



REPUBLIC OF NAURU
Public Service Bill 2016

No. 11 of 2016

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REPUBLIC OF NAURU

Public Service Bill 2016

No. [] of 2016

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

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 Service Act 2016*.

2 Commencement

This Act commences on the date on which it is certified by the Speaker.

3 Application of Act

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

- (a) if a public service employee belongs to a class of employees who are excluded from the application of all or part of this Act by regulations, this Act does not apply to the employee to the extent of the exclusion;
- (b) 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) Cabinet may make regulations that may apply this Act or specified provisions of this Act to employees of State owned enterprises, or other employees of the Republic who are not public service employees, subject to modifications (if any) specified in the Regulations (and to the extent specified in the Regulations, the Regulations will have effect despite the provisions of any other Act).

PART 2 - INTERPRETATION

4 Definitions

- (1) In this Act:

'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;

'adopted child', see section 3 of the *Adoption of Children Act 1965*;

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

'adoption order', see section 3 of the *Adoption of Children Act 1965*;

'adoptive parent', see section 3 of the *Adoption of Children Act 1965*;

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

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

'base hours of attendance', for a public service employee, means the base hours of attendance that apply to the employee under section 40;

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

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

'classification', for a public service position, means a

description that identifies the class of positions to which the position belongs;

'Code of Conduct' means the Code set out in section 8;

'continuous period of service', see section 6;

'contract employee' within the public service means a person who is employed under a contract of employment under section 34;

'disciplinary action', see Regulations;

'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 time within which the person must lodge an appeal;

'leave' includes paid leave, leave without pay and official leave;

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

'long service leave' means the type of leave mentioned in Part 6, Division 3, Subdivision 9;

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

'medical certificate' means a certificate given by a medical practitioner or dentist;

'Minister' means the Minister who is responsible for the administration of this law;

'misconduct' includes minor and serious misconduct as defined in the Regulations;

'non-standard hours of attendance' means the hours mentioned in section 42;

'paid leave' means recreation leave, medical leave, maternity leave, adoption leave, paternity leave, special leave or long service leave;

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

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

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

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

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

'probationary period', for a public service employee, means:

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

'public holiday', see section 81;

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

'public service position' means a position in the public service created under section 16(1)(a);

'public service values' mean the values of the public service mentioned in section 7;

'Registrar', means the Registrar of the Supreme Court as defined by section 2 of the *Courts Act* 1972;

'Regulations', unless otherwise stated means the *Public Service (Disciplinary Procedures) Regulations* 2016;

'remedial action', see section 95(1);

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

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

'relevant head of department', for a public service employee, means the Secretary;

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

'Secretary' means the Head of Department as appointed under section 13;

'standard hours of attendance' means the hours specified in section 41;

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

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

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

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

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

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

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

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

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

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

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

(1) An employee is **'absent without leave'** if the employee is:

- (a) absent from duty during the employee's required hours of attendance; and
- (b) the employee has not been granted leave for the absence.

(2) 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 'continuous period of service'

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

PART 3 – PUBLIC SERVICE VALUES AND CODE OF CONDUCT

7 Public Service values

The public service:

- (a) is politically neutral, performing its functions in an impartial and professional manner;
- (b) bases employment decisions on merit;
- (c) is free of discrimination;
- (d) has the highest ethical standards;
- (e) provides frank, honest, comprehensive, accurate and timely advice to Government;
- (f) delivers services fairly, effectively, impartially and courteously;
- (g) has leadership of the highest quality;
- (h) provides a fair workplace;

- (i) provides a safe working environment;
- (j) focuses on achieving results and managing performance;
- (k) has the highest standards of accountability and transparency;
- (l) provides a reasonable opportunity to all eligible members of the community to apply for employment.

8 Code of Conduct

Every employee of the public service must:

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

- (l) at all times behave in a way that upholds the public service values and the integrity and good reputation of the public service;
- (m) not engage in any political activity at all times;
- (n) not engage in outside employment without the Chief Secretary's authorization under section 9.

