

REPUBLIC OF NAURU
PUBLIC SERVICE BILL 2016
EXPLANATORY MEMORANDUM

The Public Service Bill 2016 is a Bill for the Public Service Act 2016.

EXPLANATION OF CLAUSES

Part 1 – Preliminary Matters

Clause 1 provides that, once enacted, the short title of the Act will be the *Public Service Act 2016*.

Clause 2 is the commencement date of the Act which commences on the date on which the Speaker of Parliament has certified it.

Clause 3 is a special clause dealing with the application of the Act. As a general rule the Act applies to all public service employees but there are also exceptions relating to employees who belong to a class of employees who are exempt by regulations, if employees are employed under a contract then the Act does not apply to the extent of any inconsistency with the contract and finally if some or all the conditions of an employee are specified in another Act then the Public Service Act does not apply to the extent of any inconsistency with the other Act.

Part 2 – Interpretation

Clause 4 deals with the interpretation of certain terms and phrases used within the Act. There are some terms that have the same meaning throughout the Act while others change in certain provisions. The meaning of public service employees for example generally excludes contract employees, temporary employees and casual employees but it is only under Part 6, Division 3, sub-divisions 1 to 8 that the definition is taken to include both permanent employees and contract employees.

There are also definitions that may be found in other legislation and are cross referenced in this Clause.

Phrases and terms generally have the meaning given in this Clause but readers must err on the side of caution and consult the relevant section first in order to determine whether there is a special meaning given.

Clause 5 covers the definition of being absent without leave.

Clause 6 is a definition of 'continuous period of service'. An example for definition of 'continuous period of service' is as follows:

The definition of 'accrual year' mentions a continuous period of service of 12 months. If the period of service begins on 1 July 2014 and the employee does not take any leave without pay in the 12 months following 1 July 2014, the employee will complete 12 months of continuous service on 30 June 2015.

However, if the employee takes leave without pay in the 12 months following 1 July 2014, the employee will not complete the 12 months of service until the employee has completed 12 months of service excluding the days of leave without pay.

If an employee resigns from the public service then that employee breaks the continuous period of service. If they reapply for another position within the public service then they shall restart their service.

Clause 7 provides the Public Service values that are important for the public service of Nauru. This clause portrays the values that public service and its employees upholds in their service to the Nauruan public and to the world at large.

Clause 8 is the Code of Conduct of the Nauru public service. All employees of the public service are required to adhere to this Code and any employee that breaks the Code will be subject to disciplinary action under the Regulations.

Clause 9 prohibits outside employment for employees of the public service. Any employee who wishes to engage in outside employment must first apply to the Chief Secretary and the Chief Secretary alone can decide whether to grant that request.

Clause 10 is the composition of the public service. The public service is made up of permanent employees, contract employees and temporary employees.

Clause 11 gives the Minister the power to establish, alter a title or abolish a department.

Clause 12 outlines the role of the Chief Secretary who is responsible to the Minister for the overall supervision of departments of the public service.

Clause 13 establishes the office of the Secretary or head of a department and outlines the procedure for appointment.

Clause 14 outlines the provisions related to the appointment of a person to act in the position of the Secretary of a Department.

Clause 15 outlines the general responsibility of a Secretary who is responsible to the relevant Minister and to the Chief Secretary for the general conduct and management of the functions and activities of his or her department.

Clause 16 makes provision for the procedure to be followed in the creation, abolition, classification and also eligibility requirements of positions in the public service.

Clause 17 described a public service position.

Clause 18 provides for reduction in salary following the reclassification of a public service position. The Minister may change the classification of positions within the public service and in doing so also decrease the salary if the new position requires it. Persons holding positions that have been reclassified and the salary reduced may choose to keep their position under the new classification and salary or if they choose not to retain their position then they will be treated as if the position has been abolished and the employee becomes redundant. If a position is held by one employee on a permanent basis but occupied by another employee for a fixed term, then the provisions would apply to each of the employees. The provisions regarding redundancy would only apply if the Minister does not make a declaration by notice that the changes in reclassification and reduction in salary do not take effect until the position becomes vacant.

Clause 19 deals with an increase in salary following reclassification of a public service position. This clause will only apply if the Minister does not make a declaration under Clause 16 that the reclassification and salary increase come into effect when the position next becomes vacant. The position is taken to be vacant one month after the change in classification unless someone is appointed before that time. If a public service employee holding the position before the reclassification is not re-appointed to the position then Part 7, Division 4 of the Act applies as if the position had been abolished. Part 4, Division 2 deals with principles applicable to appointments, such as the merit principle, advertising vacancies and eligibility for appointment.

