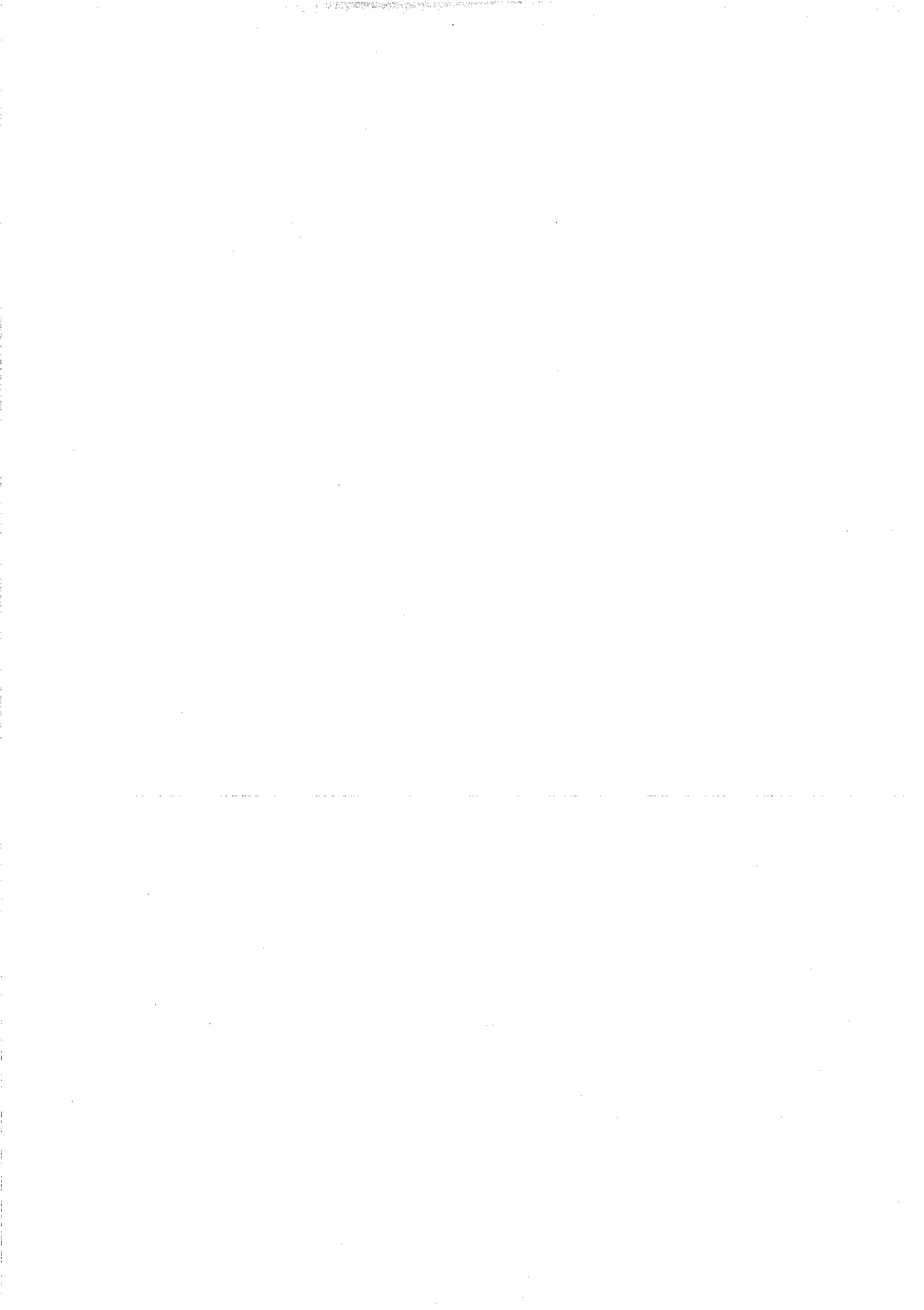


No. 35 of 2013.

***Public Services (Management) Act 2013.***

Certified on : 30/05/2014





No. of 2013.

*Public Services (Management) Act 2013.*

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No. of 2013.

AN ACT

Entitled

***Public Services (Management) Act 2013.***

Being an Act to -

- (a) make provision for the appointment, conditions of employment, constitution, powers, procedures and functions of the Public Services Commission in accordance with Sections 190 (*Establishment of the Commission*) and 191 (*Functions of the Commission*) of the **Constitution**; and
  - (b) implement Section 195 (*Organisation, etc., of the State Services*) of the **Constitution** in relation to the Public Service; and
  - (c) implement the **Organic Law on Provincial Governments and Local-level Governments** insofar as an Act of the Parliament is required to make provision relating to the staffing of Provincial Governments and Local-level Governments; and
  - (d) make provision for ensuring the implementation of decisions, directions and policies of the National Executive Council by the National Public Service and public bodies,
- and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with and in accordance with, the advice of the Minister.

**PART I. - PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the **Constitution**, namely -

- (a) freedom of expression conferred by Section 46 of the **Constitution**; and
- (b) freedom of assembly and association conferred by Section 47 of the **Constitution**; and
- (c) freedom of employment conferred by Section 48 of the **Constitution**; and
- (d) the right to privacy conferred by Section 49 of the **Constitution**; and
- (e) the right to vote and stand for public office conferred by Section 50 of the **Constitution**; and
- (f) the right to freedom of information conferred by Section 51 of the **Constitution**; and
- (g) the right to equality of treatment in employment conferred by Section 55 of the **Constitution**,

is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.

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2. **INTERPRETATION.**

In this Act, unless the contrary intention appears -

“Chairperson” means the Chairperson of the Commission appointed under Section 5;

“Chief Secretary to Government” means the Chief Secretary to Government appointed under Section 19 of the *Prime Minister and National Executive Council Act 2002*;

“classification” means the arrangement of officers or offices in classes, and includes the allotment to officers or offices of salaries or limits of salary according to the value of the work;

“Code of Conduct” means the Code of Conduct issued under Section 73;

“Commission” means the Public Services Commission;

“departmental head” means the Head of a Department of the Public Service and includes any person deemed to be a Departmental Head under any other Act;

“district administrator” means a District Administrator appointed under Section 73 of the *Organic Law on Provincial Governments and Local-level Governments*, and, in relation to a district, means the District Administrator for that district;

“employee” means a person employed to render temporary assistance in the Public Service, but does not include a person employed in an honorary capacity or a person remunerated by fees, allowances or commission only;

“family” in relation to an officer, means -

(a) a spouse of the officer; and

(b) children under the age of 19 years who are wholly dependent on and maintained by the officer;

“General Orders” means the General Orders made under Section 72;

“Ministerial Executive Appointments Committee (MEAC)” means the committee established under Section 28 for the purpose of advising the National Executive Council on appointments under Sections 193 and 208A of the *Constitution*;

“office” means an office in the Public Service, either a solitary position or an organisation of positions created under Sections 33 or 34;

