



REPUBLIC OF NAURU

# PUBLIC SERVICE (AMENDMENT) ACT 2016

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No. 29 of 2016

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An Act to amend the *Public Service Act 2016*

Certified: 9<sup>th</sup> June 2016

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Enacted by the Parliament of Nauru as follows:

**1 Short title**

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

**2 Commencement**

This Act commences upon certification by the Speaker.

**3 Amendment of Public Service Act 2016**

The *Public Service Act 2016* is amended by the provisions of this Act.

**4 Insert new section 11A**

**11A Sections within Departments**

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

(a) establish a Section within a department and assign a title to it; or

(b) alter the title of an existing Section; or

(c) transfer an existing Section from one department to another department; or

(d) abolish an existing Section.

(2) If a Section is transferred to another department under section 11A(1)(c), any position created within that section in accordance with section 16 of this Act is also transferred from one department to that other department.

**5 Amendment of section 22**

Section 22 is amended as follows:

**Omit**

‘The Minister may make rules’

**Substitute**

‘The Chief Secretary may make policy’

**6 Amendment of section 23**

(1) Section 23 is amended by inserting a new subsection (4) as follows:

(4) Upon being appointed as an employee of the public service, a person is required to swear before the Chief Secretary, an oath on appointment as contained in Schedule 1 of this Act.

(2) Section 23 is amended by inserting a new subsection (5) as follows:

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

## **7 Amendment of section 24**

Section 24 is amended by inserting a new section 24(1A) after subsection (1) as follows:

(1A) Subject to section 13, all appointments to the Public Service may only be made by the Chief Secretary.

## **8 Insert new Division 2A in Part 5**

In Part 5 of the Act, following Division 2 – Appointment of Public Service Employees, a new Division 2A – Vacancies, Promotion and Transfer is inserted as follows:

### **Division 2A – Vacancies, Promotion and Transfer**

#### **27A Vacancies**

(1) Where a vacancy exists for a position in the public service and, in the opinion of the Chief Secretary, it is necessary to fill the vacancy, the Chief Secretary may:

(a) direct that a notification be published in the Gazette inviting applications for transfer, promotion or appointment;

(b) set out the requirements for the position.

(2) A vacancy for a position in the public service may be filled by:

(a) the Chief Secretary transferring or promoting an officer to the vacant position; or

(b) by the appointment to the vacant position of a person from outside the public service.

(3) No person from outside of the public service may be appointed to a vacant position unless the Chief Secretary has confirmed in writing that the vacant position cannot be suitably filled by the transfer or promotion of an employee.

- (4) Until regulations have prescribed the method of transfer or promotion, the method of selection of a person to be transferred or promoted to a vacant position may be as determined by the Chief Secretary.
- (5) The promotion or transfer of an employee or the appointment of a person as an employee of the public service must be published in the Gazette.

**27B Power of Chief Secretary to transfer after 3 years**

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

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

**27C Permission to decline promotion or transfer**

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

**9 Amendment of section 29**

Section 29 is amended as follows:

**Omit**

Subsection (2)(b) 'be employed as a public service employee'

**10 Amendment of section 36**

Section 36 is amended by inserting a new subsection (3) as follows:

- (3) A performance assessment conducted in accordance with this section must be conducted by the Chief Secretary in collaboration with the relevant head of department.

**11 Amendment of section 44**

Section 44 is amended by omitting the current subsection (2) and substituting with the following:

- (2) If an employee fails to attend his or her employment for a continuous period of 14 days and fails to give notice as required under this Act, the employee is deemed to have resigned from his or her position and the position immediately vacant.

**12 Amendment of section 56**

(1) Section 56 is amended by inserting a new subsection (4) as follows:

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

(2) Section 56 is amended by inserting a new subsection (5) as follows:

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

**13 Amendment of section 77**

Section 77 is amended by inserting a new subsection (6) as follows:

- (6) An employee granted leave without pay for the purpose of study is not entitled to be paid allowances under any other provision of this Act but may be paid, in respect of that period, allowances at such respective rates as the Minister determines.

**14 Amendment of section 84**

Section 84 is amended by inserting a new subsection (3) as follows:

- (3) In this section, the phrase '**general elections**' does not include a by-election.

**15 Insert new section 84A**

**84A By-Elections – Candidates**

- (1) Any employee who intends to submit a nomination as a candidate for a by-election will be granted leave of absence until the day on which the result of the election is declared.

- (2) If the employee is declared elected, the employee is deemed to have resigned from his or her public service employment on the day on which the result of the election is declared.
- (3) Leave of absence under this section may be granted with full pay.
- (4) In this section, **'employee'** includes public service employees, contract employees who are eligible to stand for elections, temporary employees and heads of departments.

**16            Insert new section 84B**

**84B           Re-employment of employees resigning to contest elections**

An employee is entitled to be re-employed in the public service if the employee:

- (a) resigned in accordance with section 84 of this Act and the resignation took effect not earlier than 3 months before the date of submission of their nomination as a candidate; and
- (b) became a candidate at that election; and
- (c) failed to be elected at that election; and
- (d) within 2 months of the declaration of the result of that election, applied in writing to the Chief Secretary for re-employment in the public service.

**17            Amendment of section 94**

Section 94(2) is amended as follows:

**Omit**

'The Minister'

**Substitute**

'The Chief Secretary'

**18            Amendment of section 106**

Section 106(1) is amended by inserting the numeral '2' after the word Schedule and before the full stop.

**19 Amendment of section 123**

**Omit**

Subsections (3) and (4)

**20 Omit Schedule**

The Schedule is omitted.

**21 Insert Schedule 1**

**Schedule 1**

**Oath on Appointment**

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

\* State name

**22 Insert Schedule 2**

**Schedule 2**

Oath:

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

Affirmation:

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

\* state name