



REPUBLIC OF NAURU
Public Service Act 1998

Act No. 5 of 1998

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REPUBLIC OF NAURU

Public Service Act 1998

Act No. 5 of 1998

An Act relating to the Public Service of the Republic

Certified on 19 August 1998

Be it enacted by the Parliament of Nauru as follows:

PART I – PRELIMINARY

1 Short title

This Act may be cited as the *Public Service Act 1998*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Cabinet by notice in the Gazette.¹

3 Interpretation

(1) In this Act, unless the contrary intention appears:

‘Board’ means the Public Service Appeals Board;

‘Chief Secretary’ means the person for the time being appointed to the office of Chief Secretary under Article 25 of the Constitution;

‘classification’ means the arrangement of officers and positions in Divisions, and includes the allotment to officers and positions of salaries or limits of salary according to the value of the work;

¹ Cabinet fixed 1 October 1998 as the date of commencement (GN No. 234/1998).

'Department' means a Department of the Public Service established by the Minister, but does not include a Department which is abolished by the Minister or in lieu of which another Department is established;

'Division' means a division of the Public Service;

'efficiency' means special qualifications and aptitude for the discharge of the duties of an office, together with merit, diligence and good conduct and **'efficient'** has a corresponding meaning;

'employee' means a person appointed under section 21, but does not include an officer;

'Head of the Department', in relation to a Department, or to an officer or employee employed in the Department, in connection with which the term is used or is applicable, means the person for the time being holding an office which the Chief Secretary has determined constitutes the occupant the Head of the Department;

'holiday' means a day observed as a holiday under section 37;

'officer' means a person appointed under Division 3 of Part II;

'Public Service Appeals Board' means the Public Service Appeals Board established under Article 70 of the Constitution.

- (2) A reference in a provision of this Act to the salary payable to an officer shall be read as a reference to salary at the rates or in accordance with the scale of rates fixed by the Minister under section 22(1) payable to the officer under Part III as varied in accordance with section 22(2).

4 Exempt officers and employees

- (1) The Chief Secretary may, by order in writing under his hand, declare that the provisions of this Act specified in the order shall not apply to an officer or employee, or to officers and employees included in a class of officers or employees, specified in the order.
- (2) An order under subsection (1) may be expressed to be in force for a period specified in the order and, in that case, the order shall be in force for that period only.

- (3) The Chief Secretary may determine the terms and conditions of employment (including rates of payment) of an officer or employee in relation to whom an order is in force under subsection (1) but no such determination shall be made in respect of a matter dealt with in a provision of this Act which the order does not declare not to apply to the officer or employee.

5 Delegation

- (1) The Chief Secretary may, in relation to a matter or class of matters, by writing under his hand, delegate all or any of his powers and functions under this Act (except this power of delegation).
- (2) A power or function so delegated may be exercised or performed by the delegate with respect to the matters, or to the matters included in the class of matters, specified in the instrument of delegation.
- (3) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Chief Secretary.

PART II – COMPOSITION AND ADMINISTRATION OF THE PUBLIC SERVICE

Division 1 – General

6 Composition of the Public Service

The Public Service consists of:

- (a) officers whose service is, subject to this Act, of a permanent nature; and
- (b) employees appointed to provide temporary assistance.

7 Reports by Chief Secretary

- (1) The Chief Secretary shall furnish to the Minister, for presentation to the Cabinet, reports or recommendations on all matters required to be dealt with by the Minister under this Act or referred to the Chief Secretary by the Minister.

- (2) The Chief Secretary shall furnish to the Minister, at least once in each year, a report on the conditions and efficiency of the Public Service.
- (3) The Minister may direct that a report under subsection (2) need not be furnished.

Division 2 – Divisions and Offices of the Public Service

8 Divisions of the Public Service

- (1) Officers of the Public Service shall be divided into three divisions, namely, the First Division, the Second Division and the Third Division.
- (2) For the purposes of Article 68(3) of the Constitution the Cabinet may specify offices by notice in the Gazette.
- (3) The First Division consists of the persons for the time being holding or acting in the office of a person in charge of a Department and such other offices as are prescribed under subsection (2).
- (4) The Second Division includes officers who are required to exercise executive, professional or clerical functions in offices of the Public Service which the Chief Secretary directs to be included in that Division.
- (5) The Third Division includes officers whom the Chief Secretary directs to be included in that Division.
- (6) An unattached officer shall be deemed to be included in the Division in which the officer was included immediately before he became an unattached officer.

9 Departmental Heads

- (1) The Head of the Department shall be responsible for the general working and efficient conduct of his Department.
- (2) The Head of the Department shall report to the Chief Secretary, whenever the necessity arises:
 - (a) any alterations necessary or expedient in his opinion for the more economical, efficient or convenient working of his Department or a branch of his Department; and

- (b) any alterations necessary in his opinion in the salaries or allowances of any officers under his control; and
- (c) any matter in relation to an officer or the work of a branch of his Department with which he thinks it desirable for the Chief Secretary to be acquainted.

10 Creation and abolition of offices

- (1) The Minister may:
 - (a) create a new office; or
 - (b) abolish an office; or
 - (c) raise or lower the classification of an office; or
 - (d) alter the designation of an office.
- (2) Where the classification of an office is altered, the office shall be deemed to be vacant and the officer who occupied the office immediately before the alteration shall become an unattached officer.
- (3) Where the Minister makes the same alteration of the classification of all offices having the same designation and classification, the Minister may, by notice published in the Gazette, direct that subsection (2) shall not apply and in that case that subsection does not apply.
- (4) Where:
 - (a) the Minister makes an alteration of the classification of an office in a case where there is no other office having the same designation and classification as that office; and
 - (b) the Minister declares, by notice published in the Gazette, that that alteration is related to an alteration in respect of which a notice is or has been published under subsection (3);

the Minister may, in that first-mentioned notice, direct that subsection (2) shall not apply in relation to that first-mentioned alteration and, in that case, that subsection does not apply.
- (5) Notice of the creation of a new office, the abolition of an office, or the variation of the classification or designation of an office under this section shall be published in the Gazette.

11 Temporary positions

- (1) The Chief Secretary may, after receiving a report from the Head of the Department, provide a temporary position in the Department.
- (2) The Chief Secretary may, in his discretion, cancel a temporary position.

Division 3 – Appointments and Filling of Vacancies

12 Appointments

All appointments to the Public Service shall be made by the Chief Secretary.

13 Admission to the Public Service

- (1) A person is not eligible for appointment to an office in the Public Service after the commencement of this Act unless:
 - (a) he is:
 - (i) a Nauruan; or
 - (ii) where the Chief Secretary has given a certificate under subsection (2) that a vacant office cannot be filled efficiently by the appointment of a Nauruan to the office and has specified the name of a resident of Nauru (not being a Nauruan) as a person who is a suitable person to be appointed to the office– the person whose name is so specified; or
 - (iii) where the Chief Secretary has given a certificate under subsection (2) that a vacant office cannot be filled efficiently by the appointment of a Nauruan to the office and has certified that there is no person resident in Nauru who is a suitable person to be appointed to the office– any other person; and
 - (b) he produces evidence to the satisfaction of the Chief Secretary as to:
 - (i) his health and physical fitness for appointment to that office; and
 - (ii) his possession of the qualifications required for appointment to that office as specified in the

notification under section twenty of the Act in relation to that office; and

- (iii) his date of birth; and
 - (c) he makes and subscribes an oath or affirmation in the form in the First Schedule to this Act.
- (2) Where the Chief Secretary is satisfied that a vacant office cannot be filled efficiently by the appointment of a Nauruan to the office, the Chief Secretary may so certify by instrument under his hand and may also certify in that instrument:
- (a) that a specified resident of Nauru who is not a Nauruan is a suitable person to be appointed to the office; or
 - (b) that there is no person resident in Nauru who is a suitable person for appointment to the office.

14 Appointments to be on probation

- (1) Every appointment to the Public Service shall be probationary until confirmation.
- (2) The period of probation shall be twelve months, but the Chief Secretary may extend the period for a further twelve months or part of twelve months.
- (3) The services of a probationer may be dispensed with by the Chief Secretary at any time during the period of probation or during any extended period.
- (4) The Chief Secretary may dispense with the period of probation in special cases in which the Chief Secretary thinks it expedient or desirable in the interests of the Republic to do so.
- (5) The Chief Secretary may require a probationer to undergo a course of training before confirmation of appointment and, in such a case, the period of probation may be extended until the completion of the course in training.
- (6) During the month immediately preceding the expiration of the period of twelve months on probation, the Chief Secretary shall confirm or annul the appointment of the probationer, or extend the period of probation in accordance with this section.
- (7) Where the Chief Secretary does not confirm or annul the appointment of a probationer, or extend his period of probation, as provided in subsection (6), the appointment of the

probationer shall be deemed to be confirmed at the expiration of that period of twelve months on probation.

- (8) Where the period on probation is extended in accordance with this section, the Chief Secretary may confirm or annul the appointment of a probationer at any time during the extended period of probation.
- (9) Where the Chief Secretary does not confirm or annul the appointment of a probationer as provided in subsection (8), the appointment of the probationer shall be deemed to be confirmed at the expiration of that extended period of probation.
- (10) Unless otherwise directed by the Chief Secretary, an annulment of appointment takes effect from the date on which the probationer is directed to cease to perform the duties of the office.