“officer” means an officer in the Public Service, but does not include -

(a) an employee; or

(b) a person employed in an honorary capacity; or

(c) a person remunerated by fees, allowances or commission only;

“officer-in-charge” means an officer who, by virtue of the office, is responsible for the supervision and general working of a branch or section of a Department, and includes an officer who is responsible for the supervision of the work of other officers or employees not under the direct supervision of the officer in charge of the branch or section;

“pay” means salary, and in relation to any provision of this Act, includes such allowances as are specified in the General Orders in relation to that provision;

“personnel matters” means decisions and other service matters concerning an individual whether in relation to the appointment, promotion, demotion, transfer, suspension, disciplining or cessation or termination of employment (except cessation or termination at the end of the normal period of employment as determined in accordance with law);

“Provincial Administrative Headquarters” means a Provincial Administrative Headquarters established by Section 72 of the *Organic Law on Provincial Governments and Local-level Governments* and, in relation to a province, means the Provincial Administrative Headquarters for that province;

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“Provincial Administrator” means a Provincial Administrator appointed under Section 73(2) or (2A) of the *Organic Law on Provincial Governments and Local-level Governments* and, in relation to a province, means the Provincial Administrator for that province;

“Provincial Governor” means the Provincial Governor of a province in accordance with the *Organic Law on Provincial Governments and Local-level Governments*, and, in relation to a province, means the Governor of that province;

“public body” means any body, authority or instrumentality (corporate or un-incorporate) established by or under an Act or Constitutional Law other than -

(a) Constitutional Office-holder or the Office of a Constitutional Office-holder;  
or

(b) a body, authority or instrumentality incorporated or continued in existence under the *Companies Act 1997*;

“Public Service Commission Appointments Committee” means the Public Service Commission Appointments Committee referred to in Section 190(2) (*establishment of the Commission*) of the *Constitution*;

“seniority” in relation to an officer, means their seniority as determined in the prescribed manner;

“terms and conditions of service” means the obligations, entitlements and all benefits as specified in General Orders and regulations;

“the repealed Acts” means the Acts specified in Schedule 2;

“this Act” includes the Regulations and the General Orders;

“unattached officer” means an officer who is not occupying an office.

### **3. APPLICATION OF THIS ACT.**

This Act applies to and in relation to officers, employees and all other persons otherwise employed or engaged under this Act, whether inside or outside Papua New Guinea.

### **4. APPLICATION OF PUBLIC SERVICES CONCILIATION AND ARBITRATION ACT 1969.**

This Act does not affect the operation of the *Public Services Conciliation and Arbitration Act 1969* or any determination made under that Act, in respect to its application to the officers and employees of the Public Service.

## **PART II. - THE PUBLIC SERVICE COMMISSION.**

### **5. CONDITIONS OF EMPLOYMENT.**

The salary and other conditions of employment of the chairperson and members of the Commission are as determined by the Salaries and Remuneration Commission.

### **6. DECLARATION OF OFFICE.**

Before entering upon the duties of his office, a member of the Commission shall make the Declaration of Office before the Head of State or a person appointed by the Head of State.

### **7. DISQUALIFICATION FROM OFFICE.**

A person is not qualified to be, or to remain, a member of the Commission if that person is -

- (a) a member of the Parliament; or
- (b) a member of a Provincial Assembly; or
- (c) a member of a Local-level Government; or

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- (d) an office holder in a registered political party; or
- (e) an undischarged bankrupt or insolvent; or
- (f) of unsound mind within the meaning of any law relating to the protection of the person and property of persons of unsound mind; or
- (g) under sentence of death or imprisonment for a term of twelve months or more.

### **8. SPECIAL CONDITIONS OF EMPLOYMENT.**

- (1) A member of the Commission shall not -
  - (a) actively engage in politics; or
  - (b) subject to Subsection (2), engage either directly or indirectly in the management or control of a corporation or other body of persons carrying on business for profit; or
  - (c) except on leave granted by the Head of State, or because of illness, absent himself from duty for more than 14 consecutive days or more than 28 days in any period of 12 months; or
  - (d) subject to Subsection (3), acquire by way of gift or otherwise, or use or hold in any other manner, any interest in any property in Papua New Guinea or solicit, accept or receive any other benefit in addition to their terms and conditions of employment.
- (2) Nothing in Subsection (1)(b) or (d) prevents a member of the Commission from holding office -
  - (a) in a professional body in relation to which his qualifications are relevant; or
  - (b) as a nominee of Papua New Guinea in a corporation in which Papua New Guinea has a fiscal interest where -
    - (i) no direct or indirect financial benefit is received by the member as being a nominee; or
    - (ii) any direct or indirect financial benefit received by the member as being a nominee is to be paid by him to the Consolidated Revenue Fund.
- (3) Subject to the *Organic Law on the Duties and Responsibilities of Leadership*, a member of the Commission may purchase, lease or otherwise acquire land in the same manner and subject to the same conditions as any other citizen.

### **9. RESIGNATION.**

- (1) A member of the Commission may resign by giving three months' notice in writing of his intention to do so to the Head of State.
- (2) The period of three months referred to in Subsection (1) commences on the twenty-second day after the receipt of the notice by the Head of State, except where the Head of State, acting on advice, given after receiving a report from the appropriate Permanent Parliamentary Committee, by notice in writing to the member, fixes an earlier date.
- (3) A member of the Commission may withdraw his resignation at any time before the period of three months referred to in Subsection (1) commences.

### **10. RETIREMENT.**

- (1) Subject to Subsection (2), a person who has attained the age of 60 years shall not be appointed or re-appointed as the Chairperson or a member of the Commission and a person must not be appointed or re-appointed for a period that extends beyond the date on which that person will attain the age of 60 years.

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(2) The Head of State, acting with, and in accordance with, the advice of the Public Service Commission Appointments Committee, may, for special reasons in an appropriate case, appoint or re-appoint a person who is over 60 years of age to be the Chairperson or a member of the Commission but in no case shall the Chairperson or a member of the Commission continue to act as Chairperson or a member of the Commission after he or she has attained the age of 65 years.

### **11. ACTING CHAIRPERSON AND ACTING MEMBERS OF THE COMMISSION.**

(1) The Head of State, acting with, and in accordance with, the advice of the Public Services Commission Appointments Committee, may appoint a member of the Commission to be an Acting Chairperson of the Commission -

- (a) to temporarily fill a vacancy; or
- (b) in the absence of the Chairperson from duty for any reason.

(2) The Public Service Commission Appointments Committee may appoint a person who is qualified under this Act to be a member of the Commission to be an acting member of the Commission -

- (a) to fill a temporary vacancy; or
- (b) where a member of the Commission is absent from duty for any reason.

### **12. POWERS OF THE COMMISSION.**

(1) The Commission may at any time, for the purpose of performing its functions -

- (a) enter premises occupied or used by -
  - (i) a department of government; or
  - (ii) any State Service (other than the Defence Force); or
  - (iii) any Provincial Government; or
  - (iv) any other governmental service; and
- (b) summons a person whose evidence appears to be material to the determining of any subject, inspection, inquiry, review or investigation being conducted by the Commission; and
- (c) take evidence on oath or affirmation and for that purpose administer oaths and affirmations; and
- (d) require any person to produce documents within his possession or subject to his control.

