



REPUBLIC OF NAURU

**Public Sector Bill 2012**

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**Serial No. 26 of 2012**

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REPUBLIC OF NAURU

**Public Sector Bill 2012**

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**Serial No. 26 of 2012**

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A Bill for:

An Act about employment in, and management of, the public sector of the Republic; to amend the *Agricultural Quarantine Act 1999*, the *Attachment of Earnings and Phosphate Royalties Act 1973*, the *Civil Aviation Act 2011*, the *Criminal Justice Act 1999*, the *Education Act 2011*, the *Electoral Act 1965*, the *Facilitation of Australian Assistance Act 2004*, the *Health Practitioners Act 1999*, the *Interpretation Act 2011*, the *Legislation Publication Act 2011*, the *Official Information Act 1976*, the *Passports Act 2011* and the *Public Finance (Control and Management) Act 1998*; to repeal the *Public Service Act 1998* and for related purposes

*Certified on [ ]*

Enacted by the Parliament of Nauru as follows:

**PART 1 — PRELIMINARY MATTERS**

**1 Short title**

This Act may be cited as the *Public Sector Act 2012*.

**2 Commencement**

This Act commences on a date fixed by the Minister by Gazette notice.

**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 regulation, this Act does not apply to the employee to the extent of the exclusion;
  - (b) if some or all of the terms and conditions of employment of a public service employee are specified in a written contract, this Act does not apply to the extent of any inconsistency with the contract;
  - (c) if some or all of the terms and conditions of employment of a public service employee are specified in another Act, this Act does not apply to the extent of any inconsistency with the other Act.
- (2) The Regulations may apply this Act or specified provisions of this Act to public sector employees 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).

## PART 2 — INTERPRETATION

### 4 Definitions

In this Act, unless the contrary intention appears:

***‘absent without leave’***, see section 5;

***‘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;

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

***‘annual 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 hours determined by the Chief Secretary to be the base hours of attendance that apply to the employee under section 33;

**'Board'** means the Public Service Appeals Board established by Article 70;

**'breach of discipline'**, see section 6;

**'Chairman'** means the Chairman of the Board mentioned in Article 70(1);

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

**'continuous period of service'**, see section 7;

**'disciplinary action'**, see section 82;

**'family member'**, of a public service employee, means:

- (a) the employee's parent, spouse, child or stepchild; or
- (b) a member of the employee's household;

**'information notice'**, for a decision, means a written notice to a person specifying the following:

- (a) the decision;
- (b) the reasons for the decision;
- (c) the grounds on which the person may appeal against the decision to the Board;
- (d) the time within which the person must lodge an appeal;

**'leave'** means paid leave or leave without pay;

**'leave without pay'** means the type of leave mentioned in Part 6 Division 3 Subdivision 7;

**'long service leave'** means the type of leave mentioned in Part 6 Division 3 Subdivision 6;

**‘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;

**‘non-standard hours of attendance’** means the hours mentioned in section 35;

**‘paid leave’** means annual leave, personal leave, maternity leave, adoption leave, parental leave or long service leave;

**‘parental 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 holds a public service position on an ongoing basis;

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

**‘principal officer’**, of a public sector agency other than a department, means the chief executive of the agency or, if the agency does not have a chief executive, a person designated by the agency’s Minister as the principal officer of the agency;

**‘probationary employee’** means a public service employee who has not completed the employee’s probationary period under section 30;

**‘public holiday’**, see section 63;

**‘public sector’** means the departments of the public service and all other public sector agencies and public sector employees;

**‘public sector agency’** means:

- (a) the Chief Secretary; or
- (b) a department; or
- (c) a state-owned enterprise; or
- (d) any other agency or instrumentality of the Republic; or

- (e) a person or body declared by the Regulations to be a public sector agency,

but does not include a person or body declared by the Regulations not to be a public sector agency;

**'public sector code of conduct'** means the rules set out in section 10;

**'public sector values'** means the values of the public sector set out in section 9;

**'public sector employee'** means:

- (a) the Chief Secretary; or
- (b) an employee of a public sector agency;

**'public service employee'** means a permanent or term employee;

**'public service position'** means a position in the public service created under section 18(1)(a);

**'Registrar of the Supreme Court'** has the same meaning as in section 2 of the *Courts Act 1972*;

**'remedial action'**, see section 78(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 37(1);

**'responsible head of department'**, for a public service employee, means the head of the department in which the employee occupies a position;

**'responsible Minister'**:

- (a) for a department, means the Minister to whom the President has assigned the administration of the department under Article 23 or an administrative arrangements order; and

- (b) for a public sector agency other than a department, means the Minister responsible for the administration of the Act under which the agency is established or the Minister who assumes responsibility for the agency;

**‘salary level’**, of an employee, means the level of salary determined by Cabinet for the class of position held by the employee or by the Chief Secretary for the employee under section 31;

**‘serious misconduct’**, see section 8;

**‘standard hours of attendance’** mean the hours specified in section 34;

**‘state-owned enterprise’** means:

- (a) Nauru Rehabilitation Corporation; or
- (b) RONPHOS; or
- (c) Nauru Utilities Corporation; or
- (d) Nauru Air Corporation; or
- (e) Egigu Holdings Corporation; or
- (f) Nauru Agency Corporation; or
- (g) any other body declared by the Regulations to be a state-owned enterprise;

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

**‘substantive position’**, for a permanent employee, means the public sector position the employee holds on an ongoing basis;

**‘substantive salary level’** means:

- (a) if an employee is temporarily occupying a position other than his or her substantive position—the salary level applicable to the employee in his or her substantive position;
- (b) in any other case—the salary level currently applicable to the employee;

**'supervisor'**, of a public service employee, means:

- (a) the responsible head of department for the employee; or
- (b) a person authorised by the responsible head of department to supervise the employee;

**'temporary employee'**, see section 108;

**'term employee'** means a person who:

- (a) occupies a public service position for a fixed term; and
- (b) is not the substantive holder of another public service position;

**'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 7 when the employee's employment in the public service terminates;

**'outside employment'**, for a public sector employee, means employment outside the public sector agency in which the person is employed;

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

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

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

- (1) A public service 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) However, 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; and
- (b) the employee applies for leave for the absence as soon as practicable; and
- (c) the leave is granted.

## **6 Meaning of 'breach of discipline'**

A public service employee commits a **'breach of discipline'** if the employee:

- (a) breaches the public sector code of conduct; or
- (b) is sentenced to at least 1 month imprisonment for an offence punishable by 12 months imprisonment or more; or
- (c) is absent without leave; or
- (d) engages in outside employment without the authorisation of the Chief Secretary under section 64; or
- (e) fails to comply with a requirement to undergo a medical examination under section 69; or
- (f) fails to comply with this Act.

## **7 Meaning of 'continuous period of service'**

- (1) A **'continuous period of service'**, for a public service 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) The Regulations may declare that an employee's continuous period of service is to be regarded as including periods of service in other employment or periods of leave in the circumstances set out in the Regulations.

## **8 Meaning of 'serious misconduct'**

A public service employee is guilty of **'serious misconduct'** if the employee:

- (a) commits a breach of discipline so serious, or of such a nature, that, in the Chief Secretary's opinion, the employment of the employee should be terminated immediately; or
- (b) is absent without leave for 5 consecutive days.