9 Outside employment

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

PART 4 – STRUCTURE OF PUBLIC SERVICE

Division 1 – General Principles

10 Composition of Public Service

The public service is constituted by the following:

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

11 Departments

The Minister may, with the approval of Cabinet, 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.

12 Role of Chief Secretary

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

Division 2 – Heads of Departments

13 Secretary

- (1) The Head of a Department is the Secretary of the Department.
- (2) The office of the Secretary is established by this section.
- (3) If a Department is abolished or its name is changed, the office of the relevant Secretary is taken to be abolished or its name correspondingly changed.
- (4) Appointments to the office of the Secretary of a Department are to be made by the Minister of the relevant Department, with the approval of Cabinet.
- (5) The Cabinet will determine the conditions of employment and the functions of a person appointed as the Secretary of a Department.

14 Appointment of Acting Secretary

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

15 General responsibility of a Secretary

- (1) The Secretary of a Department is responsible to the relevant Minister and to the Chief Secretary for the general conduct and management of the functions and activities of

the Department in accordance with the core values of the public service.

- (2) Any action taken in the exercise of a responsibility under this section is not to be inconsistent with the functions conferred by this Act on a Minister administering this Act or of the Chief Secretary.

Division 3 – Public Service Positions

16 Creation, abolition, classification and eligibility requirements of position

- (1) The Minister may, by Gazette notice:
 - (a) create a public service position; or
 - (b) abolish a public service position.
- (2) The Minister must specify, in the Gazette notice that creates a public service position, the classification of the position.
- (3) The Minister may, by subsequent Gazette notice, change the classification of a public service position.
- (4) The classification specified by the Minister 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) The Minister may specify, in the Gazette notice that creates a public service position or in a subsequent Gazette notice, eligibility requirements for a person holding or occupying the position.
- (6) The Minister may, by subsequent Gazette notice, change the eligibility requirements of a public service position.
- (7) The Minister may, in a notice under subsection (3), (5) or (6), declare that the change of classification or the imposition or change of eligibility requirements does not take effect until the position next becomes vacant.

17 Public service position may be held, occupied or vacant

A public service position may be:

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

18 Reduction in salary following reclassification

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

19 Increase in salary following reclassification

- (1) This section applies if:
 - (a) the Minister changes the classification of a public service position (other than a vacant position); 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) the Minister does not make the declaration mentioned in section 16(7).

- (2) The position is taken to be vacant one month after the change in classification unless a person is appointed to the position before that time.
- (3) If a public service employee holding or occupying the position immediately before the change of classification is not re-appointed to the position, Part 7, Division 4 applies to the public service employee as if the position had been abolished.

20 Imposition or change of eligibility requirements

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

PART 5 – SELECTION AND APPOINTMENT OF PUBLIC SERVICE EMPLOYEES

Division 1 – Principles Applicable to all Appointments

21 Merit principle

- (1) The selection of a person for appointment to the public service 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 any previous employment duties; and

- (ii) the extent to which the person has potential for development.

22 Advertising vacant position

The Minister may make rules about:

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

23 Eligibility for appointment

- (1) A person is not eligible for appointment as a public service employee if the person is:
 - (a) under the age of 18 years; or
 - (b) a Member of Parliament; or
 - (c) is not a Nauruan citizen.
- (2) A person who is not eligible under subsection (1) (c) may be appointed as a contract employee.
- (3) Subsection (2) does not limit the eligibility of Nauruan citizens from being employed in the public service as contract employees.

Division 2 – Appointment of Public Service Employees

24 Basis of appointment – permanent or fixed term

- (1) Subject to sections 23 and 25, the Chief Secretary may appoint a person to a public service position:
 - (a) on a permanent basis; or
 - (b) for a fixed term.
- (2) However, the Chief Secretary must not appoint a person to a public service position on a permanent basis if another public service employee holds the position on a permanent basis.

- (3) The Chief Secretary may only appoint a person to a public service position for a fixed term if the person enters into a written contract of employment for the appointment.
- (4) Subsection 3 does not apply to temporary or casual employees.