(2) A person who knowingly makes any false or misleading statements in any evidence before the Commission commits an offence.

Penalty: A fine not exceeding K200.00.

(3) Any officer who neglects or fails, without reasonable cause (the burden of proof of which lies upon him), to attend in obedience to a summons under Subsection (1), or to be sworn or answer questions or produce documents relevant to the subject of an inspection, inquiry or investigation when required to do so under this subsection, commits an offence.

Penalty: A fine not exceeding K200.00.

(4) A person other than an officer who, after payment or tender of reasonable expenses, neglects or fails, without reasonable cause (the burden of proof of which lies upon him), to attend in obedience to a summons under Subsection (1) or to be sworn or answer questions or to produce a document relevant to the subject of an inspection, inquiry or investigation when required to do so under this subsection, commits an offence.

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Penalty: A fine not exceeding K200.00.

(5) Nothing in this section renders any person compellable to answer any question that might tend to incriminate him.

(6) In this section, "officer" means -

- (a) an officer of the National Public Service; and
- (b) a contract officer employed under the *Public Employment (Non-citizens) Act 1978*; and
- (c) an officer of the Police Force; and
- (d) an officer or employee of a Provincial Government; and
- (e) an officer of any government service; and
- (f) an employee of a service or force referred to in Paragraphs (a), (c), (d) or (e); and
- (g) an employee,

but does not include a member of the Papua New Guinea Defence Force.

### **13. COMMISSION PROCEEDINGS IN CAMERA.**

Where the Prime Minister certifies that the giving of any information or the answering of any question or the production of any documents or papers or things in public -

- (a) may prejudice the security, defence or international relations of Papua New Guinea (including Papua New Guinea's relations with the Government or any other country or with any international organisation) or the investigation or detection of offences; or
- (b) may involve the disclosure of the proceedings, deliberations or decisions of the National Executive Council or of any Committee of the Council to matters of a secret or confidential nature and would be injurious to the public interest, the Commission shall require the information or answer to be given, or as the case may be, the document, paper or thing to be produced in camera.

### **14. PROCEDURES OF THE COMMISSION.**

(1) The Commission shall meet at such times and places as are fixed by the Chairperson.

(2) The Chairperson shall preside at all meetings of the Commission if he is present.

(3) If the Chairperson is not present at a meeting of the Commission, the member of the Commission who is most senior -

- (a) in length of service as a Commissioner; or
- (b) in age, if all members present have equal length of service as Commissioner,

shall preside at the meeting.

(4) The quorum at a meeting of the Commission is two.

(5) All matters before a meeting of the Commission shall be decided in accordance with the majority of votes of the members present and voting.

(6) In the event of an equality of votes on a matter, the member presiding has a casting, as well as a deliberative, vote.



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(7) The Commission shall cause minutes of its meetings to be kept.

(8) Subject to this Act, the procedures of the Commission are as determined by the Commission.

**15. DELEGATION BY THE COMMISSION.**

(1) The Commission may, by instrument in writing under the hand of the Chairperson, delegate to any person all or any of its powers and functions (other than this power of delegation or any prescribed power or function) so that the delegated powers and functions may be exercised and performed by the delegate in relation to the matter or class of matters specified in the instrument of delegation.

(2) Every delegation under Subsection (1) is revocable, in writing, at will, and no such delegation affects the exercise of a power or the performance of a function by the Commission.

**16. ANNUAL REPORT BY THE COMMISSION.**

(1) The Commission shall, no later than 31 March in each year, give to the Head of State, for presentation to the National Parliament, a report on the work of the Commission and the National Public Service during the preceding period of 12 months with such recommendations as to improvement as it thinks proper.

(2) Nothing in Subsection (1) prevents the Commission from making, on its own initiative, or at the request of the National Parliament or of the National Executive Council, other reports of the work of the Commission.

**17. SECRETARIAT OF THE COMMISSION.**

(1) There shall be a Secretariat to the Commission established in accordance with this section.

(2) The departmental head of the Department of Personnel Management, after consultation with the Commission, shall appoint an officer to be the Head of the Secretariat.

(3) The terms and conditions of employment of the Head of the Secretariat shall be equivalent to the terms and conditions of employment of a Deputy Secretary of the Department of Personnel Management.

(4) The departmental head of the Department of Personnel Management shall manage all personnel matters relating to the Head of the Secretariat, including determination of disciplinary matters on the recommendation of the Commission.

(5) There shall be a staff to the Secretariat which -

- (a) shall be officers of the National Public Service; and
- (b) shall be governed by General Orders specifically made, in consultation with the Commission, for the purpose of management by the Head of the Secretariat; and
- (c) shall be subject to appointment, revocation of appointment and discipline by the Head of the Secretariat.

(6) The Head of the Secretariat is accorded the powers necessary to enable the head to carry out his or her functions under this section.

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**PART III. - REVIEW OF PERSONNEL MATTERS.**

**18. REVIEW OF PERSONNEL MATTERS CONNECTED WITH THE NATIONAL PUBLIC SERVICE.**

(1) The Commission shall, following a complaint made by an officer to the Commission in accordance with Subsection (2), review any decision on a personnel matter relating to appointment, selection or discipline connected with the National Public Service, where that officer has been affected by the decision.

- (2) A complaint referred to in Subsection (1) shall be -
- (a) in writing; and
  - (b) made to the Commission by the officer within 60 days of the date on which the decision is made, but the Chairperson may waive the time limit where the delay beyond the period of 60 days was beyond the control of the person seeking to make the complaint; and
  - (c) copied to the departmental head of the Department of Personnel Management by the officer making the complaint.

- (3) The Commission shall summons -
- (a) the departmental head of the Department of Personnel Management or his delegate; and
  - (b) the departmental head of the Department in which the officer is or was employed, or his delegate; and
  - (c) the officer making the complaint, who may at his request and at his own cost, be represented by an industrial organization of which he is a member, or by a lawyer.

(4) A person summonsed under Subsection (3) shall make himself available to appear before the Commission within 14 days of the date of summons.

- (5) The Commission shall -
- (a) consider all the facts relative to the matter, including -
    - (i) the views of the persons summonsed under Subsection (3); and
    - (ii) the personnel management policies of the National Public Service; and
    - (iii) the cost implications of any decision which it may make; and
  - (b) make a decision to uphold, vary or annul the decision, the subject of the complaint; and
  - (c) give immediate notification of its decision to the persons summonsed under Subsection (3).

- (6) The decision of the Commission under Subsection (5)(b) -
- (a) shall be made within 90 days from the date of receipt by the Commission of the complaint, but this period may be extended by the Commission where the reason for the delay is beyond the control of the Commission; and
  - (b) is binding after a period of 30 days from the date of the decision.