## **PART 3 — PUBLIC SECTOR VALUES AND PRACTICES**

### **9 Public sector values**

The values of the public sector are as follows:

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

### **10 Public sector code of conduct**

- (1) A public sector employee must behave honestly and with integrity in the course of public sector employment.
- (2) A public sector employee must act with care and diligence in the course of public sector employment.

- (3) A public sector employee, when acting in the course of public sector employment, must treat everyone with respect and courtesy, and without harassment or discrimination.
- (4) A public sector employee, when acting in the course of public sector employment, must comply with all applicable written laws.
- (5) A public sector employee must comply with any lawful and reasonable direction given by a person who has authority to give the direction.
- (6) A public sector employee must maintain appropriate confidentiality about dealings that the employee has with a Minister.
- (7) A public sector employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with the employee's public sector employment.
- (8) A public sector employee must use resources of the Republic in a proper manner.
- (9) A public sector employee must 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 sector employment.
- (10) A public sector employee must not make improper use of the following to gain a benefit or advantage for the employee or for another person:
  - (a) information gained as a result of the employee's public sector employment;
  - (b) the employee's duties, status, power or authority.
- (11) A public sector employee must at all times behave in a way that upholds the public sector values and the integrity and good reputation of the public sector.
- (12) A public sector employee must not engage in outside employment without the authorisation of, in the case of a public service employee, the Chief Secretary and, in any other case, the principal officer of the public sector agency.



**11 Public sector performance management and development**

- (1) Each public sector agency must establish and administer effective performance management and development systems in respect of the employees of the agency.
- (2) Performance management and development must be directed towards advancement of the public sector values and public sector code of conduct.

**12 Flexible arrangements for transfer within public sector**

- (1) Subject to this section, the Chief Secretary may, by Gazette notice:
  - (a) transfer employees within the public sector; and
  - (b) make transitional or ancillary provisions that may be necessary or expedient in the circumstances.
- (2) A notice under subsection (1) has effect according to its terms and despite the fact that an Act provides for employment of the person by a public sector agency other than the Chief Secretary.
- (3) An employee may only be transferred on conditions that maintain the substantive salary level of the employee or are agreed to by the employee.
- (4) Promotion of an employee through transfer may only be for a maximum period of 12 months.
- (5) An employee may not be transferred unless both public sector agencies agree or Cabinet authorises the transfer in order to reorganise public sector operations.
- (6) An employee whose employment is subject to a contract may not be transferred except with the consent of the employee and the provisions of the employee's contract will continue to apply after transfer, subject to any necessary modifications or further agreement between the employee and his or her employer.
- (7) A transfer of an employee under this section does not constitute a breach of the person's contract of employment or termination of the person's employment, or affect the continuity of the person's employment for any purpose.

- (8) The Regulations may prescribe further rules relating to the transfer of employees within the public sector.

**13 Public sector annual reports**

- (1) Each public sector agency must, once in each year, present a report on the agency's operations to the agency's Minister.
- (2) Subject to this section, the report must be related to a financial year and must be presented within 3 months after the end of the financial year to which it relates.
- (3) If a public sector agency is under some other statutory obligation to make an annual report to the agency's Minister:
  - (a) the report required by this section may be incorporated with that other report; and
  - (b) the period to which the report relates must be the same as for that other report; and
  - (c) the report must be presented within 3 months after the end of the reporting period referred to above.
- (4) The report must be accurate, comprehensive, deal with all significant issues affecting the agency and written and presented in a manner that aids ready comprehension.
- (5) The report must contain the information required by the Regulations.
- (6) A Minister must table the report at the next sitting of Parliament after the Minister receives it.
- (7) The report tabled in Parliament must set out in a prominent position the date on which it was presented to the agency's Minister and, if a report is presented to the agency's Minister after the end of the period allowed under this section, the report must be accompanied by a written statement of the reasons for the delay and the statement must be tabled in Parliament together with the report.

## **PART 4 — STRUCTURE OF PUBLIC SERVICE**

### **Division 1 — General principles**

#### **14 Departments**

Cabinet may, by Gazette notice:

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

#### **15 Composition of public service**

The public service consists of the heads of departments and public service employees who hold or occupy public service positions in departments.

#### **16 Role of Chief Secretary**

- (1) The Chief Secretary is responsible to the Minister for the effective management of the public service.
- (2) The Chief Secretary is not subject to direction in respect of the making of an employment decision relating to a particular person (including a decision relating to engagement, promotion, transfer, remuneration, entitlements or termination of employment and a decision to take disciplinary action), except in accordance with Article 68(3) or as expressly contemplated by this Act.

#### **17 Role of head of department**

The head of a department is responsible to the department's Minister and the Chief Secretary for:

- (a) the effective management of the department including through planning, budgeting and administering legislation for which the department is responsible; and
- (b) the general conduct of employees in the department; and
- (c) attaining performance objectives fixed under the head's contract of employment; and

- (d) ensuring, as far as practicable, that the public sector values and public sector code of conduct are observed in the management and day-to-day operations of the department; and
- (e) preparing and presenting the annual report for the department to the department's Minister.

## **Division 2 — Public service positions**

### **18      Creation, abolition, classification and eligibility requirements of position**

- (1) Cabinet may, by Gazette notice:
  - (a) create a public service position; or
  - (b) abolish a public service position.
- (2) The Gazette notice must specify the classification of the position.
- (3) Cabinet may, by subsequent Gazette notice, change the classification of a public service position.
- (4) The classification of a position must be the classification for other positions that:
  - (a) are of a similar kind; and
  - (b) have responsibilities of a similar level; and
  - (c) require work of similar value.
- (5) Cabinet 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) Cabinet may, by subsequent Gazette notice, change the eligibility requirements of a public service position.
- (7) Cabinet 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.

**19 Public service position may be held, occupied or vacant**

A public service position may be:

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

**20 Reduction in salary following reclassification**

- (1) This section applies if:
  - (a) Cabinet changes the classification of a public service position (other than a vacant position); and
  - (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) Cabinet does not make the declaration mentioned in section 18(7).
- (2) An employee holding or occupying the position immediately before the change of classification may, by written notice to the Chief Secretary within the period allowed by the Chief Secretary, elect to continue to hold or occupy the position under the new classification.
- (3) If the employee does not elect to continue to occupy or hold the position under the new classification, Part 7 Division 4 applies to the employee as if the position had been abolished.

*Note for section 20*

*If a position is held by one employee on an ongoing basis but occupied by another employee for a fixed term, subsections (2) and (3) apply to each of the employees.*

**21 Increase in salary following reclassification**

- (1) This section applies if:
  - (a) Cabinet changes the classification of a public service position (other than a vacant position); and

- (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) Cabinet does not make the declaration mentioned in section 18(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) If an 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 employee as if the position had been abolished.

*Notes for section 21*

- 1. *If a position is held by one employee on an ongoing basis but occupied by another employee for a fixed term, subsections (2) and (3) apply to each of the employees.*
- 2. *Part 4 Division 2 deals with principles applicable to appointments, such as the merit principle, advertising vacancies and eligibility for appointment.*

## **22 Imposition or change of eligibility requirements**

If a declaration is not made under section 18(7) in relation to the imposition or change of eligibility requirements for a public service position and the 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 employee as if the position had been abolished.

## **PART 5 — SELECTION AND APPOINTMENT OF PUBLIC SERVICE EMPLOYEES**

### **Division 1 — Principles applicable to all appointments**

## **23 Merit principle**

- (1) The selection of a person for appointment as a public service employee must be based on merit alone.