25 Basis of appointment – head of department

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

26 Publication of notice of appointment

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

27 Probationary period

- (1) This section applies 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 six months if the Chief Secretary reasonably believes it is necessary to do so to determine whether the person is suitable for the position.
- (5) Before confirming a person's appointment following a probationary period, the Chief Secretary must conduct or instruct the relevant Secretary to conduct a performance appraisal.
- (6) Subject to subsection (5), the person's appointment is taken to be confirmed at the end of the probationary period unless the Chief Secretary has earlier terminated the person's employment.

- (7) The Chief Secretary may terminate the person's employment at any time during the probationary period.

Division 3 – Temporary Employees

28 Employment of temporary employees

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

29 Review of status of temporary employee

- (1) This section applies at the end of five months after a temporary employee has been continuously employed in the public service.
- (2) The relevant Secretary must, two weeks before the end of the employment, decide whether the person is to:
- (a) continue as a temporary employee according to the terms of the existing employment; or
 - (b) be employed as a public service employee; or
 - (c) be terminated as a temporary employee.
- (3) Sections 2(a) and 2(b) are subject to:
- (a) consultation with the Chief Secretary; and
 - (b) the existence of a relevant vacancy within the public service.
- (4) If the Secretary does not make a decision within the period stated in subsection (2), the Secretary is taken to have

decided that the person's employment terminates according to the terms of employment.

30 Temporary employee – application of Code of Conduct

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

31 Temporary employees - application of Public Service (Disciplinary Procedures) Regulations 2016

The *Public Service (Disciplinary Procedures) Regulations 2016* apply to a temporary employee.

Division 4 – Contract Employees

32 Contract positions

(1) The Chief Secretary may, after consulting with the relevant Secretary:

(a) determine that an existing position in a Department is to be a contract position; or

(b) establish a new contract position in a Department.

(2) Where a contract position is vacant, the Chief Secretary may fill the position according to the process set out in section 34.

33 Contract position held by a public service employee

(1) Where an existing position in a Department is determined to be a contract position and that position is held by a public service employee, the following provisions apply:

(a) the Chief Secretary must give the employee notice in writing of the determination;

(b) the notice must state that the change in status of the position will take effect four weeks after the date of the notice;

(c) the employee is deemed to have resigned from their employment four weeks after the date of the notice, and must be paid the entitlements that would be due to the employee because of their resignation;

- (d) the Chief Secretary may offer the employee a contract of employment as a contract employee in the position not less than two weeks after the date of the notice;
 - (e) where the employee signs the contract of employment before the end of the four week period from the date of the notice the employee becomes a contract employee with effect from the date of signature;
 - (f) where the employee does not sign the contract before the end of the four week period from the date of the notice the offer lapses at the end of the four week period.
- (2) Where the offer of contract employment lapses under subsection (1) (f), the Chief Secretary must advertise the position according to section 34.

34 Employment of contract employees

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

35 Misconduct by contract employees

- (1) The relevant Secretary must provide a report to the Chief Secretary if they:
 - (a) become aware that a contract employee has been charged with having committed an offence punishable by more than one year of imprisonment; or
 - (b) suspect that a contract employee may have committed any misconduct.
- (2) The Chief Secretary must use discretion when applying the provisions of the Regulations and of Division 5 of Part 7 of this Act to a contract employee suspected of committing a breach of discipline.

(3) A contract employee has no right to lodge an appeal to the Public Service Appeals Board under section 108.

36 Managing the work performance of a contract employee

(1) Where the relevant Secretary considers that a contract employee is not performing their duties at the standard expected of a contract employee of that classification, the relevant Secretary must provide a report on the matter to the Chief Secretary.

(2) Sections 95 and 96 apply to the work performance of a contract employee.

37 Termination of employment – contract employee

A contract employee may be terminated according to the terms and conditions of his or her contract.

PART 6 – TERMS AND CONDITIONS OF PUBLIC SERVICE EMPLOYMENT

Division 1 – Remuneration

38 Determination of salary – public service positions

(1) The Minister may determine, by Gazette notice, a salary or range of salaries for each of public service position.