15 Vacancies

- (1) Where a vacancy exists in an office in the Public Service and, in the opinion of the Chief Secretary, it is necessary to fill the vacancy, the Chief Secretary may direct that a notification be published in the Gazette inviting applications for transfer, promotion or appointment and setting out the qualifications required for the office.
- (2) A vacancy in an office in the Public Service shall be filled:
 - (a) by the Chief Secretary transferring or promoting an officer to the vacant office; or
 - (b) by the appointment to the vacant office of a person from outside the Public Service.
- (3) A person from outside the Public Service shall not be appointed to a vacant office unless the Chief Secretary has certified by writing under his hand that the vacant office cannot be suitably filled by the transfer or promotion of an officer.
- (4) The method of selection of a person to be transferred, promoted or appointed to a vacant office shall be as prescribed.
- (5) Until the regulations have prescribed the method of selection under subsection (4), the method of selection shall be as determined by the Chief Secretary.

- (6) The promotion or transfer of an officer or the appointment of a person as an officer to a vacant office shall be published in the Gazette.

16 Permission to decline promotion or transfer

- (1) The Chief Secretary may permit an officer to decline a promotion or transfer without prejudice to his right of future promotion or transfer.
- (2) Where the Chief Secretary makes an order directing the transfer of an officer from one office to another of equal or higher classification, the officer shall comply with the order.

17 Selection of officers for promotion

In the selection of an officer for promotion to a vacant office, consideration shall first be given to the relative efficiency of the officers available for promotion and, in the event of equality of efficiency of two or more officers, then to the relative seniority of those officers.

18 Seniority

- (1) For the purposes of this Act, the relative seniority of officers shall, subject to this section, be determined according to the dates of their appointments as officers to the Public Service whether before or after the commencement of this Act.
- (2) The respective seniorities of two or more officers who are or were appointed on the same day shall be determined by the Chief Secretary.

19 Qualifications for particular offices

The Chief Secretary may, by instrument in writing published in the Gazette, determine that an officer shall not be transferred or promoted to a specified office, or to an office included in a specified class of offices, unless the officer possesses such qualifications, and complies with such conditions, as are specified.

20 Appeals against promotions

- (1) The promotion of an officer to a vacant office shall be provisional and without increase in salary pending confirmation

of the promotion and shall be subject to appeal as provided in this section.

- (2) An officer who considers that he should have been promoted to a vacant office in preference to the officer provisionally promoted may appeal to the Public Service Appeals Board on the ground that:
 - (a) he is more efficient than the officer provisionally promoted; or
 - (b) he is just as efficient as, and is senior to, the officer provisionally promoted.
- (3) An appeal shall be in writing setting out the ground of appeal and shall be lodged with the Chief Secretary within seven days after the date on which the provisional promotion is notified in the Gazette.
- (4) Upon an appeal being made, the Board shall inquire into the claims of the appellant and those of the officer provisionally promoted and shall determine the appeal.
- (5) Where the appeal is upheld, the appellant shall be promoted to the vacant office and the provisional promotion shall be cancelled.
- (6) Where the appeal is disallowed, or where no appeal is made in accordance with this section, the provisional promotion shall be confirmed with effect from the date on which the provisional promotion was notified in the Gazette.
- (7) Notwithstanding anything contained in this section, where the Chief Secretary is satisfied that:
 - (a) the office is unnecessary; or
 - (b) the office can be filled by the transfer of another officer; or
 - (c) in the circumstances, further notification of the vacant office is desirable;

he may, at any time after the notification of a provisional promotion to a vacant office and before the promotion has been confirmed, cancel the provisional promotion.

- (8) The powers of the Chief Secretary under subsection (7) may be exercised whether an appeal has been made or not.

Division 4—Temporary Employment

21 Temporary employees

- (1) Where he is satisfied that temporary assistance is required, the Chief Secretary may engage persons for temporary employment.
- (2) A person shall not be continued in temporary employment beyond the first period of six months or any further period of six months of that employment unless the Chief Secretary extends his employment for a further period of six months.
- (3) Subject to any provisions of this Act which are expressly applicable to employees, the hours and conditions of work and the rates of pay of employees and the allowances and leave of absence that may be granted to them, shall be as determined by the Minister.
- (4) An employee employed for a continuous period of twelve months or more may be granted leave of absence for recreation, or on account of illness, on the same terms and conditions as that leave of absence may be granted to officers.
- (5) Subject to subsection (6), the services of an employee may be dispensed with by the Chief Secretary or the Head of the Department in which the employee is employed at any time upon giving to the employee fourteen days' notice of his dismissal or payment of fourteen days' pay in lieu of notice.
- (6) Where an employee is, in the opinion of the Head of the Department in which the employee is employed, absent from duty without authority, or inefficient or guilty of misconduct which, if the employee were an officer, would be a disciplinary offence, the Chief Secretary may:
- (a) dismiss the employee without the notice, or the payment in lieu of notice, referred to in subsection (5); or
 - (b) fine the employee an amount not exceeding \$40.

PART III – SALARIES AND ALLOWANCES

Division 1 – Salaries

22 Salaries of officers

- (1) Officers shall be paid salaries at the rates, or in accordance with the scales of rates, as are fixed from time to time by the Minister and notified in the Gazette.
- (2) The salaries so payable to officers shall be varied by the amount of any variation in the basic wage for Nauruans as determined from time to time by the President and notified in the Gazette (that is to say, that wage or that part of a wage determined by the President as the basic wage for an adult Nauruan, without regard to any circumstance pertaining to the work upon which he is employed).
- (3) Notwithstanding subsection (1), the Minister may from time to time by notice in the Gazette vary or reduce any rate, or the basis of any scale of rates, of salaries payable to officers.

23 Salary on appointment

The salary payable to an officer upon his appointment to the Public Service shall be such salary, within the limits of salary fixed for the office to which the officer is appointed, as the Chief Secretary determines.

24 Increments

- (1) Where a scale of rates of salary fixed under section 22 is applicable in relation to an officer, the officer may, subject to this section, be paid increments of salary in accordance with that scale.
- (2) An officer is not entitled to receive an increment of salary until he has received salary without the increment for not less than twelve months.
- (3) The date from which an officer is entitled to receive an increment of salary is not affected by:
 - (a) variations of rates of salary according to variations in the basic wage for Nauruans; or

- (b) an alteration of the classification of the office occupied by the officer, being an alteration in relation to which a notice is published in the Gazette under section 10(3) or 10(4).
- (4) If, having regard to the conduct, diligence, efficiency or attendance for duty of an officer during the period after which he is entitled to receive an increment of salary, the Chief Secretary is of the opinion that the officer should not immediately receive that increment, the Chief Secretary may, by order in writing, direct that the increment shall not be paid until the expiration of such period as he thinks fit, and, in that case, payment of the increment shall be deferred until the expiration of that period.
- (5) An officer in relation to whom the Chief Secretary has made an order under subsection (4), may appeal to the Public Service Appeals Board and the Board shall, after enquiry, determine the appeal.

25 Salaries of officers on promotion or transfer

- (1) Unless otherwise determined by the Chief Secretary, the salary to be paid to an officer upon promotion to a higher office shall not exceed the minimum salary of the higher office.
- (2) Where an officer is transferred or promoted and is in receipt of salary above the minimum salary fixed for the office to which he is transferred or promoted, his transfer or promotion shall, unless otherwise determined by the Chief Secretary but subject to subsection (3), be effected without reduction in salary.
- (3) Unless otherwise determined by the Chief Secretary, an officer to whom subsection (2) applies shall not be paid salary in excess of the maximum salary of the office to which he is transferred or promoted.
- (4) The Chief Secretary may determine that an officer transferred or promoted with a salary at or exceeding the minimum salary of the office to which he is transferred or promoted shall not be eligible for advancement in salary until a date fixed by the Chief Secretary, being a date not later than the date upon which he would have been eligible for advancement in salary if he had been transferred or promoted at the minimum salary of the office.
- (5) Where an officer is transferred or promoted from one office to another with differing rates of incremental advancement, the Chief Secretary may determine the salary to be paid to the officer upon transfer or promotion and the date, for purposes of

granting of increments, from which that salary shall be deemed to have been paid.

26 Conditions of advancement

- (1) The Chief Secretary may, by notice in writing published in the Gazette:
 - (a) determine that an officer occupying an office specified in the determination shall, upon compliance with such conditions as are so specified, be paid salary at such rate as is so specified, being salary at a rate not exceeding the maximum salary of that office; and
 - (b) determine that an officer shall not be paid salary at a rate exceeding such rate as is specified in the determination unless he has complied with such conditions as are so specified.
- (2) A determination under subsection (1) has effect notwithstanding section 24.

Division 2 – Payment for Overtime and Sunday and Holiday Duty

27 Definitions

In this Division:

‘normal hours of duty’ means, in relation to an officer, the hours of duty provided for the officer under section 34;

‘officer’ includes an employee.

28 Overtime

- (1) Officers may, where it is necessary to bring up arrears of work or to meet pressure of business, be required to perform duty after the normal hours of duty.
- (2) An officer shall, when required by the Head of the Department, remain after the normal hours of duty to complete work considered necessary to be done on the same day.
- (3) Where attendance beyond the normal hours of duty is considered necessary and that attendance may involve the taking of time off in accordance with this section, the Head of

the Department shall forthwith report, in writing, the circumstances to the Chief Secretary.