**PART IV. - REVIEW OF ORGANISATIONAL MATTERS.**

**19. REVIEW OF ORGANISATIONAL MATTERS.**

(1) In the performance of its duty under Section 191(1)(b) (*Functions of the Commission*) of the **Constitution**, the Commission shall, before deciding whether advice should be given to the National Executive Council or other authority on a particular matter, consider -

- (a) the relative importance of that matter; and
- (b) any advice, recommendations, opinions or views submitted by any governmental body.

(2) In formulating its advice, the Commission shall have, as its principal objective, the communication of the views of the individual members of the Commission as representatives of officers of long-standing and experience in the National Public Service.

**PART V. - ORGANISATION OF THE NATIONAL PUBLIC SERVICE.**

**20. DEPARTMENTS OF THE PUBLIC SERVICE AND OFFICES DEEMED AS DEPARTMENTS.**

(1) There shall be -

- (a) a Department of the Prime Minister and National Executive Council; and
- (b) a Department of Personnel Management; and
- (c) such other Departments and Offices deemed as Departments as are established under Subsection (2).

(2) The Head of State, acting on advice, may, by notice in the National Gazette -

- (a) establish a Department or an Office deemed as a Department; or
- (b) abolish a Department or deemed Department; or
- (c) alter the name of a Department or deemed Department other than the Department of Prime Minister and National Executive Council and the Department of Personnel Management.

(3) In this Act, "Department" includes deemed Department for all purposes.

(4) For purposes of this Act -

- (a) the Commissioner General of Internal Revenue; and
- (b) the Auditor-General; and
- (c) a Provincial Administrator; and
- (d) such other officers as specified by the Head of State, acting on advice,

shall, in relation to the officers and employees of, and offices in the organisations of which they are respectively in charge, be deemed to be the Departmental Heads.

**21. FUNCTIONS OF DEPARTMENTS.**

The functions of -

- (a) the Department of the Prime Minister and National Executive Council are as provided for under the **Prime Minister and National Executive Council Act 2002**; and
- (b) the Department of Personnel Management are, as determined by Section 22(2), together with any other functions as determined by the Head of State, acting on advice; and

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- (c) each Department, other than those referred to in Paragraphs (a) and (b), are as determined by Section 22(4), together with any other functions determined by the Head of State, acting on advice, given after consideration of reports made to the National Executive Council by the departmental head of the Department of Personnel Management.

**PART VI. - DEPARTMENTAL HEADS.**

***Division 1. - General.***

**22. FUNCTIONS OF DEPARTMENTAL HEADS.**

- (1) The functions of the departmental head of the Department of Prime Minister and National Executive Council are as specified in the ***Prime Minister and National Executive Council Act 2002***.
- (2) The functions of the departmental head of the Department of Personnel Management are -
- (a) to be the principal adviser to the National Executive Council and the Minister on all matters concerning employment in the National Public Service and all public bodies; and
  - (b) to administer the provisions of this Act to enable the Government to determine -
    - (i) the structures and organisations of the National Public Service; and
    - (ii) the employment of persons in the National Public Service; and
    - (iii) the terms and conditions of appointment to and employment in the National Public Service; and
    - (iv) the employment of persons in the provincial administrations of the National Public Service under the ***Organic Law on Provincial Governments and Local-level Governments***; and
  - (c) to administer the ***Salaries and Conditions Monitoring Committee Act 1988*** in the determination and application of Government pay policy in all public bodies; and
  - (d) to administer the ***Public Employment (Non-Citizens) Act 1978*** in the employment of non-citizens in prescribed public bodies; and
  - (e) to formulate regulations, General Orders and Circular Instructions for the implementation of this Act and other laws governing employment in the National Public Service and Government employment policies; and
  - (f) to undertake regular audits of human resources and related payroll matters across all departments and to provide reports to the National Executive Council on departmental head performance; and
  - (g) to advise departmental heads and heads of public bodies as required by law, on all matters concerning employment of public employees in accordance with government policy; and
  - (h) to formulate and coordinate implementation of systems and procedures for the effective management and performance of the National Public Service, taking into consideration, the equitable and socially inclusive principles and values; and
  - (i) to manage and coordinate government relations with all public sector industrial organisations as advocate and negotiator; and
  - (j) to formulate and coordinate organisational and governance reviews of the National Public Service to facilitate administrative reforms for greater efficiency of service delivery; and
  - (k) to cooperate with the Secretary for the Department of Prime Minister and National Executive Council in the exercise of that departmental head's functions; and
  - (l) such other functions as are determined by the Head of State on advice, or by any other law.

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(3) In the performance of any of the functions under this Act, the departmental head of the Department of Personnel Management shall consult with the respective departmental heads of the appropriate central agencies of government.

- (4) The functions of other departmental heads and deemed departmental heads are -
- (a) to be the principal adviser to the portfolio Minister in respect to the functions for which the portfolio Minister is responsible under the Ministerial Determinations made by the Prime Minister under Section 148 of the *Constitution*; and
  - (b) to administer the respective legislation for which the portfolio Minister is responsible by virtue of the Ministerial Determinations; and
  - (c) to administer those sections of the *Public Service (Management) Act 2013* and the *Public Finance (Management) Act 1995* which have been delegated to them by the legislation or by the respective departmental heads with responsibility for these Acts; and
  - (d) to ensure the efficient and effective performance of the department in the delivery of services to the public, enforcing compliance with legislation, and implementing Government policies; and
  - (e) to cooperate with the Secretary for the Department of Prime Minister and National Executive Council in the exercise of that departmental head's functions under Subsection (1), and in particular shall -
    - (i) comply with regulations issued under the *Prime Minister and National Executive Council Act 2002* for the policy review of National Executive Council submissions; and
    - (ii) provide timely reports to the Secretary, Department of Prime Minister and National Executive Council in respect to the implementation of National Executive Council decisions; and
    - (iii) produce timely action plans for consideration by the Central Agencies Coordinating Committee and any sub-committees as prescribed by the Chairman of the Central Agencies Coordination Committee; and
  - (f) to cooperate with the departmental head of the Department of Personnel Management in the exercise of that departmental head's functions and in particular shall -
    - (i) comply with the regulations, General Orders and Circular Instructions issued to effect government employment strategies, policies and procedures, and in particular to maintain equitable and socially inclusive principles and values prescribed by this Act; and
    - (ii) provide reports to the departmental head of the Department of Personnel Management in respect to all employment matters covered by the General Orders to effect greater and more economical efficiency of the department; and
    - (iii) seek advice from the officers of the Department of Personnel Management in respect to the application of policies and procedures governing those matters delegated to the said departmental head under Section 24; and
    - (iv) inform the departmental head of the Department of Personnel Management of any matter in relation to corruption within the department as prescribed by the National Public Service Code of Ethics and Conduct; and
    - (v) satisfy the departmental head's performance requirements under Section 26.