(2) If the Minister determines a range of salaries for a class of public service positions:

(a) the Minister may also make regulations about:

(i) how the Chief Secretary must decide the salary of a person appointed to a position belonging to the class; and

(ii) the circumstances in which the Chief Secretary may increase the person's salary within the range determined; and

(b) acting in accordance with the regulations, the Chief Secretary may appoint a person to a position belonging to that class on a salary within the range determined; and

(c) the person's salary cannot be changed to an amount within the range that is lower than the amount on which the person was appointed except:

- (i) in the circumstances mentioned in section 18; or
- (ii) as a form of disciplinary action that may be prescribed by regulations.

39 Determination of allowances

(1) The Minister may determine, with the approval of Cabinet:

- (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.

(2) A decision made under subsection (1) must then be published by Gazette notice within 7 days of being made.

Division 2 – Hours of Attendance

40 Determination of base hours of attendance

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

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

41 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 one hour meal break, which must be taken at a time approved by the employee's supervisor.

42 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 relevant Secretary, excluding meal breaks.

- (2) The employee is entitled to a 1 hour meal break for each unbroken period of 4 hours of work completed.

43 Hours of attendance – Teachers

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

44 Failure to comply with required hours of attendance

- (1) A public service employee is not entitled to receive salary or any other remuneration for any time the employee is absent without leave.
- (2) A public service employee who is absent without leave for a continuous period exceeding fourteen days may be disciplined under the Regulations and terminated without any benefits, including salary, being paid out to the employee.

45 Additional hours of attendance

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

46 Record of attendance

- (1) The Chief Secretary must determine the means of recording the attendance of officers and employees.

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

Division 3 – Leave

47 Definition of employee

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

Subdivision 1 – Recreation leave

48 Purpose of recreation leave

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

49 Entitlement to recreation leave

- (1) For each year of service, an employee is entitled to four weeks of recreation leave on full salary (the employee's '**annual entitlement**').
- (2) An employee's annual entitlement may be calculated on a *pro rata* basis.

50 Accumulation of recreation leave – maximum

- (1) Recreation leave accrues cumulatively up to a maximum of three years.

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

51 Taking recreation leave

- (1) An employee may apply to the Chief Secretary to take recreation leave.
- (2) An employee must as far as practicable take their recreation leave when it is due.
- (3) An employee seeking to defer their recreation leave must first obtain the written approval of the Chief Secretary.
- (4) The Chief Secretary must grant the recreation leave to the extent of the employee's recreation leave balance if:
 - (a) the employee has completed a continuous period of service of twelve months; and
 - (b) the relevant Secretary consents to the grant of leave.

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

52 Public holiday during recreation leave

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

53 Recreation leave – Teachers

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

Subdivision 2 – Medical leave

54 Purpose of medical leave

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

55 Entitlement to medical leave

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

56 Taking medical leave – evidence

- (1) An employee may apply through the Secretary to the Chief Secretary to take a period of medical leave.
- (2) If an employee is absent from duty for more than one day, the employee must produce a medical certificate from a qualified medical practitioner evidencing the employee's unfitness for duty.
- (3) The Chief Secretary may grant the employee the medical leave provided the employee gives the Chief Secretary any required documentary evidence for the application.

57 Taking medical leave – amount

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

58 Public holiday during medical leave

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

Subdivision 3 – Maternity leave

59 Purpose of maternity leave

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

60 Entitlement to maternity leave

- (1) An employee is entitled to paid maternity leave provided she has completed six months of continuous service on the day she begins maternity leave.
- (2) An employee is entitled to twelve weeks of maternity leave:
 - (a) with full salary in relation to the first four pregnancies; and
 - (b) on half salary in relation to any subsequent pregnancies.
- (3) However, the employee is not entitled to maternity leave beyond the date on which she would have ceased

employment in the public service had she not taken maternity leave.