Clause 20 is a clause that further deals with the imposition or change of eligibility requirements. Clause 16 allows the Minister to make a declaration regarding eligibility requirements and the public service employee holding the position does not meet the new requirements or after being given time to meet the requirements, does not, then the redundancy provisions in Part 7, Division 4 of the Act applies to the employee as if the position had been abolished.

Part 5 – Selection and Appointment of Public Service Employees

Clause 21 is an important provision that covers the merit principle to be applied when persons are appointed to the public service. It is important that the Chief Secretary, after

considering the candidates suitable for appointment, that the best person or the person who has the most merit is appointed. The following are things that may be considered:

- (a) the extent to which the person has the abilities,
- (b) aptitude;
- (c) skills;
- (d) qualifications;
- (e) knowledge;
- (f) experience; and
- (g) personal qualities relevant to performing the duties of the position.

Clause 22 gives the Minister the power to create rules about the circumstances in which vacancies may be advertised and the way in which it must be advertised.

Clause 23 creates a criteria for appointment as a public service employee. Persons will not be appointed if they are below 18 years of age, if they are a Member of Parliament and if they are not a Nauruan citizen. It is important to note that the definition of a public service employee within the Act is *'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'*.

This clause provides an exception to the rule by creating a sub-clause that allows non Nauruan citizens to be employed as contract employees as provided in the Act. This clause is not restrictive to Nauruan citizens who are appointed to contract positions in the public service. They would then become contract employees rather than permanent employees.

Clause 24 creates the terms of appointment that may be made within the public service and they are appointments on a permanent basis or appointment for a fixed term. Note that under Clause 23 only Nauruan citizens may be appointment on a permanent basis.

Clause 25 states that a head of department or Secretary may only be appointed for a fixed term.

Clause 26 provides that an appointment to a public service position must be published by the Chief Secretary in the Gazette within 14 days of the appointment being made.

Clause 27 deals with the probationary period that persons appointed to the public service must go through prior to being confirmed in their position. The purpose of this period as provided in the Act is to determine whether the person is suitable for the position and is

able to carry out the work adequately and efficiently according to the standards of the public service. This period is for 6 months but may be extended once for a further 6 months by the Chief Secretary. Before confirmation of a person, the Chief Secretary must conduct or instruct the relevant Secretary to conduct a performance appraisal. A person's appointment is taken to be confirmed at the end of the 6 months (subject to appraisal) unless the Chief Secretary has earlier terminated the appointment.

Clause 28 provides for the employment of temporary employees who may be employed in order to meet temporary circumstances within the public service. A person employed as a temporary employee does not become a public service employee by virtue of their employment. Note that a public service employee is one who holds a public service position on a permanent basis. Regardless of this, a temporary employee is subject to the principles of merit and appointment as with other public service positions.

Clause 29 deals with the status of a temporary employee and a review of employment after 5 months in order to allow the relevant Secretary to decide whether the person's employment will continue. The Secretary may make a recommendation to continue the employment, employ the person as a public service employee or terminate the temporary employment. Employment as a public service employee is of course subject to consultation with the Chief Secretary and the availability of a vacant position. If a decision is not made within the period required by this Clause then the employment is taken to be terminated at the end of the initial period of employment.

Clause 30 applies the Public Service Code of Conduct to temporary employees. This would subject them to disciplinary regulations also.

Clause 31 applies the *Public Service (Disciplinary Procedures) Regulations 2016*.

Clause 32 determines that the Chief Secretary may see it fit to determine that an existing position within a Department of the public service is to be a contract position or establish a new contract position.

Clause 33 provides the procedure to be followed when an existing position is currently held by a public service employee but the Chief Secretary has determined in Clause 39 that it is to be a contract position. The Chief Secretary would then give the employee notice of the determination that the position is now a contract position and the notice must state that the change in status will be 4 weeks from the date of the notice. The employee is then deemed to have resigned from their position after 4 weeks and paid the appropriate entitlements.

Within 2 weeks of the date of the notice the Chief Secretary may offer the new contract position to the employee and if the employee accepts the offer, the employee becomes a

contract employee from the date of signature of the contract. Where the employee does not sign the contract at the end of the four week notice period then the offer of contract employment lapses.