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**23. POWERS OF THE DEPARTMENTAL HEAD OF THE DEPARTMENT OF PERSONNEL MANAGEMENT.**

The Departmental Head of the Department of Personnel Management may at any time, for the purpose of the performance of the functions under this Act -

- (a) enter premises occupied or used by a department or a provincial government or a public body; and
- (b) question a person who appears likely to have information relevant to the functions of the Departmental Head of the Department of Personnel Management; and
- (c) require any person to provide information relative to the functions of the Departmental Head of the Department of Personnel Management; and
- (d) require any person to produce documents within his possession or subject to his control where such documents are relevant to the functions of the Departmental Head of the Department of Personnel Management; and
- (e) make and retain copies of documents referred to in Paragraph (d); and
- (f) require a Departmental Head, a head of a public body or a Provincial Administrator to appear before the Departmental Head of the Department of Personnel Management to give effect to this section.

**24. DELEGATION OF POWERS AND FUNCTIONS BY THE DEPARTMENTAL HEAD OF THE DEPARTMENT OF PERSONNEL MANAGEMENT.**

(1) The Departmental Head of the Department of Personnel Management may, by written instrument, delegate to an office of any other departmental head or deemed departmental head, all or any of the powers and functions given to him or her under this Act (except this power of delegation).

(2) Powers delegated by the Departmental Head of the Department of Personnel Management under this section may be withdrawn at any time in the event of abuse of the delegated powers as determined by the Departmental Head of the Department of Personnel Management.

**25. DELEGATION OF POWERS AND FUNCTIONS BY DEPARTMENTAL HEADS.**

(1) A departmental head, including the Departmental Head of the Department of Personnel Management, may, by written instrument, delegate to an office or offices all or any of the powers and functions given to a departmental head under this Act (except this power of delegation).

(2) Powers and functions delegated by a departmental head under this section may be withdrawn at any time in the event of abuse of the said delegated powers as determined by the departmental head.

**26. WORK PERFORMANCE OF DEPARTMENTAL HEADS.**

(1) The Head of State, acting on advice, given after consideration of recommendations made by the departmental head of the Department of Personnel Management in consultation with the Chief Secretary to Government, may make regulations prescribing standard criteria and procedures for the appraisal of the performance of departmental heads consistent with the provisions of his contracts of employment under Section 27 of the Act.

(2) The Prime Minister may establish a separate performance review process conducted by non-public service adjudicators accredited by the Public Service Commission for that purpose, in respect to the appraisal of performance of the departmental head of the Department of Personnel Management and the Chief Secretary to Government, as described in the regulations.

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**27. APPOINTMENTS, ETC., OF DEPARTMENTAL HEADS.**

(1) The procedures relating to the substantive appointments, temporary appointments, suspension and termination of appointments of departmental heads referred to in Section 193 (*appointments to certain offices*) of the *Constitution* are as prescribed in the Regulations.

(2) The procedures relating to the substantive appointment, temporary appointment, suspension and termination of appointment of the Secretary to the National Executive Council, the departmental heads of the Department of Personnel Management, and the Chief Secretary are as prescribed in the Regulations.

(3) The merit-based selection process as prescribed by the Regulations shall be the primary consideration of the Ministerial Executive Appointments Committee created under Section 28 in making a recommendation to the National Executive Council on the appointment under this section.

(4) All other considerations not related to the processes described in this section shall not have any bearing in the recommendation made by the Ministerial Executive Appointments Committee to the National Executive Council for the purpose of making a final decision under this section.

**28. MINISTERIAL EXECUTIVE APPOINTMENTS COMMITTEE.**

(1) This section does not abrogate the review functions of the Public Service Commission under Section 191 (*Functions of the Commission*) of the *Constitution* to review personnel matters.

(2) There shall be established a Ministerial Executive Appointments Committee comprising of the following:

- (a) the Minister responsible for Public Services employment functions; and
- (b) the Minister responsible for the portfolio functions of the department concerned; and
- (c) the Minister responsible for Treasury functions; and
- (d) the Minister responsible for National Planning functions; and
- (e) the Minister responsible for Justice and Attorney General functions.

(3) The Minister for Public Service shall be the Chairperson of the Committee.

(4) Three members, including the Chairperson and the portfolio Minister in Subsection 2(b), constitute a quorum for a meeting of the Committee.

(5) There shall be a Secretariat to the Committee provided by the departmental heads of the Department of Personnel Management as detailed in the Regulations.

(6) The functions of the Ministerial Executive Appointments Committee shall be exercised in accordance with the following broad responsibilities with details contained in the Regulations -

- (a) to assess a short list of candidates provided by the Secretary for the Department of Personnel Management for the appointment of a departmental head, following a merit-based selection process; and
- (b) to recommend to the National Executive Council one candidate for appointment as a departmental head; and
- (c) to analyse a report on the performance of serving departmental heads and his eligibility for reappointment as a departmental heads; and

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- (d) to consider a recommendation to be made by a portfolio Minister, pursuant to the provisions of a departmental head contract made under Section 29, in respect to the temporary appointment, the suspension or the termination of a departmental head.

(7) The Minister, as Chairman of the Ministerial Executive Appointments Committee, may exercise the delegated powers of the National Executive Council to advise the Head of State on the appointment, suspension, and revocation of appointment in respect to a departmental head from time to time.

(8) Notwithstanding the provisions of Subsection (6), the Minister may advise the Head of State to make an acting appointment of a departmental head from suitable candidates selected in accordance with the Regulations.

#### *Division 2. - Employment of Departmental Heads on Contract.*

#### **29. CONTRACTS OF EMPLOYMENT.**

(1) A departmental head shall be employed under, and shall hold office in accordance with the terms and conditions of a contract of employment with the State.

(2) A contract of employment under Subsection (1) shall be executed by the Head of State, acting on advice, on behalf of the State, and the departmental head and shall be witnessed by the departmental head of the Department of Personnel Management.

(3) The Regulations shall prescribe standard contract documentations and the responsibilities of the departmental head of the Department of Personnel Management for the interpretation and administration of contracts.

(4) Legal clearance shall be obtained from the State Solicitor for all contracts to be executed by the Head of State and the decision on legal clearance shall be made by the State Solicitor within 14 days of the request being made by the departmental head of the Department of Personnel Management.

(5) In the event that the State Solicitor fails to give clearance within the specified period, he must give reasons to the departmental head of the Department of Personnel Management, and where such reasons are unjustifiable, the departmental head of the Department of Personnel Management may seek intervention from the Attorney General.

(6) A departmental head shall not continue in office in the event that he or she refuses, for any reason, to execute a contract under this section within the period of notice under the contract.

#### **30. EMPLOYMENT UNDER CONTRACT TO CONSTITUTE SERVICE.**

An employment under contract under this Division shall constitute service in the National Public Service for all intents and purposes.

#### **31. CESSATION OF EMPLOYMENT IN PUBLIC SERVICE.**

A person who is appointed to be a departmental head and accordingly enters into a contract of employment under this Division, shall, on the termination of his employment in accordance with the contract of employment, cease to be an officer of the Public Service on conclusion of the notice period under this section, unless reappointed to another position prior to conclusion of the notice period as provided by his contract of employment.