- (4) If the employee completes six months of continuous service during the period of maternity leave, she is entitled to be paid her full salary for the remaining period of maternity leave.
- (5) Maternity leave does not accrue cumulatively.

61 Taking maternity leave

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

62 Returning to duty after maternity leave

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

63 Restriction on termination

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

Subdivision 4 – Paternity Leave

64 Purpose of paternity leave

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

65 Entitlement to paternity leave

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

66 Taking paternity leave

- (1) An employee may apply to the Chief Secretary to take paternity leave.
- (2) An employee must apply at least three months before he intends to start the leave.

- (3) The Chief Secretary may apply discretion if an application for paternity leave is submitted less than three months before the intended start of leave.
- (4) The Chief Secretary must grant the paternity leave if:
 - (a) the employee gives the Chief Secretary a medical certificate stating the expected date of birth of the child; or
 - (b) the employee gives the Chief Secretary a certified copy of the adoption order evidencing the adoption; and
 - (c) the Chief Secretary is satisfied that the employee is a parent or adoptive parent of the child.
- (5) The employee must also give the Chief Secretary an extract from the Register of Births kept under section 6 of *Births, Deaths and Marriages Act 1957* as soon as practicable showing:
 - (a) the birth of the child; or
 - (b) the registration of the child; and
 - (c) that he is the father of the child.

Subdivision 5 – Adoption Leave

67 Purpose of adoption leave

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

68 Entitlement to adoption leave

- (1) An employee is entitled to twelve weeks of paid adoption leave provided she has completed six months of continuous service on the day she begins adoption leave.
- (2) An employee who becomes an adoptive parent of a child is entitled to up to twelve weeks of adoption leave in relation to the adoption if the child:
 - (a) is under the age of twelve months at the time of the adoption; and
 - (b) is not the child or step-child of the employee's spouse.

- (3) However, the employee is not entitled to adoption leave beyond the date on which she would have ceased employment in the public service had she not taken adoption leave.
- (4) If the employee completes six months of continuous service during the period of adoption leave, she is entitled to be paid her full salary for the remaining period of adoption leave.
- (5) Adoption leave does not accrue cumulatively.

69 Taking adoption leave

- (1) An employee who intends to take adoption leave must inform the Chief Secretary of the intention as soon as practicable after she applies for the adoption order in relation to the adoption.
- (2) The employee must apply to the Chief Secretary for the adoption leave as soon as practicable after she becomes an adoptive parent.
- (3) The Chief Secretary must grant the adoption leave if:
 - (a) the employee gives the Chief Secretary a certified copy of the adoption order evidencing the adoption; and
 - (b) the Chief Secretary is satisfied that the employee is otherwise entitled to adoption leave under section 68(1).
- (4) The adoption leave 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 – Special Leave

70 Purpose of special leave

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

71 Entitlement to special leave

- (1) For each year of service, an employee is entitled to three days of special leave on full salary (the employee's '**annual entitlement**').
- (2) The employee accrues the annual entitlement:

- (a) on appointment to the public service; and
 - (b) on completing each accrual year.
- (3) Special leave does not accrue cumulatively.

72 Application for special leave

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

Subdivision 7 – Official leave

73 Purpose of official leave

- (1) Official leave may be available to an employee to enable the employee to travel outside of Nauru for an official purpose.
- (2) The Chief Secretary may by notice in the Gazette determine the meaning of '**official purpose**' in subsection (1).
- (3) Where official leave has been granted to an employee, and he or she is for any reason, unable to travel, complete or engage in the purpose for which the leave was approved, the employee must report to work as soon as practicable despite the prior approval of leave.
- (4) An employee who does not report back to the office as required under subsection (3), will be treated as being absent without leave and subject to disciplinary action under the Regulations.
- (5) When a gazetted public holiday falls or occurs when an employee is travelling abroad for official purposes, the employee is entitled to claim a leave credit equal to the number of days of the gazette public holiday.

74 Application for official leave

- (1) An employee must:
 - (a) apply to the Chief Secretary to take a period of official leave; and
 - (b) the Chief Secretary, upon review of the relevant documents and upon sufficient cause being shown, may

grant to the employee official leave of absence with salary.