- (2) If the Chief Secretary considers that more than one candidate for appointment to a particular position is suitable for the appointment, the Chief Secretary must select the candidate the Chief Secretary reasonably believes has the greatest merit for the appointment.
- (3) The Chief Secretary must 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;
  - (b) if relevant:
    - (i) the way in which the person performed previous employment duties; and
    - (ii) the extent to which the person has potential for development.

## **24 Advertising vacant position**

The Regulations may prescribe:

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

## **25 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; or
  - (b) a member of Parliament.
- (2) A person is not eligible for appointment:
  - (a) as a permanent employee unless the person is a Nauruan citizen; or
  - (b) as a term employee unless the person:
    - (i) is a Nauruan citizen; or

- (ii) has a right to live and work in Nauru (whether permanently or temporarily) under the *Immigration Act 1999*.
- (3) A person is not eligible for appointment to a public service position if he or she does not meet any eligibility requirements specified under section 18 for the position.

## **Division 2 — Appointment of heads of departments**

### **26 Appointment of head of department**

- (1) A head of a department must be appointed for a fixed term under a written contract of employment.
- (2) The contract must specify:
  - (a) that the head of department is employed for a term not exceeding 5 years specified in the contract; and
  - (b) that the head of department is to meet performance objectives as set from time to time by Cabinet.
- (3) The decision whether to engage the head of a department for a further term must be made and notified to the head of department not less than:
  - (a) if the contract is for a term of 5 years—6 months before the end of the head's current term of employment; or
  - (b) if the contract is for a term less than 5 years—the period determined by applying to the period of 6 months the proportion that the number of months in the term of the contract bears to 60 months before the end of the head's current term of employment.
- (4) The Chief Secretary may, by written notice, terminate the employment of a head of department on any ground on which the employment of a public service employee may be terminated under Part 7 or without specifying any grounds.



- (5) Subject to the contract of employment, if the employment of a head of department is terminated without specifying any grounds, the head is entitled to a termination payment of an amount equal to 2 months remuneration (at the rate determined for the purposes of this subsection under the contract) for each uncompleted year of employment (with a pro rata adjustment in relation to part of a year) up to a maximum of 8 months remuneration.
- (6) The period of notice of termination without specifying any grounds must be at least 2 months except if the head of department is compensated by payment of an amount equal to the remuneration that would have been payable during the balance of the period of 2 months (at the rate determined for the purposes of this subsection under the contract).

**27            Publication of notice of appointment of head of department**

The Chief Secretary must cause a Gazette notice of each appointment of a head of department to be published within 14 days after the appointment is made.

**Division 3 —Appointment of other public service employees**

**28            Basis of appointment of other public service employees—ongoing or fixed term**

- (1) Subject to this section, the Chief Secretary may appoint a person to a public service position (other than head of department):
  - (a) on an ongoing basis; or
  - (b) for a fixed term under a written contract of employment.
- (2) The Chief Secretary must not appoint a person to a public service position on an ongoing basis if another public service employee holds the position on an ongoing basis.
- (3) The Chief Secretary may change the basis on which a person is appointed as an employee at any time with the employee's agreement.
- (4) The Regulations may impose limits on the exercise of the power to appoint or extend the appointment of a person for a fixed term.

**29            Publication of notice of appointment**

The Chief Secretary must cause a Gazette notice of each appointment to a public service position to be published within 14 days after the appointment is made.

**30            Probationary period**

- (1) This section applies if:
  - (a) a person is appointed to a public service position; and
  - (b) immediately before the appointment, the person was not a public service employee.
- (2) The appointment is subject to an initial period of probation of 6 months.
- (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) 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.
- (6) The Chief Secretary may terminate the person's employment at any time during the probationary period.
- (7) The transfer of a person to a different position within the public service during a probationary period does not affect the application of this section to the person.

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

### **Division 1 — Remuneration**

#### **31 Determination of salary—public service positions**

- (1) The salary or range of salaries for each class of public service position will be as determined by Cabinet by Gazette notice.
- (2) If there is a range of salaries for a class of public service position:
  - (a) the Chief Secretary must decide the salary of a person appointed to a position belonging to the class in accordance with the Regulations; and
  - (b) the Chief Secretary may increase the person's salary within the range determined, but only in accordance with the Regulations; and
  - (c) 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
  - (d) 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 mentioned in section 20; or
    - (ii) as disciplinary action under section 82.

#### **32 Determination of allowances**

The Cabinet may determine, by Gazette notice:

- (a) the circumstances in which a public service employee must be paid an allowance in addition to the employee's salary; and
- (b) the amount of each allowance.

## **Division 2 — Hours of attendance**

### **33 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.

### **34 Base hours of attendance—standard**

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

### **35 Base hours of attendance—non-standard**

- (1) If the non-standard hours of attendance apply to a public service employee, the employee must attend work at the times and on the days specified in advance by the responsible head of department for 70 hours each pay period, excluding meal breaks.
- (2) The employee is entitled to a 1 hour meal break for each unbroken period of 5 hours of work completed.

### **36 Failure to comply with required hours of attendance**

A public service employee is not entitled to receive salary or any other remuneration for any time the employee is absent without leave.

### **37 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 Regulations may contain provisions about additional hours of attendance, including provisions about:
  - (a) the maximum amount of additional hours an employee may be required to attend work; and
  - (b) the compensation the employee must be given for the additional hours.

### **Division 3 — Leave**

#### ***Subdivision 1 — Annual leave***

##### **38 Purpose of annual leave**

Annual leave is available to a public service employee to enable the employee to be absent from duty.

##### **39 Entitlement to annual leave**

- (1) For each year of service, a public service employee is entitled to 20 days of annual leave on full salary (the employee's '***annual entitlement***').
- (2) At the end of each completed month of service, the employee accrues 1 $\frac{2}{3}$  days of annual leave.

##### **40 Maximum annual leave balance**

- (1) Annual leave accrues cumulatively, up to a maximum annual leave balance equal to twice the employee's annual entitlement.
- (2) If an employee reaches the maximum annual leave balance, the Chief Secretary must direct that:
  - (a) the employee immediately or within a specified period take an amount of annual leave that will reduce the employee's annual leave balance so it does not exceed the maximum annual leave balance when the employee next accrues annual leave; or
  - (b) that:
    - (i) the employee's annual leave balance be reduced by the number of days that will reduce it so it does

not exceed the maximum annual leave balance when the employee next accrues annual leave; and

- (ii) the employee be paid, in lieu of leave for that number of days, an amount equal to the salary and allowances that the employee would have been entitled to receive during those days of leave.
- (3) The Chief Secretary may only direct the employee to be paid an amount in lieu of a period of annual leave if there are exceptional operational reasons preventing the employee from taking annual leave.
- (4) An employee may only be paid an amount in lieu of a period of annual leave if the Chief Secretary directs that outcome under subsection (2)(b).
- (5) If an employee has been given a direction to take accrued annual leave within a specified period but has not done so, the Chief Secretary may give the employee written notice cancelling the entitlement of the employee to the relevant amount of annual leave.