- (4) The report shall specify the officer or officers to be employed and the probable duration of the overtime and the Chief Secretary, where satisfied that the overtime is necessary, may authorise the working of overtime.
- (5) In the case of emergency, the Head of the Department may authorise directly the working of overtime and in such a case he shall forthwith report, in writing, the circumstances to the Chief Secretary.
- (6) Where it is necessary for an officer to work beyond the normal hours of duty to meet an emergency and it is not practicable to obtain prior authority, the officer shall, immediately upon the completion of the work, report in writing, the circumstances to the Head of the Department.
- (7) Upon receipt of a report under subsection (6), the Head of the Department shall forward the report, with his comments and recommendations, to the Chief Secretary who, where he is satisfied that it was necessary for the officer so to work, shall authorise the recording as overtime of the work performed by the officer beyond the normal hours of duty.
- (8) At the end of each fortnightly pay period, the Head of each Department shall furnish to the Chief Secretary a return showing:
 - (a) all overtime worked during the period; and
 - (b) a certificate by the Head of the Department that the overtime has been authorised under this section.
- (9) Overtime shall be recorded and, subject to the approval in each case of the Chief Secretary, or of an officer whom he authorises for the purpose, the officer shall be granted time off work equivalent to the period of overtime worked.
- (10) Any period of absence from duty on leave of absence granted to an officer under this Act or the period during which he is absent from duty on a holiday during the period in respect of which he claims time off under this section shall, in the calculation of the number of hours to be worked before time off for overtime worked can be claimed, be added to the number of hours actually worked by the officer in that period.

(11) Officers:

- (a) in receipt of annual salary at a rate exceeding the rate of annual salary determined, for the purpose of this subsection, by the Minister and notified in the Gazette; or
- (b) not working under close supervision; or
- (c) whose hours of duty cannot be definitely determined,

shall not be eligible to receive time off for overtime worked except in such special cases as the Chief Secretary approves.

- (12) In this section, '***overtime***' means authorised duty in a week in excess of the normal hours of duty per week and performed after the normal hours of attendance on any day, but does not include duty performed on Sunday or on a holiday.
- (13) Where an officer is recalled for duty after he has ceased work for the day, the period of duty shall, for the purpose of recording overtime, be deemed to include the time necessarily spent in travelling to his place of duty to perform the duty for which he was recalled and returning to his home.
- (14) Where an officer is required to perform duty above and below the normal hours of duty, overtime shall be the aggregate time worked in excess of the normal hours of duty per week.

29 Sunday duty

- (1) Subject to this section, an officer who is required to perform duty on a Sunday shall, in addition to his salary for his normal hours of duty per week, be paid in respect of that duty in accordance with this section.
- (2) Payment for duty performed on a Sunday by an officer, other than a shift worker, shall be at double his hourly rate of salary.
- (3) Where an officer who is a shift worker performs scheduled duty on a Sunday and the period of that duty and the duty performed by him in the six days preceding that Sunday does not exceed his normal hours of duty per week, payment for the Sunday duty shall be at his normal hourly rate of salary.
- (4) Where the whole or any part of the duty performed on a Sunday by an officer who is a shift worker is in excess of his normal hours of duty per week, payment for the duty performed on that Sunday that is in excess of his normal hours of duty per week

shall, subject to subsection (5), be at double his hourly rate of salary.

- (5) For the purposes of this section, the maximum hourly rate of payment for duty performed on a Sunday shall be the rate determined by the Minister and notified in the Gazette.
- (6) In computing payments for duty performed on a Sunday:
 - (a) scheduled duty ending at two o'clock in the morning or earlier on the Sunday shall not be paid for at the rate of double time unless the officer is again required to be on duty on the same day; and
 - (b) scheduled duty commencing at ten o'clock in the evening or later on a Sunday shall not be paid for at the rate of double time unless the officer has already been on duty on the same day.

30 Holiday pay

- (1) The Chief Secretary may require any officer to work, in the public interest, for the whole or part of a day observed as a holiday under section 37.
- (2) An officer who is required to work on a holiday shall be granted, in addition to his normal salary:
 - (a) where the officer's hours are arranged by schedule and his hours of duty under that schedule commence or cease on that holiday – an amount calculated at the hourly rate prescribed in subsection (4); and
 - (b) where the officer's hours are arranged by schedule, but the duty performed on the holiday is outside that schedule – an amount calculated at twice that hourly rate and
 - (c) where an officer whose hours are not arranged by schedule performs duty on the two days before and the two days after the performance of the holiday duty – an amount calculated at twice that hourly rate; and
 - (d) in any other case – an amount calculated at that hourly rate.

- (3) The amount calculated in respect of an officer under subsection (2) shall be not less than half a day's salary at the rate applicable to the officer.
- (4) For the purposes of this section, where the officer's rate of salary is not an hourly rate, the hourly rate of salary shall be ascertained in accordance with the following formula:

$$\frac{\text{Annual salary}}{313} \times \frac{6}{\text{normal hours of duty per week}}$$

- (5) For the purpose of a calculation under subsection (4), the normal hours of duty per week for an officer shall be not less than 35 hours or such other rate as the Minister determines by notice in the Gazette under section 34.
- (6) Where an officer performs on a holiday the duties of an office having a higher classification than his own, the rate of salary of that officer shall, for the purposes of this section, include any allowance payable for the performance of those duties.

Division 3 – Allowances

31 Higher duties allowance

- (1) An officer may be called upon to perform temporarily the duties of an office having a higher classification than his own.
- (2) Subject to this section, an officer who performs all the duties of a higher officer shall be paid in respect of the performance of those duties an allowance equal to the amount of the difference between his salary and the minimum salary of the higher office.
- (3) An officer who performs the duties of a higher office for a period of less than one day shall not be paid an allowance under this section, and that period shall not be included in any period of service in the higher office for the purpose of this section.
- (4) Where an officer temporarily performs the duties of a higher office for a continuous period of more than twelve months after the date on which he first commenced to perform those duties, he may, after the completion of each period of twelve months' performance of those duties, be granted increments of allowance of the same amounts as are payable as increments of salary to an officer occupying the higher office.

- (5) For the purposes of subsection (4), the performance of the duties of another office having the same classification as, or a higher classification than, the higher office, shall be deemed to be performance of the duties of the higher office.
- (6) For the purpose of determining the date from which an increment in an allowance is payable under this section, and for the purpose of determining whether the performance of the duties of a higher office has been for a continuous period, an officer who performs the duties of a higher office immediately before he is absent from duty on:
- (a) a public holiday; or
 - (b) leave of absence for recreation; or
 - (c) leave of absence on account of illness not exceeding two weeks in any one period of twelve months of the performance of duties in the higher office; or
 - (d) other authorised leave not exceeding in all six days in any twelve months,

shall be deemed to have performed the duties of a higher office if the officer resumes duty in the same office or another office of higher classification than his own immediately after the expiration of the absence.

- (7) Where an officer who is performing the duties of a higher office is permanently promoted to that office, he shall not suffer any reduction in his remuneration and he may receive the same increments as if he had, during the period of his temporary service in the higher office, been the permanent occupant of that office.
- (8) Where an officer:
- (a) is permanently promoted to an office; and
 - (b) before his promotion, has performed the duties of a higher office of the same classification as the office to which he is promoted but is not performing those duties when he is promoted,

the period for which he performed those duties shall be taken into account for the purposes of his incremental advancement in the same manner as it would have been taken into account under subsection (4) if he had not been promoted.

- (9) Where an officer who is, or has been, performing the duties of a higher office is promoted to an office which is of lower classification than the office the duties of which he is or has been temporarily performing, his remuneration on promotion shall be the same as the remuneration which he would have received had his period of service in the higher office been service in the office of lower classification.
- (10) Where an officer performs the duties of a higher office and is in receipt of a salary above the minimum salary payable to the occupant of the higher office, he shall, upon commencing to perform the duties of the higher office, be paid allowance at such rate as will cause the total remuneration to be the same as that which would have been payable if he had been permanently promoted to the higher office.
- (11) Where an officer temporarily performing the duties of a higher office does not perform all the duties of that office, he may be paid in respect of the performance of those duties an allowance of such amount and subject to such conditions as the Chief Secretary determines.
- (12) An allowance granted under this section shall be regarded as salary for the purpose of calculation of travelling allowance.

32 Travelling and car and cycle allowances

- (1) Where an officer is required to travel on duty to or to attend for duty at a place outside Nauru, he shall be paid a travelling allowance at such rates as the Minister determines.
- (2) An officer who uses his own motor truck, motor car, motor cycle or bicycle for official purposes or when travelling on public business, or an officer whose motor truck, motor car, motor cycle or bicycle is used for those purposes, may, on the authority of the Chief Secretary, be paid an allowance for that use at such rates and in accordance with such conditions as the Chief Secretary determines.

33 Special allowance

The Chief Secretary may in special circumstances approve the payment to an officer of a special allowance at such rates as the Minister determines.

PART IV – HOURS OF ATTENDANCE, HOLIDAYS AND LEAVE OF ABSENCE

Division 1 – Hours of Attendance and Holidays

34 Hours of attendance

- (1) Subject to subsections (2) and (3), except in the case of a holiday, the hours of duty for officers and employees other than teachers and shift workers shall be worked between the hours of nine o'clock in the morning and one o'clock in the afternoon, and two o'clock in the afternoon and five o'clock in the afternoon, on Monday, Tuesday, Wednesday, Thursday and Friday of each week.
- (2) Notwithstanding subsection (1), the hours of duty for teachers, shift workers and any other class of officers or employees shall be as determined by the Minister by notice in the Gazette.
- (3) Notwithstanding subsection (1), the Minister may, by notice in the Gazette, vary the hours of duty in that subsection, either generally or in respect of any category or class of officers and employees specified in the notice.