Clause 34 provides that where the Chief Secretary wishes to employ persons in a contract position, the Chief Secretary must advertise the position and may determine the procedures to be used when determining the right person for the position. This may include consulting with the relevant Secretary of the Department in which the contract position exists. Contracts of employment must always be written and signed by the employee and the Chief Secretary on behalf of Government. The Public Service Code of Conduct applies to a contract employee.

Clause 35 deals with misconduct by contract employees. If the relevant Secretary becomes aware of a contract employee committing an offence punishable by more than 1 year imprisonment or suspect that a contract employee may have committed any misconduct, the Secretary must provide a report to the Chief Secretary.

A contract employee has no right to lodge an appeal to the Public Service Appeals Board under section 111 of the Act.

Clause 36 applies to the work performance of a contract employee. The relevant Secretary has a duty to monitor the work performance of a contract employee and if the Secretary is aware that the employee is not performing to the standard expected then the Secretary must provide a report to the Chief Secretary. Clause 98 and Clause 99 apply to the work performance of a contract employee.

Clause 37 determines that a contract employee may be terminated according to the contract of employment.

Part 6 – Terms and Conditions of Public Service Employment

Clause 38 is the provision that deals with the determination of salary of public service positions. The Minister determines that salary or range of salaries for public service positions. The power to make regulations is also given to the Minister and the regulations may cover issues on how the Chief Secretary must decide the salary of a person appointed and also the circumstances in which the Chief Secretary may increase the person's salary within the range determined. A person's salary may only be lowered if there is a reduction following reclassification or a person is disciplined under regulations.

Clause 39 deals with allowances that may be determined by the Minister and these are allowances that are in addition to the person's salary. A decision can only be taken with the approval of Cabinet.

Clause 40 provides for the determination of base hours of attendance and these are the non-standard hours and standard hours.

Clause 41 prescribes that the standard base hours of attendance are 9am to 5pm on each working day and during this time, an employee is entitled to a 1 hour meal break. The meal break will be at a time that is approved by the supervisor.

Clause 42 prescribes that the non-standard base hours of attendance shall be determined by the relevant Secretary.

Clause 43 deals with the hours of attendance for teachers. This is necessary as teachers have different hours of attendance required of them. This clause provides that the Minister shall not notice in the gazette.

Clause 44 is a penalty section that deals with public service employees who fail to comply with the required hours of attendance. Penalties include loss of salary or other remuneration and discipline under the Regulations for employees who are absent without leave for a continuous period of more than 14 days may be discipline and terminated without benefits.

Clause 45 provides for the benefits that may be received by employees who are required to work hours additional to their base hours. The employee may receive additional remuneration and also time off work at another time. The Minister, under this Clause is also given the power to make regulations about additional hours of attendance including the maximum amount of hours and the compensation that may be received for the additional hours of work.

Clause 46 provides for the recording of attendance of public service employees. The chief secretary must determine a means of recording attendance and each head of department is responsible for administering this method of record. Heads of departments/ Secretaries are exempt and so are other persons who may be exempted by the Chief Secretary.

Clause 47 is an extension of the definition of employee specifically for subdivisions 1 to 8. This is so that contract employees are included within the definition and benefit from the leave entitlements in these subdivisions.

Clause 48 contains the purpose of recreation leave and this is to enable employees to take leave from duty.

Clause 49 provides the amount of recreation leave that employees are entitled to. These are 4 weeks of recreation leave on full salary and this may be calculated on a pro rata basis.

Clause 50 provides for the maximum recreation leave that an employee may accumulate recreation leave up to a maximum of 3 years. If an employee reaches the maximum balance

then the Chief Secretary may direct that employee to take an amount of recreation leave that will bring the balance down to an amount that it will not exceed the annual balance when the employee next accrues leave. The Chief Secretary may also cash out an amount of recreation leave instead of directing the employee to take recreation leave. Cashing out of recreation leave will only be done in exceptional cases where for operational reasons the employee cannot take their leave.

Clause 51 deals with the process of applying for recreation leave. Employees who have completed 12 months of service and have the consent of the relevant Secretary may apply for recreation leave.

Clause 52 states that if an employee is on recreation leave and a public holiday occurs during that period than the day must not be deducted from the employee's recreation leave balance.

Clause 53 deals with the recreation leave for teachers. Teachers are a special category of public servants and they cannot utilize the recreation leave provisions like other public servants. In taking that into account, this clause provides that the Chief Secretary may grant teachers leave of absence for recreation.