#### **41 Taking annual leave**

- (1) A public service employee may apply to the Chief Secretary to take annual leave.
- (2) The Chief Secretary must grant annual leave if:
  - (a) the responsible head of department consents to the grant of leave; and
  - (b) the employee has accrued the relevant amount of leave or the Chief Secretary approves (subject to the Regulations) the employee taking the leave in anticipation of it accruing to the employee.
- (3) The responsible head of department may only refuse to consent to the grant of leave for operational reasons.
- (4) If the responsible head of department refuses to consent to the grant of leave for operational reasons, the head of department must consult with the employee to determine an alternative time for the employee to take the leave.
- (5) If an employee has taken annual leave before the entitlement to the leave accrues to the employee and the employee ceases for any reason to be an employee then, unless the Chief

Secretary otherwise determines, a sum equal to the sum paid to the employee in respect of that leave is payable to the Republic as a debt by the employee.

**42 Public holiday during annual leave**

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

***Subdivision 2 — Personal leave***

**43 Purpose of personal leave**

Personal leave is available to a public service employee to enable the employee to be absent from duty:

- (a) because the employee is unfit for duty due to illness or injury; or
- (b) to care for a family member of the employee who is ill or injured; or
- (c) when a family member of the employee:
  - (i) has an illness or injury that seriously threatens the family member's life; or
  - (ii) dies.

**44 Entitlement to personal leave**

- (1) For each year of service, a public service employee is entitled to 15 days of personal leave on full salary (the employee's '**annual entitlement**').
- (2) The employee accrues the annual entitlement:
  - (a) on appointment as a public service employee; and
  - (b) on completing each accrual year.
- (3) Personal leave accrues cumulatively and there is no maximum personal leave balance.

**45 Taking personal leave—evidence**

- (1) A public service employee may apply to the Chief Secretary to take a period of personal leave.
- (2) For an application for personal leave made for a reason specified in column 1 of the table, the **'required documentary evidence'** is specified opposite in column 2.

*Table for subsection (2)*

Reason for leave	Documentary evidence
Employee unfit for duty because of illness or injury	Medical certificate evidencing the employee's unfitness for duty
Employee caring for family member who is ill or injured	Medical certificate evidencing the family member's illness or injury
Employee's family member has illness or injury that seriously threatens the person's life	Medical certificate evidencing the family member's illness or injury

- (3) Subject to subsection (4), the Chief Secretary may grant the employee the personal leave if:
  - (a) the employee gives the Chief Secretary any required documentary evidence for the application; and
  - (b) for an application for personal leave to enable the employee to care for a family member who is ill or injured—the Chief Secretary is satisfied that the employee will use the leave to care for the family member.
- (4) The Chief Secretary may grant the employee up to 4 days of personal leave in each accrual year without documentary evidence in support of the application if no more than 3 of the days are consecutive.

**46 Taking personal leave—amount**

- (1) The Chief Secretary may grant an employee personal leave to the extent of the employee's personal leave balance.
- (2) However, the Chief Secretary must not grant personal leave for a continuous period longer than 52 weeks.



**47 Public holiday during personal leave**

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

***Subdivision 3 — Maternity leave***

**48 Purpose of maternity leave**

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

**49 Entitlement to maternity leave**

- (1) A public service employee is entitled to 12 weeks of maternity leave in relation to a pregnancy of the employee.
- (2) However, the employee is not entitled to maternity leave beyond the date on which the employee would have ceased employment in the public service had the employee not taken maternity leave.

*Example for subsection (2)*

*A term employee is entitled to 12 weeks maternity leave. However, if the employee's contract of employment expires during the 12 week period and is not renewed, the employee is only entitled to maternity leave until the date of expiry.*

- (3) If the employee has completed at 12 months of continuous service before the employee begins maternity leave, the employee is entitled to be paid the employee's full salary during the period of maternity leave.
- (4) If the employee has not completed 12 months of continuous service before the employee begins maternity leave, the leave is to be without pay.
- (5) If the employee completes 12 months of continuous service during the period of maternity leave, the employee is entitled to be paid the employee's full salary for the remaining period of maternity leave.
- (6) Maternity leave does not accrue cumulatively.

**50 Taking maternity leave**

- (1) A public service employee may apply to the Chief Secretary to take maternity leave.
- (2) The employee must endeavour to make the application at least 3 months before the employee intends to start the leave.
- (3) The Chief Secretary must grant the maternity leave if:
  - (a) the employee gives the Chief Secretary a medical certificate stating:
    - (i) that the employee is pregnant; and
    - (ii) the expected date of birth of the employee's child; and
  - (b) the date of the start of the leave is not:
    - (i) earlier than 6 weeks before the expected date of birth of the employee's child; or
    - (ii) later than the actual date of birth.

***Subdivision 4 — Parental leave***

**51 Purpose of parental leave**

Parental leave is available to a public service employee to enable the employee to be absent from duty to care for the employee's infant or the mother of the infant immediately before or soon after birth.

**52 Entitlement to parental leave**

- (1) A public service employee is entitled to 10 days of parental leave if the employee:
  - (a) becomes or is to become a parent (other than an adoptive parent) of a newborn child; and
  - (b) is not entitled to maternity leave.
- (2) However, the employee is not entitled to parental leave beyond the date on which the employee would have ceased employment in the public service had the employee not taken parental leave.

*Example for subsection (2)*

*A term employee is entitled to 2 weeks parental leave. However, if the employee's contract of employment expires during the 2 week period and is not renewed, the employee is only entitled to parental leave until the date of expiry.*

- (3) If the employee has completed 12 months of continuous service before the employee begins parental leave, the employee is entitled to be paid the employee's full salary during the period of parental leave.
- (4) If the employee has not completed 12 months of continuous service before the employee begins parental leave, the leave is to be without pay.
- (5) If the employee completes 12 months of continuous service during the period of parental leave, the employee is entitled to be paid the employee's full salary for the remaining period of parental leave.
- (6) Parental leave does not accrue cumulatively.

**53 Taking parental leave**

- (1) A public service employee may apply to the Chief Secretary to take parental leave.
- (2) A public service employee must endeavour to make the application at least 3 months before the employee intends to start the leave.
- (3) The employee may take parental leave at any time from 2 weeks before the expected date of birth of the child to 6 months after the actual birth of the child.
- (4) The Chief Secretary must grant the parental leave if:
  - (a) the employee gives the Chief Secretary a medical certificate stating the expected date of birth of the child; and
  - (b) the Chief Secretary is satisfied that the employee is a parent of the child.

### **Subdivision 5 — Adoption leave**

#### **54 Purpose of adoption leave**

Adoption leave is available to a male or female public service employee to enable the employee to be absent from duty immediately after adopting a child.

#### **55 Entitlement to adoption leave**

- (1) A public service 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.

- (2) However:

- (a) the employee is not entitled to adoption leave beyond the date on which the employee would have ceased employment in the public service had the employee not taken adoption leave; and
- (b) if the employee's spouse also takes adoption leave in relation to the adoption, the employee's entitlement to adoption leave is reduced by the period of adoption leave taken by the employee's spouse.

#### *Example for subsection (2)(a)*

*A term employee is entitled to 12 weeks adoption leave. However, if the employee's contract of employment expires during the 12 week period and is not renewed, the employee is only entitled to adoption leave until the date of expiry.*

#### *Example for subsection (2)(b)*

*If the employee's spouse takes 2 weeks adoption leave, the employee will only be entitled to take 10 weeks adoption leave.*

- (3) If the employee has completed 12 months of continuous service before the day the employee begins adoption leave, the employee is entitled to be paid the employee's full salary during the period of adoption leave.