35 Records of attendance

- (1) The Chief Secretary shall determine the means of recording the attendance of officers and employees.
- (2) The Head of the Department is responsible, using the means of record determined by the Chief Secretary, for the recording of attendance of officers and employees in that Department in accordance with this Act and such directions as are given to him by the Chief Secretary.
- (3) Every officer and employee, other than an officer of the First Division or an officer or employee specially exempted by the Chief Secretary, shall record daily, by the means of record determined by the Chief Secretary, the actual times of his arrival at, and his departure from, his place of duty.
- (4) The exemption of an officer or employee from the obligation to record his attendance does not authorise that officer or employee to leave his place of duty except on official business within his hours of duty.

- (5) The means of record of attendance shall be available each day at the commencement of the hours of duty of officers and employees and shall be made available at the time fixed for the cessation of duty but where practicable, not before that time.

36 Late attendances and absences

- (1) Where an officer or employee arrives on duty later than ten minutes after the time fixed for the commencement of duty, he shall not record his attendance but shall report himself to the Head of the Department or, in his absence, to a person appointed by him for that purpose and give an explanation for his late attendance.
- (2) The Head of the Department or, in his absence, the person appointed by him for the purpose shall record the time of reporting and the explanation given by an officer or employee under subsection (1).
- (3) The Head of the Department or, in his absence, the person appointed by him for the purpose shall duly record in the record of attendance any period during which an officer or employee is absent otherwise than on official business.
- (4) If an officer or employee is prevented by illness or other emergency from attending for duty, he shall immediately report the fact to the Head of the Department or, in his absence, to the person appointed by him for the purpose and he shall furnish such evidence of the nature of the illness or emergency as the Chief Secretary considers necessary.

37 Holidays

- (1) Subject to this section, the following days are holidays in the Public Service:
 - (a) 1st January;
 - (b) Independence Day, namely 31st January;
 - (c) 1st February;
 - (d) Good Friday and the next following Monday and Tuesday;
 - (e) Constitution Day, namely 17th May;
 - (f) Angam Day, namely 26th October;

- (g) Christmas Day, namely 25th December;
- (h) 26th December.
- (2) Whenever a day specified in subsection (1) except Independence Day and Christmas Day, falls on a Saturday or a Sunday, the following Monday is a holiday.
- (3) Whenever Independence Day or Christmas Day falls on a Saturday or a Sunday, the following Monday and Tuesday are holidays.
- (4) In addition to the days specified in subsection (1) of this section, the President may, by notice published in the Gazette, appoint a day or part of a day to be a holiday observed by officers and employees.
- (5) The President may, in any year, declare that a day which would otherwise under this section be observed as a holiday should not be a holiday in that year by a notice published in the Gazette not less than seven days before the day so declared, and that day shall cease to be a holiday in the Public Service in that year accordingly.
- (6) The President may in the notice referred to in subsection (5), appoint another day to be a holiday in that year in substitution for the day declared in that notice not to be a holiday in that year.

Division 2 – Recreation Leave

38 Recreational leave

- (1) Subject to this Act, the Chief Secretary may grant to every officer and employee leave of absence for recreation for a period or periods not exceeding in the whole twenty days (exclusive of Sundays, Saturdays and holidays) in respect of each year of his service.
- (2) The Chief Secretary shall, wherever practicable, make arrangements whereby each officer can be granted leave of absence for recreation annually.
- (3) Where it is not practicable for an officer to take leave of absence for recreation in the year in which it accrues, the Chief Secretary may direct, by writing under his hand, that the leave of absence for recreation in respect of that year may be granted in the following year.

- (4) If an officer resumes duty before the expiration of a period of leave of absence for recreation, the Chief Secretary may direct, by writing under his hand, that the unexpired portion of that period of leave may be added to the next succeeding period of leave of absence for recreation granted to the officer.
- (5) Leave of absence for recreation shall not be accumulated for more than two years.
- (6) Where an officer resigns, is retired or dies during a period of leave of absence for recreation, the Chief Secretary may authorise the payment of a sum not exceeding the salary that would, but for his resignation, retirement or death, have been payable to the officer for the unexpired period of that leave of absence.
- (7) In the foregoing provisions of this section, '**officer**' includes an employee who has been employed for a continuous period of twelve months or more but does not include an officer who is a teacher in the Department of Education.
- (8) An officer or 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.

39 Deductions from recreation leave on account of other absences

- (1) Where an officer has, during the period of twelve months immediately preceding the date from which he is granted leave of absence for recreation, been absent from duty for more than 51 working days, the period of leave of absence for recreation which may be granted to the officer shall, subject to this section, be reduced by one-twelfth of the period of recreation leave to which the officer is entitled under section 38 for each 26 working days (other than the first 26 days) on which he has been absent from duty during that period.
- (2) Where an officer has, during the period of twelve months immediately preceding the date from which he is granted leave of absence for recreation, been absent with leave granted under section 40, 46, 49, 50 or 51, the period for which the officer was so absent from duty shall not be taken into account for the purposes of the subsection (1).

Division 3 – Leave of Absence on Account of Illness

40 Leave of absence on account of illness

- (1) The Chief Secretary may grant to an officer leave of absence on account of illness in accordance with this section.
- (2) Leave granted under this section shall be granted as follows:
 - (a) where the officer is eligible for the grant of a period of leave of absence on full salary – on full salary;
 - (b) where the officer is eligible for the grant of a period of leave of absence on half salary but not on full salary – on half salary;
 - (c) in any other case – without salary.
- (3) Unless the officer produces a certificate from a legally qualified medical practitioner or other evidence approved by the Chief Secretary as to the officer's unfitness for duty, leave granted under this section shall, except as provided in subsection (4), be without salary.
- (4) It shall not be necessary for a medical certificate or other evidence of unfitness for duty to be produced in respect of an absence or absences not exceeding four days in the aggregate in any twelve months.
- (5) An officer is eligible for the grant of leave of absence on account of illness:
 - (a) on full salary for a period equal to the period by which the officer's credit for leave on full salary ascertained in accordance with subsection (8) exceeds the period for which he has been granted leave of absence on account of illness on full salary; and
 - (b) on half salary for a period equal to the period by which the officer's credit for leave on half salary ascertained in accordance with subsection (8) exceeds the period for which he has been granted leave of absence on account of illness on half salary.
- (6) An officer who has been granted leave of absence on account of illness on a day which is a holiday in the Public Service shall, if he was on duty on the working day immediately preceding, or is on duty on the working day immediately following, the holiday,

be credited with leave on full salary for a period equal to the period of the holiday.

- (7) Where an officer who is absent from duty on leave of absence for recreation is ill for a period of not less than four days, the officer may, on the production of a certificate from a legally qualified medical practitioner certifying that the officer has been unfit for duty for the period specified in the certificate, be granted leave of absence on account of illness for that part of the period specified in the certificate which is part of his leave of absence for recreation and the grant of leave of absence for recreation for that part of that period shall be cancelled.
- (8) An officer shall be credited with:
- (a) a period of one week's leave on full salary and a period of one week's leave on half salary on his appointment as an officer; and
 - (b) a period of one week's leave on full salary and a period of one week's leave on half salary on completion of six months' service; and
 - (c) a period of two weeks' leave on full salary and a period of two weeks' leave on half salary on the anniversary of his appointment; and
 - (d) a period of two weeks' leave on full salary and a period of two weeks' leave on half salary in respect of each subsequent period of twelve months of his service as an officer.
- (9) Where the Chief Secretary considers that the absence of an officer is due to an illness caused by the misconduct of the officer or that the officer is absent from duty without sufficient cause, leave of absence with salary on account of illness shall not be granted in respect of the period of absence and the Chief Secretary may determine that the period of absence shall not form part of the officer's service.
- (10) Where the Chief Secretary has occasion to doubt the cause of the illness or the reason for the absence, he may instruct a legally qualified medical practitioner to visit and examine the officer, or may direct the officer to attend on a legally qualified medical practitioner for examination.
- (11) Where an officer is absent from duty on account of illness for a continuous period of thirteen weeks, the Chief Secretary shall not grant further leave of absence under this section unless a

legally qualified medical practitioner approved by the Chief Secretary certifies that the officer is unfit for duty.

- (12) If the Chief Secretary has reason to believe that an officer is in such a state of health as to render him a danger to his fellow officers or employees or to the public or is unfit for duty, he may require the officer to submit himself for medical examination by a legally qualified medical practitioner approved by the Chief Secretary.
- (13) Upon receipt of the medical report, the Chief Secretary may direct the officer to absent himself from his duties until a legally qualified medical practitioner certifies that he is fit to resume duty.
- (14) The period for which an officer is absent under subsection (13) shall be deemed to be a period of leave of absence on account of illness granted under this section.
- (15) The maximum period of continuous leave on account of illness that may be granted under this Division is:
- (a) with salary – 52 weeks; and
 - (b) without salary or with salary and without salary – 78 weeks.
- (16) In this section:

'officer' includes an employee who has been employed for a continuous period of twelve months or more;

'unfit for duty' includes unfit for duty from dental causes.