Clause 54 is a provision on medical leave and its purpose to allow employees to be absent from work because they are unfit for duty due to injury or illness.

Clause 55 provides that an employee is entitled to 10 days of medical leave for each year of service. This leave is accrued on appointment to the public service and on completing each year. It is important to note that medical leave does not accrue cumulatively.

Clause 56 is a clause providing for the evidence that is needed in order for an employee to be able to apply for medical leave. An employee who is absent from work for more than a day is required to produce a medical certificate from a qualified medical practitioner evidencing the employee's unfitness for duty.

Clause 57 provides that the Chief Secretary may only grant medical leave to an amount that is within the employee's medical leave balance.

Clause 58 states that if a public holiday occurs while an employee is on medical leave than the day must not be deducted from the employee's medical leave balance.

Clause 59 allows female employees of the public service to take leave for maternity reasons during or immediately after the employee's pregnancy.

Clause 60 provides for the amount of maternity leave that an employee can take. For the first 4 pregnancies she may take leave on full pay and for each subsequent birth the leave will be on half salary. Employees are not entitled to paid maternity leave beyond the period

on which she would have ceased employment within the public service. An employee is entitled to full pay during maternity leave only if she has completed 6 months of service in the public service.

Clause 61 makes clear the process of application for maternity leave. An employee must apply to the Chief Secretary at least 3 months before she intends to take leave and provide medical evidence of the pregnancy and also the expected date of birth of the child. This is to allow the Chief Secretary to secure adequate personnel to cover her duties in her absence. A medical certificate submitted to the Chief Secretary must certify:

- (a) that the employee is pregnant;
- (b) the expected date of birth of the child;
- (c) the date on which the employee must cease duties.

The last requirement is important in that it ensure that woman are not working at a time when complications could arise due to the stress of work. A clause in this provision further states that employees must proceed on leave no less than 6 weeks before the due date unless a medical practitioner certifies that she is fit to continue. This is a provision that is intended to protect women and prevent complication.

Clause 62 states that a woman who is about to complete her maternity leave must contact the Chief Secretary at least 4 weeks before the end of the leave to let the Chief Secretary know that the employee intends to return to work at the end of the leave. The clause further provides protection for the female employee by stating that she is to return to the same or equivalent position without any loss in salary, benefits or seniority.

Clause 63 is intended to protect women clause states that no woman must be terminated from her public service employment on the ground of pregnancy. A woman may only be terminated if she is absent from work 3 months after the expiration of her maternity leave and it is the result of her pregnancy. This must be certified by a medical practitioner and the Chief Secretary in citing this may give her notice of termination.

Clause 64 is a clause that provides for paternity leave. This is a novel idea in this jurisdiction but it is intended to allow male employees of the public service to be absent from duty after the birth of their child or after the adoption of a child that is not less than 12 months old.

Clause 65 allows an employee 2 weeks of paid paternity leave. Paternity leave is an entitlement that allows male employees to assist in caring for a new child in their family and as support to the woman. Paternity leave does not accrue cumulatively.

Clause 66 provides the process of application for paternity leave. An employee must apply to the Chief Secretary at least 3 months prior to the intended leave date. The Chief Secretary shall apply discretion if applications come in less than 3 months to the date. A medical certificate similar to that provided by a pregnant mother must be submitted if the employee is expecting the birth of a child and for adoptive parents, a certified copy of the adoption order evidencing the adoption.

Following the birth of a child, the employee must as soon as practicable provide to the Chief Secretary an extract of a birth certificate and the registration of the child.

Clause 67 provides for adoption leave and it provides that adoption leave is available only to female employees after the adoption of a child who is less than 12 months old.

Clause 68 is the entitlement to adoption leave and an employee is only entitled to 12 weeks of paid leave if she has completed at least 6 months of continuous service. Adoption leave also does not accrue cumulatively.

Clause 69 provides that application for adoption leave must be made to the Chief Secretary as soon as practicable after the employee has applied for the adoption order. The Chief Secretary will need to be given a certified copy of the adoption order and must be satisfied that the employee is entitled to the adoption leave.

Clause 70 provides for special leave and this is available to an employee to allow them to be absent from duty without deduction of the recreation leave balance.

Clause 71 gives the annual entitlement and each employee is entitled to 3 days of special leave on full salary. It is important to note that special leave does not accrue cumulatively.