- (4) If the employee has not completed 12 months of continuous service before the day the employee begins adoption leave, the leave is to be without pay.
- (5) If the employee completes 12 months of continuous service during the period of adoption leave, the employee is entitled to be paid the employee's full salary for the remaining period of adoption leave.
- (6) Adoption leave does not accrue cumulatively.

**56 Taking adoption leave**

- (1) A public service employee who intends to take adoption leave must inform the Chief Secretary of the intention as soon as practicable after the employee forms the intention to adopt a particular child and it appears that the employee will be able to adopt the child.
- (2) A public service employee must apply to the Chief Secretary for the adoption leave as soon as practicable after the employee becomes an adoptive parent.
- (3) The Chief Secretary must grant the adoption leave if:
  - (a) the employee satisfies the Chief Secretary that the employee has adopted a child; and
  - (b) the Chief Secretary is satisfied that the employee is otherwise entitled to adoption leave under section 55.
- (4) The adoption leave must 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 — Long service leave***

**57 Purpose of long service leave**

Long service leave is available to a public service employee to enable the employee to be absent from duty in recognition of the employee's length of service in the public service.

**58 Entitlement to long service leave**

- (1) For each continuous period of service of 10 years, a public service employee is entitled to 12 weeks of long service leave.

- (2) An employee accrues:
- (a) 9.6 weeks of long service leave on completion of a continuous period of service of 8 years; and
  - (b) 0.1 of a week of long service leave on completion of each following month of service.

*Note for subsection (2)*

*Although long service leave accrues on completion of 8 years of service, under section 59(2)(a) an employee will not be granted long service leave until the employee has completed 10 years of service.*

*However, under section 93, an employee who ceases employment in the public service is entitled to receive payment equivalent to his or her accrued long service leave. Since an employee first accrues long service leave on completion of 8 years of continuous service, only an employee who has completed at least 8 years of continuous service will receive payment equivalent to his or her accrued long service leave on termination.*

- (3) Long service leave accrues cumulatively and there is no limit to the long service leave balance a public service employee can accrue.

## **59 Taking long service leave**

- (1) A public service employee may apply to the Chief Secretary to take a period of long service leave.
- (2) The Chief Secretary must grant the long service leave if:
  - (a) the employee has completed a continuous period of service of 10 years; and
  - (b) the responsible head of department consents to the grant of leave; and
  - (c) the period of leave is a multiple of 1 week; and
  - (d) the employee has accrued the relevant amount of leave.
- (3) The responsible head of department may only refuse to consent to the grant of leave for operational reasons.

- (4) If the responsible head of department refuses to consent to the grant of leave for operational reasons, the head of department must consult with the employee to determine an alternative time for the employee to take the leave.

### ***Subdivision 7 — Leave without pay***

#### **60 Purpose of leave without pay**

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

#### **61 Taking leave without pay**

- (1) A public service employee may apply to the Chief Secretary to take a period of leave without pay.
- (2) The application must include:
  - (a) the purpose of the leave; and
  - (b) evidence of the purpose.
- (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; and
    - (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 responsible head of department consents to the grant of leave.
- (4) The maximum period of leave without pay that the Chief Secretary may grant is 3 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 3 months.
- (5) The Chief Secretary must 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.

*Example for subsection (5)*

*The Chief Secretary may only grant a term employee unpaid leave until the date the employee's contract of employment expires.*

## **62 Election candidates—leave without pay**

If a public service employee is nominated as a candidate for election as a member of Parliament under section 16 of the *Electoral Act 1965*, the employee is taken to be on leave without pay from the date of nomination until the earliest of the following events:

- (a) the employee withdraws his or her candidature for election under section 16(3) of that Act;
- (b) the election fails under section 17 of that Act;
- (c) the result of the election is declared under section 28 of that Act.

*Note for section 62*

*Under section 67, the employee is taken to have resigned if the employee is elected.*

## **Division 4 — Public holidays**

### **63 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);
  - (k) any other day declared to be a public holiday by the Minister by Gazette notice.
- (2) However, if:
- (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; and
  - (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; and
  - (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.

## **Division 5 — Outside employment**

### **64 Outside employment**

- (1) A public service employee may 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 public sector code of conduct.

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

### **Division 1 — Preliminary**

#### **65 How employment terminates**

Employment in the public service of an employee terminates if:

- (a) the Chief Secretary terminates the employment of a probationary employee under section 30(6); or
- (b) the employee resigns or retires, or is taken to have resigned, under Division 2; or
- (c) the employment is terminated on medical grounds under Division 3; or
- (d) the employment is terminated on the ground of redundancy under Division 4; or
- (e) the Chief Secretary terminates the employment under Division 5 for unsatisfactory performance (see section 80) or for breach of discipline (see section 82(1)).

### **Division 2 — Resignation or retirement**

#### **66 Resignation or retirement of employee**

- (1) A public service employee, other than a probationary employee, may resign or retire by written notice given 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 given to the Chief Secretary:
  - (a) at least 1 week before the notice is to take effect; or
  - (b) within a shorter period approved by the Chief Secretary.
- (3) A notice of resignation or retirement takes effect without the Chief Secretary's acceptance of it.

**67 Automatic resignation—election as member of Parliament**

If a public service employee is elected as a member of Parliament, the employee is taken:

- (a) to have resigned from the public service with effect from the day the employee's election is declared under section 28 of the *Electoral Act 1965*; and
- (b) to have given the required 4 weeks notice.

**Division 3 — Termination on medical grounds**

**68 Application of Division 3**

This Division 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.

**69 Chief Secretary may require medical examination**

The Chief Secretary may:

- (a) appoint a medical 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.

*Note*

*Under section 6(e), an employee commits a breach of discipline if the employee refuses to undergo the medical examination.*

**70 Medical examination report**

- (1) The report on the medical examination must include the medical 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) If the medical 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 must also include the medical 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.

**71 Termination of employment on medical grounds**

The Chief Secretary may terminate the employment of the employee from the public service if, after considering the report of the medical examination, the Chief Secretary is 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**

**72 Abolition of permanent employee's substantive position**

- (1) This section applies if Cabinet abolishes a permanent employee's substantive position under section 18(1)(b).
- (2) The employee's employment is terminated on the ground of redundancy.

*Note for section 72*

*Division 7 provides for termination entitlements.*

**73 Abolition of position occupied by permanent employee for fixed term**

- (1) This section applies if:
  - (a) Cabinet abolishes a public service position under section 18(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 must return to the employee's substantive position.

**74 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 must return to employee A's substantive position.

**75 Return of substantive holder—position occupied by term employee**

- (1) This section applies if:
  - (a) a public service position is occupied by a term employee; and
  - (b) the substantive holder of the position returns to the position.
- (2) The term employee's employment is terminated on the ground of redundancy.

*Note for section 75*

*Division 7 provides for termination entitlements.*

**76 Abolition of position occupied by term employee**

- (1) This section applies if:
  - (a) Cabinet abolishes a public service position under section 18(1)(b); and
  - (b) immediately before it was abolished, the position was occupied by a term employee for a fixed term.
- (2) The employee's employment is terminated on the ground of redundancy.

*Note for section 75*

*Division 7 provides for termination entitlements.*

**Division 5 — Unsatisfactory performance and disciplinary matters**

***Subdivision 1 — Preliminary***

**77 Application of Division 5**

This Division applies to all public service employees except probationary employees.