41 Credits of sick leave after decision to retire an officer and on re-appointment

- (1) An officer shall not be credited with a period of leave of absence on account of illness in respect of his service after a decision to retire him.
- (2) Where an officer who was retired from the Public Service on the ground of illness is re-appointed, he shall be credited upon re-appointment with the leave of absence on account of illness at his credit immediately before his retirement.

Division 4 – Furlough and Payment in Lieu of Furlough

42 Furlough

- (1) The Minister may grant to an officer whose period of service is not less than twelve years, leave of absence for furlough for a period not exceeding three-tenths of one month on full salary or three-fifths of one month on half salary in respect of each completed year of his period of continuous service.
- (2) An officer shall not be granted furlough under subsection (1) for a continuous period exceeding twelve months at any one time.
- (3) Upon the retirement of an officer who is eligible for furlough under subsection (1), the Chief Secretary may, in lieu of granting that furlough, authorise the payment to the officer of a sum not exceeding the amount of salary, calculated at the rate payable to him on the date of his retirement, for a period equal to the period of furlough on full salary which the officer could have been granted under that subsection.
- (4) Upon the death of an officer who, at the date of his death, was eligible for furlough under subsection (1), the Chief Secretary may authorise payment to the dependants of the officer of a sum equivalent to the amount of salary which the Chief Secretary could have authorised to be paid to the officer under subsection (3) if the officer had retired immediately before the date of his death.

43 Long service leave or pay in lieu to officers not entitled to furlough

- (1) The Chief Secretary may grant to an officer who has continued in the Public Service for not less than four years but less than twelve years, immediately prior to his retirement from the Public Service on, or subsequent to, his attaining the age of fifty-five years, leave of absence for furlough on full salary, as follows:—
 - (a) where the period of service of the officer is not less than four years but is less than eight years – two months;
 - (b) where the period of service of the officer is not less than eight years but is less than ten years – three months;
 - (c) where the period of service of the officer is not less than ten years but is less than twelve years – four months.

(2) Where an officer is eligible for leave under subsection (2), the Chief Secretary may, in lieu of granting that leave, authorise payment to the officer, upon his retirement from the Public Service, of a sum not exceeding his salary for a period equal to the period of leave which the officer could have been granted under that subsection.

(3) Where an officer who is less than fifty-five years of age:

(a) retires from the Public Service after not less than four years' service but less than twelve years' service satisfies the Chief Secretary that his retirement is due to ill-health that is permanent and is not due to misconduct or to causes within his own control; or

(b) is retired from the Public Service under section 54 after not less than eight years' service but less than twelve years' service,

the Chief Secretary may authorise payment to the officer of a sum not exceeding his salary for a period equal to the period of leave which the officer could have been granted under subsection (1) if he had attained the age of fifty-five years.

(4) Where, before an officer has completed twelve years' service in the Public Service and either before or after he has attained the age of fifty-five years:

(a) the officer dies; or

(b) the Chief Secretary, after consideration of all the circumstances, directs that the death of the officer be presumed;

the Chief Secretary may authorise payment to the dependants of the officer of a sum equivalent to the amount of salary which the Chief Secretary could have authorised to be paid to the officer under subsection (2) where:

(c) he had retired from the Public Service on the date of his death or, where the Chief Secretary has directed that the death of the officer be presumed, on a date determined by the Chief Secretary; and

(d) in the case of an officer who had not attained the age of fifty-five years at that date, he had attained that age.

- (5) The official conduct record of an officer shall be taken into consideration in determining whether, and to what extent, leave of absence shall be granted, or payment authorised, in accordance with this section.

44 Meaning of service in this division

- (1) For the purposes of this Division:
- (a) the period of service of an officer is the period for which he has been employed continuously in the Public Service as an officer; and
 - (b) where that continuous period of employment in the Public Service as an officer is continuous with a period or periods of service in the Public Service as an employee, or a period or periods of employment as an employee and a period or periods of earlier employment as an officer, the period or periods for which he was so employed shall be deemed to be a period of continuous employment in the Public Service as an officer.
- (2) The period of service of an officer does not include a period of employment in respect of which leave of absence for furlough, or long service, on retirement on or subsequent to attaining the age of fifty-five years has been granted, or a payment made, to the officer under this Division.
- (3) In this section, the continuity of the service of an officer shall be deemed not to have been, or to be, broken by a period or periods of absence (including a period or periods when the officer was not employed in the Public Service) unless:
- (a) the period of absence exceeds or has exceeded twelve months; or
 - (b) the number of days included in the period or periods of absence exceed in the aggregate one-seventh of the number of days occurring after the commencement of the first period of employment which may be included in the period of his service under subsection (1);

but any such period or periods of absence shall not, for the purposes of this section be included in the period of service of the officer.

- (4) For the purposes of subsection (3), an officer shall be deemed not to be absent for any period of absence during which:
- (a) he is on leave of absence with salary or part salary; or
 - (b) he is on leave of absence without salary where the leave of absence is granted in pursuance of another provision of this Act under which a period of absence has been, or is allowed to be, included as service for the purposes of this Act.

45 Payment in lieu of unexpired furlough

Where an officer resigns, is retired or dies during a period of furlough, the Chief Secretary may authorize payment to the officer, or to the dependants of the deceased officer, as the case may be, of a sum not exceeding the salary that would, but for his resignation, retirement or death, have been payable to the officer for the unexpired period of furlough.

Division 5 – Other Leave of Absence

46 Special leave

- (1) The Chief Secretary may, upon sufficient cause being shown, grant to an officer special leave of absence with salary not exceeding three days in any twelve months without deduction from leave of absence for recreation.
- (2) In addition to leave of absence granted under subsection (1), the Chief Secretary may grant to an officer leave of absence not exceeding three days in the aggregate in any twelve months without salary, or subject to deduction of the period of leave from the next accruing leave of absence for recreation, as the Chief Secretary directs.

47 Leave without pay

- (1) The Chief Secretary may, on the application of an officer who is appearing as counsel for a party in proceeding before a Court, grant to the officer leave of absence without salary for the period necessary for him to represent that party in those proceedings

- (2) The Chief Secretary may, on the application of an officer, grant to the officer leave of absence without salary for any purpose (not being a purpose for which leave may be granted under any other provision of this Act) for a period not exceeding twelve months.
- (3) Where leave is granted under subsection (2), the Chief Secretary shall inform the Minister for the time being responsible for the Department in which the officer works.
- (4) The period during which an officer is absent on leave granted under this section shall not, unless the Chief Secretary otherwise determines, be deemed to form part of the period of service of the officer under this Act.

48 Leave without pay for the purpose of pursuing a course of study

- (1) The Chief Secretary may, on the application of an officer, grant to the officer leave of absence for the purpose of pursuing a course of study or training that, in the opinion of the Chief Secretary, will fit him, or assist in fitting him, to carry out the duties of an office in the Public Service of Nauru.
- (2) Where leave is granted under subsection (2), the Chief Secretary shall inform the Minister for the time being responsible for the Department in which the officer works.
- (3) The period during which an officer is absent on leave granted under this section shall be deemed to form part of the period of service of the officer under this Act.
- (4) An officer granted leave of absence under subsection (1) is not entitled to be paid salary or allowances under any other provision of this Act in respect of the period of the leave but may be paid, in respect of that period, such allowances (if any) at such respective rates as the Minister determines.

49 Leave of absence to officers called as witnesses

- (1) An officer who is subpoenaed or called as a witness shall promptly notify the Head of his Department.
- (2) An officer subpoenaed or called as a witness on behalf of the Republic shall be granted leave of absence with salary for the period necessary for his attendance as a witness, and, where it is necessary for the officer to travel for the purpose of so attending, the officer shall be entitled to the payment of

travelling allowances and expenses on the same basis as if he had travelled in the course of his duties.

- (3) An officer who, by reason of attending to give evidence in the circumstance referred to in subsection (2) receives payment, other than payment of travelling allowances and expenses by reason of operation of that subsection, of witnesses expenses, shall pay the amount received to the Republic.
- (4) An officer subpoenaed or called as a witness in any other circumstances may be granted leave but that leave shall be without salary and any fees received as a witness may be retained by the officer.

50 Leave of absence for service as Member of Parliament, Councillor, magistrate or coroner

- (1) The Chief Secretary may grant leave of absence with salary without deduction from leave of absence for recreation to an officer who is a member of:
 - (a) Parliament, for the purpose of his attendance to the business of the Parliament; or
 - (b) the Nauru Island Council for the purpose of his attendance to the business of the Council.
- (2) Any fees, allowances or expenses received by an officer for his attendance to the business of the Nauru Island Council may be retained by the officer.
- (3) An officer required to serve as magistrate or coroner shall promptly notify the Head of his Department.
- (4) The officer so required shall be granted leave of absence with salary for the period necessary for his attendance upon the court.
- (5) The officer shall pay the Republic any amounts received by him as fees in respect of his attendance upon the court.

51 Maternity leave

- (1) The Chief Secretary may, on the application of a female officer, grant to the officer maternity leave with salary for a period not exceeding three months in respect of any one pregnancy.

- (2) Any period of absence taken by the officer in excess of three months shall be taken as leave of absence on account of illness in accordance with section 40, or, where the provisions of section 40 do not apply, shall be taken as leave of absence without salary in accordance with section 47(2).
- (3) The period during which an officer is absent on maternity leave granted under this section shall be deemed to form part of the period of service of the officer under this Act.