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*Division 3. - Reports.*

**32. PERFORMANCE REPORTS.**

Each departmental head shall -

- (a) by 31 March in each year, prepare a report on the attainment of the planned objectives of his or her department on all matters under this Act for the year ending 31 December preceding; and
- (b) produce or cause to be produced such further reports as may be required by -
  - (i) the departmental head of the Department of Personnel Management; or
  - (ii) the National Executive Council.

**PART VII. - CREATION OF OFFICES.**

**33. CREATION AND ABOLITION OF OFFICES.**

(1) This section does not apply to an office of departmental head.

(2) The departmental head of the Department of Personnel Management may, in relation to a department or a deemed department -

- (a) create an office and specify the qualifications for, and the duties of, the office; or
- (b) abolish an office; or
- (c) alter the designation of an office; or
- (d) raise the classification of an office; or
- (e) lower the classification of an office; or
- (f) alter the qualifications for, or the duties of, an office; or
- (g) transfer an office from one department to another department.

(3) Subject to Subsections (4) and (5), where a department is re-organised, all offices in the department are deemed to be vacant and shall be advertised in accordance with this Act.

(4) Where -

- (a) a department is re-organised; and
- (b) the re-organisation affects the number of offices or designation of offices or of a class of offices,

the departmental head of the Department of Personnel Management may, by notice in the National Gazette, declare those offices or classes of offices not to be affected by the re-organisation.

(5) Substantive occupants of offices or classes of offices declared in the National Gazette under Subsection (4) shall retain their offices and the positions shall not be advertised.

**34. TEMPORARY OFFICES.**

The departmental head of the Department of Personnel Management may, in his discretion -

- (a) create or abolish an office or upgrade or downgrade the classification of an office; or
  - (b) appoint, transfer or redeploy a person from one office to another,
- for purposes of project implementation.

**PART VIII. - QUALIFICATIONS.**

**35. QUALIFICATIONS FOR ADMISSION TO THE PUBLIC SERVICE.**

A person shall not be appointed under this Act as an officer unless -

- (a) evidence is provided by the officer to the satisfaction of the departmental head of the employing department that the officer meets the requirements under the General Orders in relation to -
  - (i) health and physical fitness; and
  - (ii) possession of qualifications and experience that will enable the officer to perform the duties of the office; and
  - (iii) good character; and
- (b) the officer swears an oath or affirmation in the form prescribed in Schedule 1.

**PART IX. - RECRUITMENT AND APPOINTMENT OF OFFICERS.**

**36. RECRUITMENT OF OFFICERS.**

- (1) A departmental head may, by notice published in the National Gazette or elsewhere, invite persons to apply for appointment, promotion or transfer to a vacant office in the department.
- (2) A departmental head shall specify in the notice -
  - (a) the office or class of offices in respect of which applications for appointment, promotion or transfer are invited; and
  - (b) the salaries, or limits of salaries, that will be applicable on appointment, promotion or transfer; and
  - (c) where applicable -
    - (i) the age limits for appointment; and
    - (ii) the qualifications required to be possessed for appointment, promotion or transfer and the period (if any) within which the qualifications must have been obtained; and
    - (iii) the date on which persons who obtain or have obtained the required qualifications during a period specified for the purposes of Subparagraph (ii) will cease to be qualified for appointment, promotion or transfer; and
    - (iv) that only males or only females will be appointed, promoted or transferred in particular proportions; and
  - (d) the manner of ascertaining the order in which offers of appointments, promotions or transfers will be made; and
  - (e) the date by which applications are required to be made; and
  - (f) such other matters (if any), not inconsistent with this Act, as the departmental head thinks desirable.
- (3) Subject to Subsection (4), a departmental head shall not advertise or make an acting appointment against a position in his department which has a substantive occupant.
- (4) Where the substantive occupant of an office vacates the office for leave or study purposes, a departmental head may make an acting appointment to the office for the duration of the absence of the substantive occupant.

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**37. SUBSTANTIVE APPOINTMENTS.**

An officer may only be substantively appointed to a position through a merit-based procedure determined by the departmental head of the Department of Personnel Management and published in a General Order.

**38. ACTING APPOINTMENTS.**

Where an officer, other than a departmental head, is absent from office or unable to perform the duties of the office for purposes specified in Section 36(4) or when there is a vacancy in an office other than an office of departmental head, the departmental head concerned may appoint another officer to act in the place of the officer during the said absence or inability, or may appoint an officer to fill the vacancy temporarily.

**39. TEMPORARY EMPLOYMENT.**

(1) Where, in the opinion of the departmental head of the Department of Personnel Management, the business of a department -

(a) warrants the engagement of temporary assistance to provide a particular skill or service to a department; or

(b) has given rise to an unexpected workload which could not have been anticipated and is expected to continue for more than six months,

the departmental head of the Department of Personnel Management may approve the employment of a person or persons to render temporary assistance to that department, for a period not exceeding 12 months.

(2) A person employed under Subsection (1) shall be employed on contract as specified in the General Orders.

(3) Notwithstanding Subsection (1)(b), a person may be employed on contract under this section for a period exceeding twelve months where the departmental head of the Department of Personnel Management so authorises as prescribed in the General Orders.

(4) A national contract to which this section applies shall provide for a salary and duty-related allowances.

(5) A person employed under a national contract may apply to the departmental head of the Department of Personnel Management for a discretionary allowance and may be granted if warranted.

**PART X. - EMPLOYMENT CONTRACT FOR SENIOR OFFICERS.**

**40. DESIGNATION OF SENIOR OFFICERS.**

(1) The Minister may, pursuant to a directive of the National Executive Council, by notice in the National Gazette, designate an office, other than an office of departmental head, as a senior office for the purposes of this Division.

(2) A notice under Subsection (1) shall specify, in relation to each senior position whether a person is to be appointed to that office by -

(a) the Head of State, acting on advice; or

(b) the departmental head of the Department of Personnel Management, in accordance with this Act.

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- (3) A person appointed to a senior officer position shall -
- (a) be an officer of the Public Service; or
  - (b) subject to Subsection (4), becomes an officer of the Public Service by virtue of the appointment.

(4) A person referred to in Subsection (3)(b) shall only be appointed if he or she is eligible for appointment to the Public Service under this Act.

### **41. CONTRACTS OF EMPLOYMENT.**

(1) Subject to the *Salaries and Conditions Monitoring Committee Act 1988* an officer appointed to a management position shall be employed under, and hold office in accordance with, the terms and conditions of a contract of employment with the State,

(2) A contract of employment under Subsection (1) shall be executed by the appointee and, on behalf of the State, by -

- (a) in respect of appointees under Section 40(2)(a), the Head of State; and
- (b) in respect of appointees under Section 40(2)(b), the departmental head of the Department of Personnel Management.

(3) Notwithstanding the provisions of this Act relating to discipline of officers, a contract of employment shall make specific provision for discipline and an officer employed under a contract of employment is exempted from the provisions of Part XIV of this Act.