***Subdivision 2 — Unsatisfactory performance***

**78 Unsatisfactory performance—remedial action**

- (1) If, in the opinion of the responsible head of department, a public service employee is not performing the employee's duties in a satisfactory way, the head of department must 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;

- (c) developing and implementing a performance management plan for the employee.

**79 Unsatisfactory performance—referral to Chief Secretary**

The responsible head of department may refer the employee's unsatisfactory performance to the Chief Secretary if:

- (a) the responsible head of department has taken remedial action in relation to the employee; and
- (b) in the opinion of the responsible head of department, the employee is still not performing the employee's duties in a satisfactory way.

**80 Unsatisfactory performance—termination**

- (1) If the Chief Secretary believes on reasonable grounds that a public service employee is not performing the employee's duties in a satisfactory way, the Chief Secretary may terminate the employee's employment.
- (2) Subsection (1) applies whether or not the unsatisfactory performance was referred to the Chief Secretary by the responsible head of department.

***Subdivision 3 — Disciplinary matters***

**81 Breach of discipline—referral to Chief Secretary**

If the responsible head of department believes on reasonable grounds that a public service employee has committed a breach of discipline, the head of department may refer the breach to the Chief Secretary.

**82 Breach of discipline—disciplinary action**

- (1) If the Chief Secretary believes on reasonable grounds that a public service employee has committed a breach of discipline, the Chief Secretary may take any of the following action (***'disciplinary action'***) in relation to the employee:
  - (a) reprimanding the employee;

- (b) suspending the employee from service without remuneration or accrual of leave rights for a specified period;
- (c) terminating the employee's employment.

*Note for paragraph (c)*

*If the Chief Secretary terminates an employee's employment, the employee is entitled to receive termination entitlements under Division 7.*

- (2) Subsection (1) applies whether or not the breach of discipline was referred to the Chief Secretary by the responsible head of department.

**83 Breach of discipline—suspension of employee**

- (1) The Chief Secretary may suspend an employee from service if the Chief Secretary is investigating alleged serious misconduct by the employee.
- (2) The period of suspension must not be longer than the period necessary to determine whether the employee is guilty of serious misconduct.
- (3) The employee must be paid the employee's full salary during the period of suspension.
- (4) This section does not prevent the Chief Secretary terminating the employee's employment under section 82(c) without first suspending the employee.

**84 Breach of discipline—former public service employee**

- (1) This section applies if:
  - (a) a person resigns or retires from the public service under section 66; and
  - (b) the Chief Secretary believes on reasonable grounds that:
    - (i) when the person was a public service employee, the person committed a breach of discipline; and
    - (ii) the person resigned or retired to avoid disciplinary action for the breach of discipline.



- (2) Within 12 months after the resignation or retirement, the Chief Secretary may make a declaration of:
  - (a) the Chief Secretary's finding in relation to the breach of discipline; and
  - (b) if the Chief Secretary finds that the person committed the breach of discipline—the disciplinary action that would have been taken against the person if the person had not resigned or retired.

### **Division 6 — Procedural requirements**

#### **85 Application of Division 6**

This Division applies to a decision by the Chief Secretary to:

- (a) terminate an employee's employment under section 71, 80(1) or 82(1)(c); or
- (b) take disciplinary action (other than termination) against an employee; or
- (c) make a declaration in relation to an employee under section 84(2).

#### **86 Compliance with natural justice**

- (1) The Chief Secretary must comply with the rules of natural justice in making the decision.
- (2) However, the Chief Secretary does not contravene a rule of natural justice only because the Chief Secretary is unable, after reasonable attempts to do so, to contact the employee before making the decision.

#### **87 Requirement to give information notice**

The Chief Secretary must give the employee an information notice for the decision.

## **Division 7 — Termination entitlements**

### **88 Termination entitlements cumulative**

If a public service employee's employment terminates, the employee is entitled to receive each of the termination entitlements that apply to the employee.

### **89 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 serious misconduct.
- (2) The employee must be given:
  - (a) 1 week notice of the termination; or
  - (b) an amount equal to the employee's salary over a 1 week period instead of notice.

### **90 Notice requirement—termination of other 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 Chief Secretary terminates the employee's employment under section 80; or
  - (c) the Chief Secretary terminates the employee's employment under section 82 for a reason other than serious misconduct.
- (2) The employee must be given:
  - (a) 4 weeks notice of the termination; or
  - (b) an amount equal to the employee's salary over a 4 week period instead of notice.

### **91 Notice requirement—termination on medical grounds**

- (1) This section applies to a public service employee if the Chief Secretary terminates the employment of the employee under section 71.

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

**92 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 must be paid an amount equal to the employee's salary over a 12 week period.

**93 Payment of accrued entitlements**

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

*Note for subsection (1)*

*Section 65 specifies the circumstances in which a public service employee's employment terminates.*

- (2) The employee must be paid an amount equal to the employee's salary over a period equal to the total of the employee's:
  - (a) annual leave balance; and
  - (b) long service leave balance.

**94 Deduction of amount if notice not given**

- (1) This section applies to a public service employee if:
  - (a) the employee resigns or retires under section 66; and
  - (b) the employee gives the Chief Secretary less than the required period of notice of the resignation or retirement under section 66.
- (2) The Chief Secretary may deduct from the payment of the employee's accrued entitlements under section 93 an amount equal to the employee's salary over the period of notice the employee failed to give.

*Example for subsection (2)*

1. If the employee is required to give 4 weeks notice but only gives 3 weeks notice, the Chief Secretary may deduct 1 week of accrued entitlements.
2. If the employee is required to give 4 weeks notice but gives no notice, the Chief Secretary may deduct 4 weeks of accrued entitlements.

### **Division 8 — Requirement for gazettal**

#### **95 Publication of notice of resignation, retirement or termination**

- (1) The Chief Secretary must cause a Gazette notice of each resignation, retirement or termination of a public service employee's employment to be published within 14 days after the resignation, retirement or termination takes effect.
- (2) If an employee of or over 60 years of age resigns or retires under section 66, the Gazette notice must refer to the fact that the employee has retired from the public service.

## **PART 8 — PUBLIC SERVICE APPEALS BOARD**

### **Division 1 — Administrative matters**

#### **96 Election of member and term of office**

- (1) The election of the member of the Board who is elected by public officers under Article 70(1) must be conducted in accordance with rules prescribed by the Regulations.
- (2) The term of the member is 3 years.

#### **97 Oath or affirmation of member**

- (1) Each member of the Board, other than the Chairman, must, before exercising a power or performing a function as a member of the Board, take an oath or make an affirmation as follows:

*Oath:*

I [*insert name*], 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.

*Affirmation:*

I [*insert name*], 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.

- (2) The oath or affirmation must be taken or made before the Chairman.

**98 Allowances for members**

A member of the Board must be paid the fees and allowances determined by Cabinet by Gazette notice.

**Division 2 — Appeals**

**99 Grounds of appeal**

A person who is entitled under section 87 to receive an information notice for a decision made by the Chief Secretary may appeal to the Board against the decision on one or both of the following grounds:

- (a) the Chief Secretary did not comply with the rules of natural justice in making the decision;
- (b) for a decision to take disciplinary action against the person—that the action taken was clearly excessive in the circumstances.