Clause 72 states that applications for special leave must be submitted to the Chief Secretary and upon sufficient cause being shown, the Chief Secretary may grant the leave.

Clause 73 covers official leave. This type of leave is granted to employees to enable them to travel outside of Nauru for official purposes. The Chief Secretary may further determine the meaning of official purpose through gazette notice. Employees are required to return to work if the purpose of the official leave does not take place or for some other reason the employee does not travel. An employee may be subject to disciplinary proceedings if they do not report back to work.

Clause 74 states that applications for official leave must be done through the Chief Secretary who will grant the leave only after citing the relevant documents. Again relevant documents may be defined by gazette notice.

Clause 75 provides that employees may be granted an allowance to assist in their travel for official purposes.

Clause 76 covers leave without pay which is leave that an employee can apply for in circumstances where the employee cannot access any other type of leave.

Clause 77 states that employees must apply to the Chief Secretary to take a period of leave without pay and the application must include the purpose of the leave and evidence of that purpose if the employee is able to provide that evidence. Employees can only be granted 12 months of leave without pay unless the purpose is for study or the Chief Secretary is of the opinion that exceptional circumstances justify a longer period.

Clause 78 provides for long service leave. This type of leave is available to public service employees (permanent employees) to enable them to be absent from work on full pay in recognition of their length of service in the public service.

Clause 79 provides that for each continuous period of 10 years an employee is entitled to 12 weeks of long service leave. The period must be continuous and unbroken by matters including resignation and leave without pay. This clause will be interpreted to mean that employees are entitled to long service leave provided that the 10 years is continuous and unbroken. An employee who chooses to take their long service leave after 14 years will not be entitled to additional days because they had accumulated another 4 years. The entitlement is only 12 weeks. If the employee accumulates another 10 years and has now served 20 years in the public service then the leave entitlement will be 12 weeks for the first 10 years and 12 weeks for the second 10 years of service.

Clause 80 states that the Chief Secretary will only grant long service leave to employees who have completed a continuous 10 years of service and if the relevant Secretary has granted the leave. Long service leave will only be refused for operational reasons.

Clause 81 provides the days that are to be regarded by members of the public service as public holidays. These include national holidays as well as holidays celebrated internationally. The Minister may declare other days within the year to be holidays as well.

Part 7 – Termination of Public Service Employment and Discipline

Clause 82 are the provisions related to the termination of employment from the public service. Employment may be terminated:

- (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; or
- (d) if the Chief Secretary retires the employee; or

(e) if the employee's employment is terminated on the ground of redundancy; or

(f) the Chief Secretary terminates the employee's employment under the Act or the Regulations.

Clause 83 provides the procedure that is to be followed if an employee resigns from the public service. Employees must resign at least 4 weeks before the notice is take effect or within a shorter period if the Chief Secretary approves.

Probationary employees may resign at least 2 weeks before the notice is to take effect or within a shorter period if approved by the Chief Secretary.

A notice of resignation takes effect from the date of receipt by the relevant Secretary.

Clause 84 is a provision that is specifically for those who intend to contest national elections in Nauru. Employees who submit a nomination as a candidate will be required to resign from their positions three months prior to submitting their nomination. This applies to all public service employees, including heads of departments and contract employees who are eligible to be candidates for elections.

Clause 85 covers the voluntary retirement of employees. The age of voluntary retirement as provided in this Clause is 60 years and employees who reach this age may voluntarily retire from their public service employment. In order to do this, they must write to the Chief Secretary through their relevant Secretary at least 4 weeks before they intend to retire or if the Chief Secretary approves then this period may be shortened. The notice of resignation takes effect from the date of receipt by the relevant Secretary.

Clause 86 covers circumstances where the Chief Secretary believes that a person is not turning up to work because of physical or mental disability. If someone is absent from duty or is not performing their duties satisfactorily then the Chief Secretary may appoint a medical practitioner to examine the person and provide a written report and further require the person to undergo the medical examination.

Clause 87 is a continuation clause from Clause 86 where the Chief Secretary requires an employee to undergo a medical examination. The report that is submitted by the medical practitioner must include the practitioner's opinion about whether the employee has a physical or mental illness or disability that may adversely affect the person's performance of duties. If the report concludes that the above is likely to occur then the report must also include a description of the likely direct or indirect effect and the length of time that this may continue.

Clause 88 provides for the retirement of an employee based on the report submitted under Clause 87. The Chief Secretary must be satisfied with the report and retire the employee

after considering the effects that the condition of the employee will have on his or her performance.