PART V – TENURE OF OFFICE

52 Retirement of officers

- (1) An officer who has attained the age of fifty-five years is entitled to retire from the Public Service where he desires to do so, but, subject to subsection (2), may continue in the Public Service until he attains the age of sixty years.
- (2) If an officer continues in the Public Service after he has attained the age of fifty-five years, he may, at any time before he attains the age of sixty years, be retired from the Public Service by the Chief Secretary.
- (3) An officer shall, on attaining the age of sixty years, be retired from the Public Service.

53 Resignations

- (1) An officer may resign his office by giving one month's notice of intention to resign in writing under his hand addressed to the Chief Secretary but the resignation is not effective unless and until it has been accepted by the Chief Secretary.
- (2) Where in any case the Chief Secretary considers that the circumstances warrant the reduction, he may reduce the period of notice under subsection (1).

54 Excess officers

- (1) If, at any time, the Chief Secretary finds that a greater number of officers is employed than is necessary for efficient working, an officer whom the Chief Secretary finds to be in excess may be transferred to such other position of equal classification as the officer is competent to fill and, where no such position is

available, the officer may be transferred to a position of lower classification.

- (2) If no position is available for the officer, the Chief Secretary may retire him from the Public Service.
- (3) An officer shall not be retired under this section unless he has been given at least one month's notice or is paid salary in lieu of notice.

55 Retirement of inefficient, incompetent, unfit and incapable officers

- (1) If an officer appears to the Chief Secretary to be inefficient or incompetent or unfit to discharge or incapable of discharging the duties of his position, the Chief Secretary may retire him from the Public Service or transfer him to some other position in the Public Service with salary appropriate to that other position.
- (2) An officer shall not be retired from the Public Service under subsection (1) unless he has been given at least one month's notice or is paid a month's salary in lieu of notice.
- (3) If the Chief Secretary is satisfied that an officer is unable to resume his duties after the maximum period of continuous leave on account of illness referred to in section 40(15) has been taken by the officer, the officer shall be retired from the Public Service.
- (4) Where the Chief Secretary decides to retire an officer on the ground of illness, the officer shall not, except with his consent, be retired from the Public Service until he has taken—
 - (a) so much of the period of leave of absence on account of illness on full salary for which he is eligible at the time of the decision under Part IV Division 3 as does not exceed fifty-two weeks; or
 - (b) where that period of leave of absence on account of illness on full salary would, but for this paragraph, expire on a day after the day on which he attains the age of sixty years—so much of that period of leave on full salary as will expire on the day on which he will attain that age.
- (5) At the expiration of the period of leave on full salary granted to him under subsection (4), the officer shall be retired from the Public Service.

56 Dismissal of officers

An officer may only be dismissed as provided in Part VI or under the *Official Information Act 1976*.

57 Gazettal of retirements, resignations and dismissals

Notice of all retirements, resignations and dismissals of officers shall be published in the Gazette.

PART VI – DUTIES OF OFFICERS AND DISCIPLINE

Division 1 – Disciplinary Offences

58 Disciplinary offences

An officer who:

- (a) is guilty of disgraceful or improper conduct, either in his official capacity or otherwise; or
- (b) is negligent or careless in the discharge of his duties; or
- (c) acts in a disorderly manner or in a manner unbecoming an officer; or
- (d) acts in a manner that is prejudicial to the good order and discipline of the Public Service; or
- (e) unlawfully uses intoxicating liquor or drugs; or
- (f) having made or subscribed the oath or affirmation required by this Act does or says anything in violation of that oath or affirmation; or
- (g) does not give a satisfactory explanation for his late attendance or absence under section forty-three of this Act; or
- (h) is frequently late after the time for commencing duty; or
- (i) leaves duty without authority before the time for ceasing duty; or
- (j) absents himself without the permission of the Head of the Department during his hours of duty; or

- (k) fails to record or records incorrectly the time of his arrival or departure; or
- (l) contravenes, or fails to comply with, a provision of this Division; or
- (m) uses for any purpose, other than the discharge of his official duties, information gained by or confided to him through his connection with the Public Service; or
- (n) seeks the influence or interest of any person in order to obtain promotion, transfer, or other advantage, or supplies to another officer, for use for any such purpose, certificates or testimonials relating to official capacity or performance of official duties,

is guilty of a disciplinary offence and is subject to punishment in accordance with Division 2.

59 Performance of duties

An officer:

- (a) shall, during his hours of duty, devote himself exclusively and zealously to the discharge of his duties; and
- (b) shall behave at all times with courtesy to the public; and
- (c) shall give prompt attention to all matters that come within the scope of his duties; and
- (d) shall promptly carry out all his duties; and
- (e) shall comply with and give effect to such of the provisions of this Act and any other Act and to such determinations, rulings and instructions as are applicable to him in the performance of his duties.

60 Obedience to lawful instructions and appeals against instructions

- (1) An officer shall promptly obey all lawful instructions given to him by an officer under whose control, direction or supervision he performs his duties.
- (2) An officer who considers that he has grounds for complaint arising out of an official instruction or for any other cause may appeal to the Chief Secretary through the Head of the

Department but he shall, nevertheless as far as possible, carry out any instruction given to him until it is countermanded or varied by competent authority.

- (3) The Chief Secretary's decision on an appeal made under subsection (2) is final.

61 Solicitation of gifts

An officer shall not, either directly or indirectly, solicit or accept a gift, fee, reward or present from any person concerned directly or indirectly with any matter in which the officer or the Republic is interested or concerned.

62 Performance of work outside the Public Service

- (1) An officer shall not, except with the express permission in writing of the Chief Secretary:

- (a) engage in any remunerative employment; or
- (b) engage in business, whether as a principal or agent; or
- (c) carry on the private practice of any profession, occupation or trade;

other than in connection with his duties as an officer during his hours of duty.

- (2) Subsection (1) does not prevent an officer from becoming a member or shareholder of an incorporated company or of a company or society of persons, but an officer shall not, during his hours of duty, take part in the conduct of the business of the company or society otherwise than in the exercise of his rights as a member or shareholder of the company or society.

63 Monetary transactions between officers prohibited

An officer shall not:

- (a) borrow money from another officer; or
- (b) be a party to a transaction with another officer either as principal or agent whereby an interest or the return of money or kind is to be charged or paid.

64 Care of property of the Republic

An officer shall take appropriate care of all property of the Republic in his possession, custody or care and shall take such steps as are necessary to preserve the property of the Republic and to ensure the economical use of the property of the Republic.

Division 2 – Punishment of Disciplinary Offences by Second and Third Division Officers

65 Definition

In this Division, '**officer**' means an officer of the Second or Third Division.

66 Charge for disciplinary offence

- (1) Where the Head of the Department has reason to believe that an officer in his Department has committed a disciplinary offence, the Head of the Department may charge the officer with the offence.
- (2) The Head of the Department shall, as soon as practicable after the charge has been made against the officer, cause a copy of the charge to be served on the officer together with a notification requiring the officer to reply, within a time specified in the notification, to the charge and to give any explanation that the officer may wish to give in relation to the charge.
- (3) If the officer does not reply to the charge within the time specified in the notification, the officer shall be deemed to have denied the allegations contained in the charge.

67 Suspension from duty

- (1) If the Head of the Department considers that the disciplinary offence with which the officer is charged is of such a serious nature that the member should not continue to perform his duties until the charge is disposed of, the Head of the Department may suspend the officer from duty.
- (2) The Head of the Department may suspend an officer either before, at the time of, or subsequent to, the making of a charge against the officer.

- (3) The Chief Secretary may, at any time before the determination of the hearing of the charge, remove the suspension of an officer and shall, in any case, where the charge is dismissed, immediately remove the suspension.
- (4) An officer who has been suspended from duty under this section shall, unless the Chief Secretary otherwise directs, be paid his salary during the period of his suspension.

68 Determination of the charge

If, after considering reports relating to the alleged disciplinary offence and the reply and explanation of the officer charged and any other circumstances which the Chief Secretary considers relevant, the Chief Secretary is satisfied that the officer has committed the disciplinary offence, the Chief Secretary shall find the member guilty of the disciplinary offence, but if not so satisfied, the Chief Secretary shall dismiss the charge.

69 Punishment

- (1) Where the Chief Secretary finds that an officer has committed a disciplinary offence, the Chief Secretary may:
 - (a) caution or reprimand the officer; or
 - (b) fine the officer an amount not exceeding Ten dollars; or
 - (c) reduce the officer to a lower office and salary; or
 - (d) reduce the rate of salary of the officer to a rate of salary within the limits of salary fixed for the office held by the officer; or
 - (e) transfer the officer to another office or Department; or
 - (f) dismiss the officer from the Public Service.
- (2) The punishment referred to in subsection (1)(e) may be imposed in addition to the punishment of a fine, reduction to a lower office or reduction in salary.
- (3) The Chief Secretary shall cause a copy of his decision and a notification of the punishment imposed on an officer to be served on the officer

Division 3 – Appeals against Punishment of Second and Third Division Officers

70 Right of appeal in certain cases

An appeal by an officer to the Public Service Appeals Board:

- (a) shall be in accordance with the form approved by the Chief Secretary; and
- (b) may be made on the grounds of innocence of the charge or against the severity of the punishment; and
- (c) shall be lodged with the Chief Secretary within seven days after the decision of the Chief Secretary is served upon the officer.