**100 Starting an appeal**

- (1) A person (the '*appellant*'), may start an appeal by lodging a notice of appeal with the Chief Secretary within 7 days after:
- (a) if the person receives an information notice for the decision—the day the person receives the notice; or

- (b) if the person does not receive an information notice for the decision—the day the person becomes aware of the decision.
- (2) However, the Board may extend the time for lodging the notice on application by the person.
- (3) The notice must be in writing and must include the grounds for the appeal.
- (4) The Chief Secretary must give a copy of the notice to the Registrar of the Supreme Court within 7 days after receiving it.

**101 Chief Secretary must supply documents**

The Chief Secretary must give the appellant a copy of each document the Chief Secretary intends to submit to the Board in response to the appeal at least 7 days before the appeal is heard.

**102 Procedure for appeal**

- (1) At the hearing of the appeal, a quorum consists of 2 members of the Board, one of whom must be the Chairman.
- (2) A member of the Board is ineligible to act in relation to the appeal if it would be contrary to the rules of natural justice for the member to do so.
- (3) The Board may hear the appeal:
  - (a) in person; or
  - (b) with the consent of the appellant—on the basis of written submissions only.
- (4) If the appeal is heard on the basis of written submissions only, the Board may conduct the hearing in person or by any other means of communication.
- (5) The hearing must not be open to the public unless the Board determines that it should be open.
- (6) The appellant may be represented at the hearing by another person, who need not be a legal practitioner.
- (7) In hearing the appeal, the Board:

- (a) is not bound by legal technicalities, legal forms or rules of evidence; and
  - (b) must act as expeditiously as a proper consideration of the appeal allows.
- (8) The Board may set its own procedures for the hearing, including applying any rules of court the Board considers appropriate in the circumstances.

**103 Decision on appeal**

To decide the appeal, the Board may:

- (a) confirm the decision; or
- (b) set aside the decision and substitute its own decision; or
- (c) refer the decision back to the person who made the decision for redetermination.

**104 Orders for reinstatement or compensation**

- (1) This section applies if the Board sets aside a decision to terminate the appellant's employment.
- (2) The Board may order that the appellant:
  - (a) be reinstated to the public service position the appellant occupied immediately before the decision appealed against; or
  - (b) if it is not practicable to reinstate the person—be paid an amount not more than the salary to which the appellant was entitled for the period of 3 months immediately before the appellant's termination date.
- (3) If the appellant is reinstated, the appellant is taken to have been on leave without pay for the period between the appellant's termination date and the reinstatement.
- (4) If the appellant is reinstated, the Chief Secretary must cause notice of the reinstatement to be published in the Gazette within 14 days after reinstatement.

**105 Orders for reimbursement of salary**

- (1) This section applies if:

- (a) the appellant loses salary as a result of a decision; and
  - (b) the Board sets aside the decision on appeal.
- (2) The Board may make an order compensating the appellant for the lost salary between the date of the decision appealed against and the date of the decision on the appeal.
- (3) An order under subsection (2) applies in addition to any order made under section 104.

**106 Order for costs**

- (1) This section applies if the Board:
  - (a) sets aside a decision; or
  - (b) refers a decision back to the person who made the decision for redetermination.
- (2) The Board may make an order for costs in favour of the appellant.

**107 Reasons for decision**

Within 7 days after deciding the appeal, the Board must give the appellant and the Chief Secretary a written notice stating:

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) any orders of the Board under section 104, 105 or 106.

**PART 9 — OTHER EMPLOYMENT ARRANGEMENTS**

**Division 1 — Temporary employees**

**108 Temporary employee—appointment**

- (1) The Chief Secretary may appoint a person (a ***‘temporary employee’***) to meet a short-term staffing need of a department if the Chief Secretary is satisfied that the staffing need cannot be met from within the public service.



- (2) A person employed under this section in a department is not a public service employee and does not hold or occupy a public service position.
- (3) However, Part 5 Division 1 applies to the selection and appointment of a temporary employee as if the position were a public service position and the employee were a term employee.

**109 Temporary employee—maximum period of employment**

- (1) The Chief Secretary:
  - (a) may employ a temporary employee for a maximum period of 3 months; and
  - (b) must not renew the employment of the employee as a temporary employee.
- (2) The Chief Secretary may, in accordance with this Act, appoint a person who has been a temporary employee to a public service position on an ongoing or fixed term basis.

**110 Temporary employee—determination of remuneration**

- (1) The Chief Secretary may determine the remuneration for a temporary employee.
- (2) A determination must be published in the Gazette as soon as reasonably practicable.

**111 Temporary employee—hours of attendance**

The Chief Secretary may determine the hours of attendance that apply to a temporary employee.

**112 Temporary employee—termination of employment**

- (1) The Chief Secretary may terminate the employment of a temporary employee by:
  - (a) giving the employee 1 day of notice of the termination; or
  - (b) paying the employee an amount equal to the employee's remuneration for 1 day instead of giving notice.

- (2) A temporary employee may resign by written notice given to the Chief Secretary at least 1 day before the notice is to take effect.
- (3) A notice of resignation takes effect without the Chief Secretary's acceptance of it.

## **Division 2 — Employment opportunity programs**

### **113 Employment opportunity programs**

- (1) The Minister may, by Gazette notice, declare an employment program to be an employment opportunity program if the program is designed to:
  - (a) ensure that persons of a defined class have equal opportunities in relation to employment in the public sector with persons not of that class; or
  - (b) to assist persons of a defined class to gain employment, training or experience in the public sector; or
  - (c) to assist persons of a defined class employed in the public sector to pursue careers in the public sector as effectively as persons not of that class.
- (2) A special provision in an employment opportunity program will, despite the provisions of this or any other Act, be lawful.

## **PART 10 — MISCELLANEOUS MATTERS**

### **114 Action if overpayment or liability to Republic**

- (1) A public sector agency may make deductions from the remuneration of an employee, or from an amount payable in respect of a person's employment, in order to recover an amount overpaid through an administrative error.
- (2) Without limiting subsection (1), a deduction may be made or an amount may be withheld pending the determination of proceedings relating to the person's liability to the agency or the Republic.

### **115 Regulations**

- (1) 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; and
  - (b) specify maximum periods for fixed terms of employment of term employees under this Act; and
  - (c) provide for additional leave entitlements or circumstances in which leave with pay may be granted; and
  - (d) provide exemptions, conditional or absolute, from the application of a provision of this Act.
- (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.

## **SCHEDULE — RELATED AMENDMENTS, REPEAL AND TRANSITIONAL PROVISIONS**

### **PART 1 — PRELIMINARY**

#### **[1] Acts amended**

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### **PART 2 — AMENDMENT OF AGRICULTURAL QUARANTINE ACT 1999**

#### **[2] Amendment of section 27 (Quarantine offences)**

Section 27(3)

*omit, substitute*

- (3) A penalty imposed under this section is in addition to a penalty imposed in disciplinary proceedings against the person as a public officer.

#### **[3] Amendment of section 29 (Offences by Quarantine Officers)**

Section 29(2)

*omit, substitute*

- (2) A penalty imposed under this section is in addition to a penalty imposed in disciplinary proceedings against the person as a public officer.

### **PART 3 — AMENDMENT OF ATTACHMENT OF EARNINGS AND PHOSPHATE ROYALTIES ACT 1973**

#### **[4] Amendment of section 6 (Effect and contents of order for attachment of earnings)**

Section 6(5)(b)

*omit, substitute*

- (b) the protected earnings rate, that is, a rate that is 75% of the lowest rate of salary applicable to a public service position.