Clause 89 states that an employee is terminated on the grounds of redundancy if the Minister abolishes that employee's substantive position under Clause 16(1)(b).

Clause 90 is a provision that deals with the abolition of a position occupied by a permanent employee for a fixed term. A permanent employee is one that holds a substantive position on an ongoing basis within the public service. So a permanent employee who is occupying a position for a fixed term, if that position is abolished then the employee may be appointed to another position for a fixed term (if position is available) but otherwise the employee must return to their substantive position.

Clause 91 covers circumstances where a position is occupied by a permanent employee and the substantive holder of the position returns. If this happens then the employee that is returning will come back to their position and the employee who is occupying that position for a fixed term must return to their substantive position.

This would cover situations similar to when public service employees go on leave for the purposes of study. When they leave for their studies, their position would be occupied by someone else for the period of their study and upon completion and they return to the public service, then they return to their substantive position.

Clause 92 is similar to Clause 91 except the person occupying the position is a temporary employee. So the substantive holder of the position returns and their position is held by a temporary employee, then they will return to their position while the temporary employee is terminated on the grounds of redundancy.

Clause 93 states that if the Minister abolishes a public service position and immediately before it was abolished, the position was occupied by a temporary employee then the employee is terminated on the grounds of redundancy.

Clause 94 provides a requirement for the Minister to give an information notice for a decision to abolish a position within the public service if the abolition of that position results in the termination of a public service employee's employment under the Act.

Clause 95 is the first of several clauses dealing with unsatisfactory performance of public service employees. This is an important Clause as it allows the relevant Secretary to first consider the reasons why a public service employee may not be performing to a certain standard. The relevant Secretary may take remedial action that includes 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.

Clause 96 shall be the option taken by the relevant Secretary if after taking remedial action under Clause 95 the employee still is not performing their duties satisfactorily. The Secretary will then refer treat the case as a repetition of minor misconduct under the regulations.

Clause 97 gives the Minister the power to create regulations that provide for procedure on misconduct and other disciplinary matters.

Clause 98 covers the entitlements that an employee is entitled to receive in the event that their employment is terminated.

Clause 99 is a notice requirement that is placed on the Chief Secretary in the event that a probationary employee is terminated for reasons other than serious misconduct. The employee must be given a week's notice or an amount equal to an amount equivalent to a week's salary.

Clause 100 is the notice requirement for the termination of other employees who are not probationary employees. This would apply if an employee is terminated on the grounds of redundancy or misconduct. The employee must be given 4 weeks' notice of the termination or an amount equal to the employee's salary over a 4 week period.

Clause 101 deals with the notice requirement for employees who are medically retired under Clause 88. The employee must be paid an amount equal to their salary over a 4 week period instead of a notice of retirement.

Clause 102 covers the severance entitlement of employees who are made redundant for reasons covered under Division 4 of this Part. These employees must be paid an amount equal to their salary over a 12 week period.

Clause 103 provides for the payment of accrued entitlements that are owed to an employee. Clause 82 provides for the reasons of termination. Subject to other provisions in the Act, employee's may be paid an amount equal to the total of the employee's annual leave balance and long service leave balance.

Clause 104 covers situations where the employee does not give the required notice. If the employee does not give the required notice then the Chief Secretary may deduct from the payment of accrued entitlements an amount equal to the employee's salary over the period of notice the employee failed to give.

Example:

(a) 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.

(b) If the employee is required to give 4 weeks notice but gives no notice, the Chief Secretary may deduct 4 weeks of accrued entitlements.

It is important to note for this Clause that a notice takes effect from the date it is received by the relevant Secretary.

Part 8 – Public Service Appeals Board

Clause 105 is the first Clause that covers the election and term of office of members of the Public Service Appeals Board. This Board is provided for by Article 70(1) of the Constitution of Nauru and the Cabinet is given the power to create rules dealing with the conduct of elections.

An important provision here is that relating to the term of a member and that is 3 years.

Clause 106 is the oath or affirmation that members are required to take. The Chairman is the only one who does not have to swear the oath (the Chairman is the Chief Justice of Nauru) and other members must swear the oath before the Chairman.

Clause 107 states that allowances may be paid to the Board and this is determined by Cabinet by Gazette notice.