(2) The Chief Secretary may by notice in the Gazette determine the meaning of '*relevant documents*' in subsection (2).

75 Allowances for official leave

(1) A public service employee who has been granted official leave may also be paid an allowance at a rate that is determined by the Minister.

(2) Any allowance paid to an employee under subsection (1) must be returned in full or on a pro rata basis to the head of department within five working days if the employee is unable or does not complete his or her travel.

Subdivision 8 - Leave without pay

76 Purpose of leave without pay

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

77 Taking leave without pay

(1) An employee may apply to the Chief Secretary to take a period of leave without pay.

(2) The application must include:

- (a) the purpose of the leave; and
- (b) evidence of the purpose, if available.

(3) The Chief Secretary may grant the leave if:

- (a) the Chief Secretary is satisfied that:
 - (i) the purpose for the leave stated in the application is genuine; 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 relevant Secretary consents to the grant of leave.

- (4) The maximum period of leave without pay that the Chief Secretary may grant is twelve 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 twelve 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.

Subdivision 9 – Long Service Leave

78 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.

79 Entitlement to long service leave

- (1) For each continuous period of ten years, a public service employee is entitled to twelve weeks of long service leave.
- (2) Long service leave accrues cumulatively and there is no limit to the long service leave balance a public service employee can accrue.

80 Taking long service leave

- (1) A public service employee must apply to the Chief Secretary to take a period of long service leave.
- (2) The Chief Secretary may only grant long service leave to the extent of the employee's long service balance if:
 - (a) the employee has completed a continuous period of service of ten years; and
 - (b) the relevant Secretary consents to the grant of leave; and
 - (c) the period of leave is a multiple of three weeks.

- (3) The relevant Secretary may only refuse to consent to grant leave for operational reasons.
- (4) If the relevant Secretary refuses to grant leave for operational reasons, the Secretary must consult with the employee to determine an alternative time for the employee to take leave.

Subdivision 10 – Public holidays

81 Public holidays

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

PART 7 – TERMINATION OF PUBLIC SERVICE EMPLOYMENT AND DISCIPLINE

Division 1 – Preliminary

82 How employment terminates

An employee's appointment terminates:

- (a) if the employee resigns, or is taken to have resigned;
- (b) upon the expiry of the employee's contract;
- (c) if the employee voluntarily retires under section 85;
- (d) if the Chief Secretary retires the employee under section 88;
- (e) if the employee is terminated on the ground of redundancy;
- (f) if the Chief Secretary terminates the employee under section 27(7) or under the Regulations.

Division 2 – Resignation

83 Resignation of employee

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

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

84 Election candidates – resignation

- (1) Any employee who intends to submit a nomination as a candidate in Nauru's general elections, must resign at least three months prior to submitting their nomination.
- (2) In this section, '**employee**' includes public service employees, contract employees who are eligible to stand for elections, temporary employees and heads of departments.

Division 3 – Retirement

85 Voluntary retirement of employee

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

86 Chief Secretary may require medical examination

- (1) This section applies to a public service employee, other than a probationary employee, if:
 - (a) either:
 - (i) the employee is absent from duty; or
 - (ii) the Chief Secretary believes on reasonable grounds that the employee is not performing his or her duties satisfactorily; and

(b) the Chief Secretary reasonably suspects that the employee's absence or unsatisfactory performance is caused by a mental or physical illness or disability.

(2) The Chief Secretary may:

(a) appoint a 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.

87 Medical examination report

(1) The report on the medical examination conducted in section 86 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.

88 Medical retirement of employee

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

(a) the employee's absence or unsatisfactory performance is caused by mental or physical illness or disability; and

(b) the illness or disability or its effects will not end within a reasonable time.