71 Election of member of board

- (1) The election of the member of the Public Service Appeals Board to be elected by public officers shall be conducted in such manner as the Cabinet, by notice in the Gazette, determines.
- (2) The member so elected shall hold office for a period of three years from the date of his election or until he sooner resigns by giving written notice of his resignation to the Chairman of the Board.

72 Appeal notice to be forwarded

The Chief Secretary shall, within seven days after the receipt of an appeal, forward a copy of the appeal notice to each member of the Board.

73 Fixing of time

- (1) The Chairman of the Board shall, as soon as practicable after the receipt of a notice of appeal, fix a time, date and place for the hearing of the appeal, and shall inform the Chief Secretary of the time, date and place so fixed.
- (2) The Chief Secretary shall, upon receipt of notification under subsection (1), forward a copy of the notification to the other members of the Board and to the appellant without delay.

74 Ineligibility of Member

A member of the Board shall not act in relation to an appeal where it would be contrary to the principles of natural justice for him to so act.

75 Copies of documents to be supplied

The Chief Secretary shall, where practicable, cause to be furnished, at least seven days before the date fixed for the hearing of an appeal, to an officer who has lodged the appeal, a copy of all documents intended to be used by the Chief Secretary on the appeal.

76 Chief Secretary as respondent

At the hearing of an appeal under this Division, the Chief Secretary shall be the respondent to the appeal.

77 Decision of appeal

The Board may confirm, annul, or vary the decision against which an appeal is brought and shall furnish a statement of its decision, under the hand of the Chairman, to the Chief Secretary and to the appellant within seven days after it has decided the matter.

Division 4 – Disciplinary Offences by First Division Officers

78 Definition

In this Division, '**officer**' means an officer of the First Division.

79 Charge for offence

- (1) Where the Chief Secretary has reason to believe that an officer of the First Division has committed a disciplinary offence, the Chief Secretary may charge the officer with the offence.
- (2) The Chief Secretary shall, as soon as practicable after the charge has been made against the officer, cause a copy of the charge to be served on the officer, together with a notification requiring the officer to reply, within a time specified in the notification, to the charge and to give any explanation that he may wish to give in relation to the charge.

- (3) If the officer does not reply to the charge in writing within the time specified in the notification, the officer shall be deemed to have denied the allegations contained in the charge.

80 Suspension from duty

- (1) The Chief Secretary may suspend an officer either before, at the time of, or subsequent to, the making of a charge against the officer.
- (2) The Chief Secretary may, at any time before the hearing of the charge, remove the suspension of an officer and shall, in any case where the charge is dismissed, immediately remove the suspension.
- (3) An officer who has been suspended from duty under this section shall be paid salary for the period of suspension, unless the Cabinet otherwise directs.

81 Report to the Cabinet

Upon the charging of an officer, and the suspension of an officer, under this Division, the Chief Secretary shall report in writing to the Cabinet.

82 Determination of the charge

Where an officer charged under this division does not admit in writing to the charge, the charge shall be determined by the Chief Secretary.

83 Decision and punishment

Where an officer admits to a charge laid against him or where he is found guilty of that charge, the Chief Secretary may:

- (a) caution or reprimand the officer; or
- (b) fine the officer an amount not exceeding Twenty dollars; or
- (c) reduce the officer to a lower office and salary; or
- (d) reduce the rate of salary of the officer to a rate of salary within the limits of salary fixed for the office held by the officer; or

- (e) transfer the officer to another Department or office; or
- (f) dismiss the officer from the Public Service.

Division 5—Proceedings by Public Service Appeal Board

84 Oath to be taken by members of board

A member of the Board, other than the Chief Justice, shall, before proceeding to perform the duties or exercise the powers or functions of a member of the Board, take an oath or make an affirmation before the Chief Secretary or a person authorized by the Chief Secretary for the purpose, in the form in the Second Schedule to this Act.

85 Procedure at hearings by board

- (1) At a hearing by the Board, the officer charged or appellant, as the case may be, and the Chief Secretary may call evidence, may examine and cross-examine witnesses and may address the Board.
- (2) At a hearing of the Board:
 - (a) the officer charged or the appellant, as the case may be, may appear personally or may be represented by not more than one counsel or solicitor or by an officer acting on his behalf; and
 - (b) the Chief Secretary may be represented by not more than one counsel or solicitor or by an officer appointed for the purpose by the Chief Secretary.
- (3) The Board may take evidence on oath and the Chairman may administer an oath to a witness.
- (4) The Board shall make a thorough investigation into the subject-matter of the charge without regard to legal forms and solemnities.
- (5) The Board is not bound by legal rules of evidence and may inform itself on any matter in such manner as it thinks fit.
- (6) A hearing by the Board shall not, unless the Board otherwise determines, be open to the public.

86 Summons of witness

- (1) The Chairman of the Board may, by writing under his hand, summon any person to attend before the Board at a time and place specified in the summons and then and there to give evidence and to produce any books, documents and writings in his custody or control which he is required by the summons to produce.
- (2) A summons under subsection (1) shall be served personally or by leaving it with a person apparently over the age of sixteen years at the usual place of abode of the person to whom it is addressed.
- (3) A person who is served with a summons to attend before the Board shall not, without reasonable excuse
 - (a) fail to attend before the Board at the time and place specified in the summons; or
 - (b) fail to produce any books, documents or writings in his custody or control which he is required to produce; or
 - (c) withdraw from the presence of the Board unless the Board grants permission for him to do so.
- (4) A person, whether or not he has been served with a summons, who attends to give evidence before a Board shall not refuse:
 - (a) to be sworn or to make an affirmation; or
 - (b) to answer any question relevant to the matter before the Board put to him by a member of the Board.
- (5) A person who breaches subsection (3) or (4) is guilty of an offence and is liable to a penalty not exceeding one hundred dollars.
- (6) Nothing in subsection (4) requires a person to answer a question the answer to which would tend to incriminate him.
- (7) It is a defence to a prosecution for an offence against paragraph (3)(b) if the defendant proves that the books, documents or writings were not relevant to the matter before the Board.

87 Costs

- (1) The Board may, subject to subsection (2), recommend that all or any part of the costs and expenses reasonably incurred by an officer charged, or an appellant, in connection with a hearing by the Board, whether or not the charge is found proved or the appeal is upheld, as the case may be, shall be paid by the Republic, and the Republic shall make payment accordingly.
- (2) The Board shall not recommend that any of the costs and expenses of an officer in connection with a hearing by the Board that are related to the representation of the officer by counsel or a solicitor who is not resident in Nauru shall be paid to the officer unless the President has, before the hearing by the Board, approved of the officer being so represented.

Division 6 – Miscellaneous

88 Previous record of officer

The Chief Secretary, or the Board shall, in imposing a punishment, take into consideration the previous record and conduct of the officer.

89 Conviction for criminal charge

- (1) Where an officer is charged with having committed a criminal offence against the law of Nauru, punishable either on indictment or on summary conviction, the Chief Secretary may suspend the officer from duty.
- (2) If, upon the hearing of the charge by a court, the officer is found guilty of the offence, the Chief Secretary may (whether the officer has been suspended or not) dismiss the officer from the Public Service or inflict any other punishment that could be imposed on the officer for the commission of a disciplinary offence under Division 2 or 4.
- (3) The Chief Secretary may at any time remove the suspension of an officer suspended under this section, whether before or after conviction.
- (4) This section does not prevent an officer from being charged under other provisions of this Act, but an officer shall not be punished under this Act twice in respect of the same offence or matter.

- (5) A member who is suspended or dismissed under this section shall not, unless the Chief Secretary otherwise directs, be paid salary during the period of suspension, or after the time from which he ceased to perform his duties, as the case may be.
- (6) Where a person has been dismissed under subsection (2), but:
- (a) the conviction or finding has been subsequently quashed; or
 - (b) the person has received a pardon; or
 - (c) the conviction or finding has been otherwise nullified; or
 - (d) the person has been released from prison as a result of an inquiry into the conviction,
- the Chief Secretary may re-appoint the person as an officer.
- (7) Where a person is re-appointed as an officer under subsection (6):
- (a) the person shall be deemed to have been, during the period which commenced on the date of his dismissal and ended on the date of his re-appointment, on leave of absence without pay; and
 - (b) that period shall, for all purposes other than the payment of salary, be counted as a period of service as an officer.
- (8) A reference in this Section to the Chief Secretary shall, where the officer is an officer of the First Division, be read as a reference to the Chief Secretary with the approval of the Cabinet.

90 Insolvent officers

An officer or employee who is adjudicated insolvent or whose estate is sequestrated either voluntarily or compulsorily for the benefit of his creditors—

- (a) shall forthwith give notice to the Chief Secretary of the fact that he has become so insolvent or that his estate has been so sequestrated; and
- (b) shall, as and when required to do so by the Chief Secretary furnish such information in relation to his insolvency or his estate as the Chief Secretary requires

91 Strikes

- (1) An officer shall not foment or take part in a strike which interferes with or prevents the carrying on of a part of the Public Service.
- (2) Where an officer is adjudged by the Chief Secretary after investigation and hearing to be guilty of an offence under this section, the Chief Secretary may summarily dismiss him from the Public Service.
- (3) A reference in subsection (2) to the Chief Secretary shall, where the officer is an officer of the First Division, be read as a reference to the Chief Secretary with the approval of the Cabinet.