(4) Despite the provisions of this Act relating to promotion and appointment, where -

- (a) a contract of employment terminates or is terminated and is not subsequently renewed; and
- (b) the appointee under that contract of employment is not re-appointed to another office under this Act,

employment in the Public Service is terminated on conclusion of the due notice period.

### **42. EMPLOYMENT UNDER CONTRACT TO CONSTITUTE SERVICE.**

Employment under contract under this Part constitutes service in the Public Service for all intents and purposes.

### **43. ADMINISTRATION OF CONTRACTS.**

(1) The departmental head of the Department of Personnel Management shall, on behalf of the State, interpret any contract of employment made under this Part.

(2) An amendment to a contract of employment under this Part -

- (a) by reason of a directive of the National Executive Council; or
- (b) in accordance with the General Orders; or
- (c) for administrative purposes,

shall be authorised -

- (d) in respect of contracts of employment to which Section 40(2)(a) applies, by the Minister; or
- (e) in respect of contracts of employment to which Section 40(2)(b) applies, by the departmental head of the Department of Personnel Management.

**PART XI. - TRAINING.**

**44. TRAINING AND CAREER PATH PLANNING.**

(1) The departmental head of the Department of Personnel Management is responsible for initiating and co-ordinating manpower, career and training plans for the Public Service.

(2) A departmental head is responsible for -

(a) producing manpower, career and training plans for the department of which he is departmental head; and

(b) submitting plans produced under Paragraph (a), by 31 March of each year, to the departmental head of the Department of Personnel Management.

(3) Any training, whether local or overseas, for an officer shall be consistent with the manpower, career and training plans of the department in which the officer is employed.

(4) An officer who is sent on a course of study for the purpose of career progression to a higher office shall, on successful completion of that study, be given first consideration in the selection process for appointment to that higher office.

(5) If an officer who is employed on contract under Section 39 proceeds on a course of study of more than three months he or she shall be paid such contractual entitlements as specified in the General Orders.

**PART XII. - AID FUNDED TECHNICAL ADVISERS.**

**45. AID FUNDED CITIZEN TECHNICAL ADVISERS.**

Subject to this Act and the regulations -

(a) a citizen Technical Adviser may be engaged by the State in a designated position to provide technical and capacity building support to a departmental head as an employee of an accredited aid agency under a bi-lateral aid donor agreement between the State and the foreign government; and

(b) the Technical Adviser may only be engaged in the service of a department through the procedures administered by the departmental head of the Department of Personnel Management, and shall enter into a contract with the State and the department and the provisions of the contract under this section are as set out in the regulations and includes a job description and terms of reference governing the service to be provided; and

(c) the Technical Adviser shall not be an employee of the State and the department has no liability for any component of a Technical Adviser's remuneration unless, the departmental head of the Department of Personnel Management authorise payment of an ex-gratia allowance to a Technical Adviser in recognition of work performed, subject to the provisions of the *Salaries and Conditions Monitoring Committee Act 1988*; and

(d) the Technical Adviser shall report to the departmental head and is accountable to the departmental head for his or her performance under the contract, and shall pledge primary loyalty to the State, despite the employment arrangement made between the accredited aid agency and the Technical Adviser; and

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- (e) except where the contract otherwise determines, the Act including the Regulations and the Public Service Code of Ethics and Conduct and relevant General Orders apply to a Technical Adviser; and
- (f) the departmental heads of the Department of Personnel Management is responsible for approving the remuneration and other conditions of employment to be applied by the aid donor agency to the Technical Adviser under the bi-lateral aid agreement; and
- (g) the Technical Adviser who is appointed to a designated position has the same powers, functions, duties, responsibilities and protections as an officer employed in the same designated position for purposes of this Act; and
- (h) the Technical Adviser shall be responsible for training and developing citizens within the department in furtherance of organisational capacity building, and for compliance with the General Orders governing staff development and career path planning.

### **PART XIII. - SALARIES AND ALLOWANCES.**

#### **46. SALARY CLASSIFICATIONS.**

(1) Offices shall be given such classifications as are fixed by the departmental heads of the Department of Personnel Management.

(2) A classification under Subsection (1) shall provide for a rate of annual salary or a scale of rates of annual salary.

(3) In fixing classifications under this section, the departmental heads of the Department of Personnel Management shall comply with any general directions of the National Executive Council in respect to pay policy and the job evaluation process to be utilised.

#### **47. ALLOWANCES.**

Officers may be paid such allowances in such cases as are specified in the General Orders.

#### **48. DEDUCTIONS FROM OFFICERS' ENTITLEMENTS.**

Deductions may be made from the entitlement of officers and employees as specified in the General Orders, or as determined by the Minister, in relation to an officer or class of officers, or employee or class of employees for any service provided by the State or as a service to the officer or employee by the State.

#### **49. RECOVERY OF SALARY AND ALLOWANCES.**

(1) All amounts of salary and allowances payable to an officer may be recovered by the officer as a debt in any court of competent jurisdiction.

(2) The State may, with the consent of an officer, effect deductions from the salary of an officer to recover debts due by the officer to the State.

#### **50. PAY DURING SUSPENSION.**

Subject to Section 49, where an officer has been suspended in connection with a charge of an offence under this Act, such suspension may be with or without pay depending on the circumstances as determined by the departmental head in consultation with the departmental heads of the Department of Personnel Management.

**PART XIV. - DISCIPLINE.**

**51. DISCIPLINARY OFFENCES.**

An officer who -

- (a) commits a breach of this Act including the Public Service Code of Business Ethics and Conduct; or
- (b) divulges, directly or indirectly, any confidential information concerning public business or any matters of which he has official knowledge, except as authorised in the course of official duty; or
- (c) publicly comments on an administrative action or the administration of a department, except with the consent of the Head of State, acting on advice, or of an officer authorised for the purpose by the Head of State, acting on advice; or
- (d) wilfully disobeys or disregards a lawful order made or given by a person having authority to make or give it; or
- (e) is negligent or careless in the discharge of his duties; or
- (f) is inefficient or incompetent from causes within his own control; or
- (g) uses intoxicating liquors or drugs to excess; or
- (h) solicits or accepts a fee, reward, gratuity or gift (other than his official remuneration) in connection with the discharge of his official duties; or
- (i) is guilty of disgraceful or improper conduct in his official capacity or otherwise; or
- (j) having taken an oath or made an affirmation in the prescribed form, does or says anything in violation of it; or
- (k) seeks the influence or interest of any person in order to gain promotion, transfer or other advantage; or
- (l) supplies to another officer, for use for any purpose referred to in Paragraph (k), a certificate or testimonial relating to official capacity or the performance of official duties,

is guilty of a disciplinary offence and is liable to be dealt with and punished -

- (m) in the case of a departmental heads, under Part VI; and
- (n) in the case of an officer other than a departmental heads, under this Part.