Division 4 – Redundancy

- 89 Abolition of permanent employee’s substantive position**
- (1) This section applies if the Minister abolishes a permanent employee’s substantive position under section 16(1)(b).
 - (2) The employee’s employment is terminated on the ground of redundancy.
- 90 Abolition of position occupied by permanent employee for fixed term**
- (1) This section applies if:
 - (a) the Minister abolishes a public service position under section 16(1)(b);and
 - (b) immediately before it was abolished, the position was occupied by a permanent employee for a fixed term.
 - (2) Unless the employee is appointed to another public service position for a fixed term, the employee must return to the employee’s substantive position.
- 91 Return of substantive holder – position occupied by permanent employee**
- (1) This section applies if:
 - (a) a public service position is occupied by a permanent employee (**‘employee A’**) for a fixed term; and
 - (b) the substantive holder of the position returns to the position.
 - (2) Employee A must return to employee A’s substantive position.
- 92 Return of substantive holder – position occupied by temporary employee**
- (1) This section applies if:
 - (a) a public service position is occupied by a temporary employee; and
 - (b) the substantive holder of the position returns to the position.

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

93 Abolition of position occupied by temporary employee

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

94 Requirement to give notice

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

Division 5 – Unsatisfactory performance and discipline

95 Unsatisfactory performance – remedial action

- (1) If, in the opinion of the relevant Secretary, a public service employee is not performing the employee's duties in a satisfactory way, the Secretary 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.

96 Unsatisfactory performance – alternative action

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

97 Disciplinary matters and procedure

The Minister may, by regulations prescribe the procedure for dealing with misconduct and other disciplinary matters.

Division 6 – Termination entitlements

98 Termination entitlements cumulative

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

99 Notice requirement – termination of probationary employee

- (1) This section applies to a probationary employee if the Chief Secretary terminates the employee's employment for any reason other than serious misconduct.
- (2) The employee must be given:
 - (a) one week notice of the termination; or
 - (b) an amount equal to the employee's salary over a one week period.

100 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 employee is terminated for reasons related to 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 four week period.

- 101 Notice requirement – medical retirement**
- (1) This section applies to a public service employee if the Chief Secretary retires the employee under section 88.
 - (2) The employee must be paid an amount equal to the employee's salary over a four week period instead of notice of the retirement.
- 102 Severance entitlement – redundancy**
- (1) This section applies to a permanent employee whose employment is terminated on the ground of redundancy under Division 4.
 - (2) The employee must be paid an amount equal to the employee's salary over a twelve week period.
- 103 Payment of accrued entitlements**
- (1) This section applies to a public service employee if the employee's employment terminates for any reason.
 - (2) Subject to other provisions of this Act, a public service employee may 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.
- 104 Deduction of amount if notice not given**
- (1) This section applies to a public service employee if:
 - (a) the employee resigns under section 83 or voluntarily retires under section 85; and
 - (b) the employee gives the Chief Secretary less than the required period of notice of the resignation or retirement under section 83 or 85.
 - (2) The Chief Secretary may deduct from the payment of the employee's accrued entitlements under section 103 an amount equal to the employee's salary over the period of notice the employee failed to give.

PART 8 – PUBLIC SERVICE APPEALS BOARD

Division 1 – Administrative matters

105 Election of member and term of office

- (1) The election of the member of the Board must be conducted in accordance with the rules that may be prescribed by Cabinet.
- (2) The maximum term that a member, other than the Chairman, may serve on the Board is 3 years.

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

107 Allowances for members

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

Division 2 – Appeals

108 Grounds of appeal

- (1) Subject to this Act, a public service employee is entitled to appeal against any of the following decisions:
 - (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.

- (2) An employee is not entitled to appeal against a decision to appoint or promote a person to a position unless:
 - (a) the employee was an applicant for that position; and
 - (b) the movement of the employee to that position would have been a promotion.
- (3) The only ground of appeal in relation to a decision to appoint or promote a person is that the employee appealing has more merit for that position than the person who was appointed or promoted.
- (4) Where an employee has appealed against a decision to appoint or promote another person to a position, the appeal lapses if:
 - (a) the employee is promoted to a position of the same or an equivalent grade;
 - (b) the appointment or promotion of the other person is cancelled; or
 - (c) the position becomes vacant.

