"/> public service employee; <input type="checkbox"/> temporary employee; <input type="checkbox"/> contract employee; <input type="checkbox"/> foreign service employee. <i>[Tick whichever is applicable]</i>

State the nature of appeal	<p>The Appellant appeals against:</p> <p><input type="checkbox"/> the appointment of a person or promotion of another public service employee;</p> <p><input type="checkbox"/> the finding that the Appellant committed a misconduct and a penalty imposed by the Chief Secretary;</p> <p><input type="checkbox"/> being transferred for reasons other than as a penalty for misconduct;</p> <p><input type="checkbox"/> the reduction of his or her classification.</p> <p><i>[(a) Tick whichever is applicable]; [(b) Attach a copy of the decision]</i></p>
Date of decision	[day] / [month] / [year]
Date of notification of decision to the Appellant	[day] / [month] / [year] 1. <i>[insert the date on which the decision of the Chief Secretary was given to the Appellant]</i> 2. <i>[where the intended appeal is out of time, please insert the reasons for the same below]</i>
Grounds of Appeal	<p>The grounds of appeal are as follows:</p> <p><i>[Properly outline, number and state the grounds of appeal as 1, 2, 3, etc]</i></p> <p>1 2 3</p> <p><i>[If necessary, attach a separate page.][Note: No submissions are to be attached or included as part of the grounds of appeal.]</i></p>
Nature of relief sought	<p>The Appellant seeks the following relief:</p> <p>1 2 3</p> <p><i>[(a) Precisely state the relief sought from the Public Service Appeals Board; (b) If necessary attach a separate page; (c)No submissions are to be attached or included as part of the relief sought]</i></p>
Leave to extend time to appeal <i>[if applicable]</i>	<p><input type="checkbox"/> I am applying for an extension of time to lodge my appeal notice after 5.00 pm on the 14th day after I was notified of the decision. The reason I could not lodge my appeal within the 14 day timeframe is:</p> <p><i>[provide reason]</i></p> <p><i>[Appellant shall state the last date for appealing the decision under the Act – appeal shall be filed within 14 days after the appealable decision was made]</i></p>
Representation	<p>In person or by a legal representative <i>[state the name of legal representative]</i></p> <p>.....</p>

Address for service of the Appellant or legal representative District Email:..... Telephone Number: <i>[insert full address of Appellant or legal representative]</i>
Any special requirements	<i>[for example, an interpreter]</i>
Signature of Appellant or Legal representative
Date notice of appeal filed	[day] / [month] / [year]
Endorsement by the secretary to the Public Service Appeals Board	

FORM 2



[Section 113(1)(b); Regulation 5]

NOTICE TO ATTEND

Appeal No. . . ./20. . . .

IN THE MATTER of the *Public Service Act 2016*

AND IN THE MATTER of an Appeal to the Public Service Appeals Board pursuant to Section 109 of the *Public Service Act 2016*

BETWEEN: [INSERT NAME OF APPELLANT] of [insert address]

APPELLANT

AND: **THE CHIEF SECRETARY,**
Government Buildings, Yaren District

RESPONDENT

NOTICE TO ATTEND

TAKE NOTICE that:

- (a) this appeal was filed on [insert date of filing of the appeal]; and
- (b) the appeal is listed before the Board on the [insert date and time of the listing].

The Appellant and the Chief Secretary or his or representative are required to attend before the Board on the date and time contained in this Notice for directions or hearing of the appeal.

DATED the day of 20..... .

.....
Secretary
Public Service Appeals Board

TO: [insert name of Appellant]
[insert address of Appellant] District
Chief Secretary
Department of Chief Secretary
Government Offices
Yaren District

[The next page is 30,001]