Clause 108 provides for the grounds of appeal that are available to members of the public service. The grounds of appeal are:

- (a) a decision to appoint or promote another person;
- (b) a decision under this Act or regulations that the employee has committed any misconduct;
- (c) any penalty imposed on the employee under this Act or regulations;
- (d) a decision to:
 - (i) transfer the employee;
 - (ii) reduce the employee's classification; or
 - (iii) terminate the employment of the employee.

Clause 109 deals with the process of appealing to the Public Service Appeals Board. Once a person receives an information notice, they may lodge their appeal. If a person does not

receive and information notice then the person may lodge their appeal the day they become aware of the information notice provided that this period does not exceed 21 days.

The Board may extend the time for lodging an appeal notice if a person applies for extension. Every notice of appeal must be in writing and include the grounds of appeal. The Chief Secretary must a copy of the notice to the Registrar of the Supreme Court within 7 days after receiving it.

Clause 110 states that the Chief Secretary must supply to the appellant a copy of each document that the Chief Secretary intends to submit to the Board in response to the appeal. This must be done at least 7 days before the appeal is set to be heard.

Clause 111 provides for the procedure for the appeal. A quorum for a hearing is 2 members of the Board, one of which must be the Chairman. If there is a conflict or against the rules of natural justice then a member of the Board who is faced with that dilemma must not act. This means if he or she would be acting contrary to the rule against bias and the rule on the right to a fair hearing.

The appeal may be heard in person or on written submissions but the latter is only possible with the consent of the appellant.

It is important to note that the Board is not bound by legal technicalities, legal forms or rules of evidence and they must act as speedily as a proper consideration of the appeal allows. The Board may set its own procedures.

Clause 112 states that in order to decide the appeal the Board may do one of three things. The Board may:

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

Clause 113 provides for the orders of reinstatement or compensation that a Board may make if it decides to set aside a decision of termination or abolishment of a public service position. The Board may order reinstatement, if the position has since been abolished or its otherwise not practicable to reinstate the person then the Board may order that the person be paid three months salary that the person would have been entitled to had the person not been terminated and if the person is reinstated then the person must be taken to have been on leave without pay for the period between termination and reinstatement.

Clause 114 gives the Board the power to order reimbursement of salary if the appellant had lost salary as a result of the original decision and the Board has set aside the decision after the appeal.

Clause 115 are further powers that the Board may make orders for costs in favour of the appellant if they have referred a decision back to the decision maker for re-determination.

Clause 116 states that within 7 days after deciding an appeal, the Board must give the appellant and the Chief Secretary a written notice stating the decision, the reasons for the decisions and any orders that the Board has chosen to make under Clause 113, 114, or 115.

Clause 117 places a restriction on anyone from challenging a decision of the Board. The only challenge can be made on the ground of lack of jurisdiction and on any matter concerning Part II of the Constitution which relate to rights of persons.

Part 9 – Savings and Transitional Provisions

Clause 118 repeal the Public Service Act 1998.

Clause 119 are special definitions relating to the transition of this Act from the old to the new.

Clause 120 are transitional provisions relating to the existing officers and employees generally. Officers and employees under the old Act shall continue under the new Act and employment will not be affected.

Clause 121 states that persons who were appointed Secretaries under the old Act continue to hold that position until their appointment ends. This includes those appointed as Acting Secretaries.

Clause 122 provides that contracts of employment under the old Act shall continue to be in force until they expire.

Clause 123 provides for temporary employees and they are taken to continue as temporary employees until the end of their appointment.

Clause 124 states that any rulings decisions that were made under the old Act shall remain in force as if made under the new Act. It may be adapted or read alongside the new provisions in order to make it more consistent.

Clause 125 states that any disciplinary action started under the old Act but not completed, may be completed under the new Act.

Clause 126 provides that any persons suspended from duty under the old Act shall continue to be suspended and the suspension shall have effect as if it had been made under the new Act.

Clause 127 provides for references to the old Act. If the context permits then any document or reference in another Act to the old Act shall be a reference to the new Act.

Clause 128 deals with any corresponding approvals, decisions and notices made under the old Act. Any one of these made under the old Act shall continue and is taken to be an approval, decision or notice under the new Act.

Clause 129 gives Cabinet the power to create transitional regulations that made be necessary to cover any provisions that the new Act has failed to make transition for. It is important to note that this Clause expires 24 months after the commencement of the Act.

Part 10 – Miscellaneous

Clause 130 gives the Cabinet the power to make regulations under this Act in order to put into effect any of the provisions of the Act.