109 Starting an appeal

- (1) A person (the 'appellant'), may begin an appeal by lodging a notice of appeal with the Chief Secretary within seven days:
 - (a) if the person receives an information notice for a decision made under section 108 – the day the person receives the notice; or
 - (b) if the person does not receive an information notice for a decision made under section 108 – the day the person becomes aware of the decision provided that the time has not exceed twenty one days after the date on the information notice.
- (2) However, on application by the person, the Board may extend the time for lodging the notice.
- (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 seven days after receiving it.

110 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 seven days before the appeal is heard.

111 Procedure for appeal

- (1) At the hearing of the appeal, a quorum consists of two 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 speedily 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.

112 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 or body who made the decision for re-determination.

113 Orders for reinstatement or compensation

- (1) This section applies if the Board sets aside a decision to:
 - (a) terminate the appellant's employment; or
 - (b) abolish a public service position.
- (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 the position has been abolished or it is otherwise not practicable to reinstate the person – to be paid an amount not more than the salary to which the appellant was entitled for the period of three months immediately before the appellant's termination date.
- (3) If the appellant is re-instated, the appellant is taken to have been on leave without pay for the period between the appellant's termination date and the reinstatement.

114 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 113.

115 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 re-determination.

(2) The Board may make an order for costs in favour of the appellant.

116 Reasons for decision

Within seven 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 113, 114 or 115.

117 Restriction on challenge of decision of Board

(1) Proceedings before the Board must not be held bad for want of form.

(2) No proceedings or decision of the Board may be challenged in any Court, except on the ground of lack of jurisdiction.

(3) Despite any other law, no Court has jurisdiction to hear and determine any matter arising from or concerning the Board save for the matter referred to in subsection (2) and any matter concerning Part II of the Constitution of Nauru.

PART 9 – SAVINGS AND TRANSITIONAL PROVISIONS

118 Repeal of Public Service Act 1998

The *Public Service Act* 1998 is repealed.

119 Definition

‘changeover day’ means the day this Act comes into force and this Part commences.

‘repealed Act’ means the *Public Service Act* 1998.

120 Existing officers and employees - general

(1) Subject to any provisions in this Act, a person who was an officer or employee under the repealed Public Service Act

immediately before the changeover date is taken to be a public service employee under this Act.

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

121 Existing Secretary

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

122 Existing contracts of employment

- (1) This section applies if a person, other than a Secretary, was employed under the repealed Public Service Act under a contract of employment immediately before the changeover day.
- (2) The contract of employment is deemed to have been made under this Act between the person and the Government and subject to any amendments made by this Act.

- (3) If the person was a public service employee immediately before the changeover day, the employment of that person under this Act is taken to be on contract for a fixed term.

123 Existing temporary employees

- (1) A person who was employed under the repealed Public Service Act as a temporary employee immediately before the changeover day is taken to be a temporary employee under this Act.
- (2) The person's employment and conditions of employment are not affected by the repeal of the Public Service Act.
- (3) If there is doubt about whether a person is an existing officer, a Secretary may, if the person asks, declare the person to be an existing public service employee.
- (4) On making the declaration, subsections (1) and (2) are taken to have always applied to the person.

124 Existing rulings and decisions

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

125 Existing disciplinary action

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

126 Existing suspensions

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

127 Reference to repealed Act

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

128 Corresponding approvals, decisions and notices

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

129 Transitional regulations

- (1) Cabinet may make regulations that 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.

- (4) This section expires twenty four months after the commencement date of this Act.

PART 10 - MISCELLANEOUS

130 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 under this Act; and
 - (c) provide for additional leave entitlements; and
 - (d) provide exemptions, conditional or absolute, from the application of a provision of this Act; and
 - (e) provide the procedure for investigating and determining charges under this Act; and
 - (f) provide for any other matters.
- (3) The Regulations may:
- (a) be of general application or vary in their application according to prescribed factors; and
 - (b) give a person discretion to decide a matter.

SCHEDULE

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.