92 Record of punishments

- (1) The Chief Secretary shall cause a record to be kept of all punishments imposed on officers under this Act.
- (2) A punishment of an officer by a caution, reprimand or a fine not exceeding One dollar shall not be kept for a longer period than two years and no such caution, reprimand or fine of over two years' standing shall be taken into account in any matter affecting the officer.

93 Breaches to be reported

An officer in charge of a Department or a branch or section of a Department, shall report to the Chief Secretary any breach of this Act which comes to his notice.

94 Deduction of pecuniary penalty from salary

- (1) On receipt of notice of a pecuniary penalty imposed upon, or an order for the payment of money made against an officer under this Act, the officer who pays the salary of the officer so punished or against whom the order is made shall, unless he is satisfied that the penalty or the money ordered to be paid has been paid by the officer so punished or against whom the order is made, deduct from that salary the amount of the penalty or the sum ordered to be paid, as the case may be.
- (2) The deduction may be made by instalments equal as nearly as practicable to one-fourth of the salary due from time to time to the officer.

PART VII – MISCELLANEOUS

95 Attachment of salaries for judgement debts

- (1) Where judgement has been given by a Court against an officer or employee for the payment of a sum of money, the person in whose favour the judgement is given may serve on the Head of the Department in which the officer or employee is employed a copy of the judgement, certified in writing by the Registrar or other proper officer of the Court, and a statutory declaration stating that the judgement has not been satisfied by the judgement debtor and setting out the amount due by the judgement debtor under the judgement.
- (2) Upon the service upon him of a copy of a judgement and a statutory declaration under subsection (1), the Head of the Department shall, as soon as practicable:
 - (a) notify the judgement debtor in writing of the service of the copy of the judgement and statutory declaration; and
 - (b) require him to state in writing, within a time specified by the Head of the Department, whether the judgement has been satisfied and, if so, furnish evidence in support of his statement and if the judgement has not been satisfied, to state the amount then due under the judgement.
- (3) If the officer or employee fails to prove to the satisfaction of the Head of the Department, within the time so specified that the judgement has been satisfied, the Head of the Department may cause such sums as are, in his opinion, necessary to satisfy the judgement to be deducted from time to time from any moneys due to the officer or employee and shall cause those sums to be paid to the judgement creditor.
- (4) The Head of a Department shall not cause a deduction to be made which will reduce the moneys which would, but for this section, be payable to the officer or employee to less than one-third of those moneys.
- (5) A payment made to a judgement creditor under this section shall, as between the Republic and the officer or employee, be deemed to be a payment by the Republic to the officer or employee.
- (6) If a payment under this section exceeds the amount due under the judgement, the excess is repayable by the judgement creditor to the judgement debtor and, in default, may be

recovered by the judgement debtor from the judgement creditor in a court of competent jurisdiction.

- (7) This section does not apply to an officer or employee who has given notice under section 90 that he has become insolvent or that his estate has been sequestrated and has not yet obtained a discharge.

96 Administration of oaths and affirmations

An oath or an affirmation under this Act required to be made and subscribed shall be administered by the Chief Secretary or such other officer appointed by the Chief Secretary for the purpose of administering oaths or affirmations under this Act.

97 Acquaintance with this Act

All officers and employees shall acquaint themselves with the provisions of this Act.

98 Regulations

The Cabinet may make regulations prescribing matters or things which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

PART VIII – REPEAL

99 Repeal

(1) The following laws are repealed:

- (a) the *Public Service Ordinance 1961*;
- (b) the *Public Service Ordinance 1962*;
- (c) the *Public Service Ordinance 1964*;
- (d) the *Public Service Ordinance 1965*;
- (e) the *Public Service Ordinance 1966*;
- (f) the *Public Service Act 1968*;
- (g) the *Public Service Act (No.2) 1968*;

- (h) the *Public Service (Amendment) Act 1971*;
 - (i) the *Public Service (Amendment) Act 1975*;
 - (j) the *Public Service (Amendment) Act 1979*;
 - (k) the *Public Service (Amendment) Act 1995*.
- (2) The laws repealed by subsection (1) shall remain in operation after the commencement of this Act to the extent necessary to give effect to sections 104, 105 and 106 of this Act.

PART IX – SAVINGS AND TRANSITIONAL

100 Interpretation of Part IX

In this Part:

'Commissioner' means the Public Service Commissioner appointed under the repealed laws;

'repealed law' means a law repealed by section 99.

101 Transfer of divisions

The Divisions of the Public Service established under the repealed laws and in existence immediately before the commencement of this Act shall, on that commencement, be deemed to be Divisions established under section 8.

102 Transfer of offices

All offices (including offices of Heads of Departments) established under the repealed laws and in existence immediately before the commencement of this Act shall, on that commencement, be deemed to be offices created under this Act with:

- (a) the same designation; and
- (b) the same duties; and
- (c) a requirement of the same qualifications; and
- (d) the same classifications,

that they had, and in the same Departments as they were in, under the repealed laws immediately before the commencement of this Act.

103 Transfer of officers and employees

- (1) A person who, immediately before the commencement of this Act, was a Head of a Department under the repealed laws shall be deemed, on that commencement, to be the Head of the Department under this Act.
- (2) An officer who, immediately before the commencement of this Act, was the substantive occupant of an office under the repealed laws shall be deemed, on that commencement, to have been appointed to the equivalent office under this Act.
- (3) A person who, immediately before the coming into operation of this Act, was an unattached officer under any provision of the repealed laws shall, on that commencement, be deemed to be an unattached officer under this Act.
- (4) Where a person to whom subsection (1), (2) or (3) applies was, immediately before the commencement of this Act, a probationer under the repealed laws, he shall be deemed to be a probationer under this Act for the period of probation remaining unexpired immediately before that commencement.
- (5) A person who, immediately before the commencement of this Act, was an employee under the repealed laws, shall, on that commencement, be deemed to be an employee under this Act.
- (6) An officer or employee who was, immediately before the commencement of this Act, acting in an office by virtue of the provisions of the repealed laws shall, on that commencement, continue so to act under this Act.

104 Procedure in respect of appointments, promotions and transfers

Where a procedure required in respect of an appointment, promotion or transfer commenced under the repealed laws prior to the commencement of this Act has not been finalised at that commencement:

- (a) the matter shall be finalised under the procedure provided for by the corresponding provisions of this Act; and

- (b) so much of the procedure as was carried out under the repealed laws shall be considered, in so far as appropriate, as procedure provided for under this Act.

105 Procedure in respect of disciplinary offences

- (1) Where, prior to the commencement of this Act, an officer or employee had been charged with committing a disciplinary offence under the repealed laws, and on that commencement the procedure set out for dealing with the disciplinary offence under the repealed laws had not been completed, that disciplinary offence shall continue to be dealt with in accordance with the corresponding provisions of this Act.
- (2) The continuance referred to under subsection (1) includes the determining of a punishment.
- (3) For the purposes of this Act, an offence against the repealed laws committed prior to the commencement of this Act, but in respect of which no charge had been made at that commencement, shall be deemed to be a disciplinary offence under this Act.

106 Acts, matters and things under repealed laws

- (1) All acts, matters and things done or suffered under or for the purposes of the repealed laws shall be deemed to have been done or suffered under the equivalent provisions of this Act.
- (2) Without limiting the generality of subsection (1), but subject to sections 104 and 105, that subsection applies to any act, matter or thing relating to appointment, promotion, transfer or discipline.
- (3) For the avoidance of doubt, it is hereby declared that any act, matter or thing done or suffered by a Minister, the Commissioner or a Board of Inquiry under or for the purposes of the repealed laws after the 31st day of January, 1968, which by this Act is required or permitted to be done by the Chief Secretary, the Minister or the Public Service Appeals Board shall be deemed to have been done, and to have always been done, by the Chief Secretary, the Minister or the Public Service Appeals Board, as the case may be.

107 Service

All periods that were counted as service of a person under the repealed laws shall be counted as service for the equivalent purposes of this Act.

108 Application of laws, documents and instruments

Where:

- (a) any written law; or
- (b) any document or instrument wherever made or executed;

contains a reference, express or implied, to a repealed law or to a provision of a repealed law, other than a reference in an Act which repeals a provision of a repealed law, that reference shall, on the commencement of this Act, except where the context otherwise requires, be read and construed and have effect as a reference to this Act or the corresponding provision of it.

109 Retirement of officers 55 years and over

- (1) Notwithstanding section 52(2), an officer who, at the date of commencement of this Act, has already attained the age of fifty-five years but has not yet attained the age of sixty years may continue in the Public Service until he attains the age of sixty years.
- (2) An officer who, at the date of commencement of this Act, has already attained the age of sixty years shall be retired from the Public Service.

SCHEDULES

FIRST SCHEDULE

Section 13

OATH ON APPOINTMENT

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

AFFIRMATION ON APPOINTMENT

I, A.B., do solemnly and sincerely promise and declare that I will render true and faithful service as an officer of the Public Service of the Republic.

SECOND SCHEDULE

Section 84

OATH

I, A.B., do swear that I will render true and faithful service as a member of the Public Service Appeals Board and that I will perform the duties and exercise the powers imposed and conferred upon me as a member thereof without fear or favour, affection of ill will. SO HELP ME GOD!

AFFIRMATION

I, A.B., do solemnly and sincerely affirm and declare that I will render true and faithful service as a member of the Public Service Appeals Board and that I will perform the duties and exercise the power imposed and conferred upon me as a member thereof without fear or favour, affection or ill will.