## **PART 4 — AMENDMENT OF CIVIL AVIATION ACT 2011**

### **[5] Amendment of section 6 (Definitions)**

Section 6, definition of '*Head of the Department*'

*omit*

### **[6] Amendment of section 21 (Staff of the Authority)**

Section 21(1)

*omit, substitute*

- (1) The Chief Secretary may, on the recommendation of the chairperson, assign employees of the Department to assist the Authority (and employees so assigned will be regarded as staff of the Authority).

### **[7] Amendment of section 24 (Appointment of Director)**

Section 24(1)

*omit*

the Director of Civil Aviation under the *Public Service Act 1998*

*substitute*

a public officer as the Director of Civil Aviation

### **[8] Amendment of section 187 (Staff of Authority)**

Section 187(2)

*omit, substitute*

- (2) The member of staff remains a public service employee and may be dealt with under the law of Nauru as such.

## **PART 5 — AMENDMENT OF CRIMINAL JUSTICE ACT 1999**

### **[9] Amendment of section 4 (Probation officers)**

Section 4(3)

*omit, substitute*

- (3) A person appointed under subsection (2) is not a public service employee.

## **PART 6 — AMENDMENT OF EDUCATION ACT 2011**

### **[10] Amendment of section 4 (Definitions)**

Section 4, definition of '**Secretary**'

*omit*

the Department as defined in section 3 of the *Public Service Act 1998*

*substitute*

Department

## **PART 7 — AMENDMENT OF ELECTORAL ACT 1965**

### **[11] Amendment of section 9A (Proof of entitlement to enrolment)**

Section 9A(2)(a)

*omit, substitute*

- (a) a Head of Department; or

## PART 8 — AMENDMENT OF FACILITATION OF AUSTRALIAN ASSISTANCE ACT 2004

### [12] Substitution of section 8

Section 8

*omit, substitute*

### 8 Other personnel

- (1) A designated person who is deployed under Article 5.1 of the Agreement to work in a department is to be appointed to a public service position and the *Public Sector Act 2012* applies, subject to the Regulations under that Act, to the person in that capacity.
- (2) A designated person who is deployed under Article 5.1 of the Agreement to work in an agency of Nauru may, subject to Cabinet approval and despite any other law, be appointed to the agency and any Act governing the agency applies, subject to the Agreement and this Act, to the person in that capacity.

## PART 9 — AMENDMENT OF HEALTH PRACTITIONERS ACT 1999

### [13] Amendment of section 2 (Interpretation)

#### 13.1 Section 2, definition of '**Chief Nursing Superintendent**'

*omit*

, under the Public Service Act 1998

*substitute*

in the public service

#### 13.2 Section 2, definition of '**Director of Medical Services**'

*omit*

, under the Public Service Act 1998

*substitute*

in the public service

**13.3** Section 2, definition of '**Secretary for Health**'

*omit*

under the Public Service Act 1998

## **PART 10 — AMENDMENT OF INTERPRETATION ACT 2011**

**[14] Amendment of section 65 (Definitions applicable to all written laws)**

**14.1** Section 65, definition of '**public holiday**'

*omit*

under section 37 of the *Public Service Act 1998*

**14.2** Section 65, definition of '**department**'

*omit, substitute*

**'department'**, see section 14 of the *Public Sector Act 2012*;

## **PART 11 — AMENDMENT OF LEGISLATION PUBLICATION ACT 2011**

**[15] Amendment of section 15 (Staff of the Office of Parliamentary Counsel)**

Section 15(1)

*omit, substitute*

- (1) The Chief Secretary may, acting on the recommendation of the Parliamentary Counsel, assign public officers to assist the Parliamentary Counsel (and public officers so assigned will be regarded as staff of the Parliamentary Counsel although they remain public service employees).



## **PART 12 — AMENDMENT OF OFFICIAL INFORMATION ACT 1976**

### **[16] Amendment of section 8 (Declassification of documents)**

Section 8(2)

*omit*

is guilty of a disciplinary offence for the purposes of Part IX of the Public Service Act 1976

*substitute*

commits a breach of discipline

### **[17] Amendment of section 9 (Restriction on prosecution)**

Section 9 (2)

*omit*

under Part IX of the Public Service Act 1976

## **PART 13 — AMENDMENT OF PASSPORTS ACT 2011**

### **[18] Amendment of section 3 (Interpretation)**

Section 3(1), definition of '*Head of the Department*'

*omit*

## **PART 14 — AMENDMENT OF PUBLIC FINANCE (CONTROL AND MANAGEMENT) ACT 1998**

### **[19] Amendment of section 2 (Interpretation)**

**19.1** Section 2, definition of '*department*'

*omit*

**19.2** Section 2, definition of 'Head of the Department'

*omit*

## PART 15 — REPEAL OF PUBLIC SERVICE ACT 1998

### [20] Repeal

The *Public Service Act 1998* is repealed.

## PART 16 — TRANSITIONAL PROVISIONS

### [21] Definitions

In this Part:

**‘commencement date’** means the date this Act commences;

**‘repealed Act’** means the *Public Service Act 1998*, as in force immediately before the commencement date.

### [22] Departments

- (1) At the commencement of this Act, the public service will consist of the departments continued by Cabinet by Gazette notice.
- (2) A Gazette notice under this clause may assign the same or a new title to a department.

### [23] Public service positions

- (1) A public service office in existence immediately before the commencement of this Act continues in existence as a public service position, subject to this Act.
- (2) The classification of an office under the repealed Act immediately before the commencement of this Act becomes the classification of the corresponding position under this Act, subject to this Act.

### [24] Heads of department

- (1) A person employed as head of department under the repealed Act immediately before the commencement of this Act continues to be employed as head of department, subject to this Act.

- (2) If the employment of a head of department was not subject to a contract immediately before the commencement of this Act, the head may elect to make his or her employment subject to a contract under this Act or to remain employed on an ongoing basis.
- (3) If the employment of a head of department was subject to a contract immediately before the commencement of this Act, the same contractual terms apply, subject to this Act.

**[25] Other public service employees**

- (1) A person employed in a department under the repealed Act immediately before the commencement of this Act continues to be employed in the same department with the same duties, subject to this Act.
- (2) A person employed under a contract under the repealed Act immediately before the commencement of this Act continues to be employed on the same contractual terms, subject to this Act.
- (3) A person employed on probation under the repealed Act immediately before the commencement of this Act continues to be employed on probation, subject to this Act.

**[26] Continuity of employment and leave rights**

Subject to this Act, for an employee whose employment is continued under this Schedule:

- (a) the continuity of the person's employment is not affected; and
- (b) the accrued leave entitlements of the person are not affected.

**[27] Transitional regulations**

- (1) The regulations may make provision (a ***'transitional regulation'***) about a matter for which:
  - (a) it is necessary to make provision for the transition from the operation of the repealed Act to the operation of this Act; and
  - (b) this Act does not make provision or sufficient provision.

- (2) A transitional regulation may have retrospective operation to a date not earlier than the commencement date.
- (3) However, to the extent to which a transitional regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Republic) by adversely affecting the person's rights or imposing liabilities on the person.

## **PART 17 — EXPIRY**

### **[28] Expiry**

This Schedule expires 12 months after the commencement date.