**52. DEALING WITH MINOR DISCIPLINARY OFFENCES.**

(1) If the departmental heads, or an officer authorised by the departmental heads to deal with minor offences, has reason to believe that an officer other than a departmental head has committed a disciplinary offence that, in his opinion, would properly be dealt with under this section, the departmental heads or the authorised officer may call on the officer for an explanation as to the alleged offence, and if, on consideration of the explanation, the departmental heads or the authorised officer is of the opinion that the offence has been committed, the departmental heads or the authorised officer may caution or reprimand the offending officer.

(2) A caution or reprimand by an officer other than a departmental heads shall be immediately reported to the departmental heads.

**53. DEALING WITH SERIOUS DISCIPLINARY OFFENCES.**

(1) Where there is reason to believe that an officer, other than a departmental heads, has committed a disciplinary offence other than an offence that may be dealt with under Section 51, the provisions of this section apply.

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- (2) The officer may be -
- (a) charged by his departmental heads or an officer authorised by the departmental heads to lay charges under this Division; and
  - (b) suspended, if it is considered that the charge is of such a serious nature that the charged officer should not continue in the performance of his duty, by -
    - (i) his departmental heads; or
    - (ii) an officer authorised by the departmental head to lay charges under this Division in case of emergency.

(3) Suspension may be effected before, at the time of or after the laying of the charge, and may be removed at any time by the departmental heads concerned pending determination of the charge, and where the charge has not been sustained shall be lifted immediately on a finding to that effect.

(4) On a charge being laid against an officer, the departmental heads concerned or the authorised officer shall -

- (a) promptly give a copy of the charge to the officer; and
- (b) direct the officer to -
  - (i) reply promptly in writing, stating whether he admits or denies the truth of the charge; and
  - (ii) give any explanation that he desires to give, and if a reply is not given by the officer within seven days after receipt of the charge, the officer may be deemed to have admitted the truth of the charge.

(5) If, after considering reports relating to the offence and charge, the reply and explanation (if any) of the officer charged and any further report that he thinks necessary, the departmental heads concerned is of the opinion that the charge has been sustained, the departmental head may -

- (a) fine the officer a sum not exceeding 20% of the officer's gross fortnightly pay; or
- (b) reduce the officer's pay; or
- (c) reduce the officer to an office having a lower classification, and to a salary within that classification; or
- (d) in addition to or instead of imposing a punishment specified in Paragraphs (a), (b) or (c), transfer the officer to some other office or locality; or
- (e) dismiss the officer from the Public Service.

(6) The departmental heads shall notify an officer of a punishment imposed or recommendation made by him under Subsection (5).

### **54. OFFICER CHARGED WITH CRIMINAL OFFENCE.**

(1) Where an officer other than a departmental heads is charged by Police with having committed a criminal offence, the officer shall be suspended by the departmental head -

- (a) without pay, where the criminal offence relates to the duties of his office; or
- (b) on full pay, where the offence does not relate to the duties of his office.

(2) Where the officer is convicted of an offence which relates to the duties of his office by a court of competent jurisdiction, he shall be dismissed from the Public Service by the departmental heads concerned.



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(3) Where the officer is convicted of an offence which does not relate to the duties of his office by a court of competent jurisdiction, he may be dismissed by the departmental heads, unless the departmental heads determines otherwise.

### **55. STRIKES.**

- (1) An officer who aids, abets, foment or takes part in a strike that -
- (a) interferes with or prevents; or
  - (b) is intended or calculated to interfere with or prevent; or
  - (c) attempts to interfere or prevent,

the carrying on of any part of the public service or utilities of the country commits an illegal act against the peace and good order of the country.

(2) Any officer adjudged by the departmental heads concerned, after investigation and hearing, to be guilty of any action referred to in Subsection (1) may be summarily dismissed by the departmental heads from the Public Service, without regard to the procedures prescribed in this Act for dealing with disciplinary offences.

## **PART XV. - RESIGNATION AND RETIREMENT.**

### **56. PERSONS WHO HAVE RESIGNED FROM THE PUBLIC SERVICE TO BECOME CANDIDATES AT ELECTIONS.**

(1) An officer (including a departmental heads) who wishes to contest in a National or Local Level Government election shall resign in order to stand as a candidate in the election by giving the required notice under employment arrangements.

- (2) An officer exercising the right to resign and stand for election shall resign -
- (a) in the case of a National Election, not less than six months before the issuance of the writs for the election; and
  - (b) in the case of a Local Level Government election not less than one month before the issuance of the writs for the election.

(3) The office held by the officer at the time of resignation under this section becomes vacant and may be filled substantively or in an acting capacity by another officer.

(4) An officer who has resigned and has failed to win a seat in the election has no automatic right to be readmitted to the Public Service and if wishing to be re-admitted to the Public Service shall apply for re-appointment.

(5) An officer who resigns under this section may exercise the option to leave his service without taking receipt of his service related termination benefits and in the event of failing to win a seat and having successfully obtained re-admittance to the Public Service, the period of absence shall be counted as leave without pay and not to count as service.

### **57. AGE OF RETIREMENT.**

Subject to this Act and the Regulations -

- (a) a departmental heads who has attained the age of 50 years is entitled to retire from the Public Service if he desires to do so, but may, continue in the Public Service until attaining the normal retirement age of 60 years, at which age the departmental head is entitled to retire by giving due notice under the contract of employment; and

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- (b) the National Executive Council may appoint a departmental heads for a mutually agreed period after attaining the age of 60 years until attaining the age of 65 years, subject to performance assessments and fitness tests prescribed by the Regulations, and on attaining the age of 65 years shall be retired by the Head of State on advice; and
- (c) an officer, other than a departmental heads who has attained the age of 50 years is entitled to retire from the Public Service if he desires to do so, and at any age after that but such an officer may continue in service until he attains the normal retirement age depicted in row (ii) at any date in the year depicted in row (i), in Table "A", and age 60 from 2017 onwards; and

**Table "A".**

(i) Year	2013	2014	2015	2016	2017
(ii) Normal Retirement Age (Complete Years).	56	57	58	59	60

- (d) an officer who, at the date of coming into force of these provisions and at any time after that, has already attained an age above the age shown in row (ii) in the year shown in row (i) in Table "A", may be retired at the sole discretion of the State, at any time; and
- (e) an officer who attains the normal retirement age under Subsections (3) or (4) as depicted in Table "A" may continue in service at the discretion of the State and by mutual agreement of the said officer until attaining the compulsory retirement age depicted in row (ii) at any date in the year depicted in row (i), in Table "B" and at age 65 from 2017 and any year after that; and

**Table "B".**

(i) Year	2013	2014	2015	2016	2017
(ii) Compulsory Retirement Age (Complete Years).	61	62	63	64	65

- (f) an officer who, at the date of coming into force of these provisions and at any time after that, has already attained an age above the age shown in row (ii) in the year shown in row (i) in Table "B", and at age 65 from 2017 and onwards shall be retired; and
- (g) a retirement under this section shall be effected on behalf of the State by the departmental heads of the employing department, subject to consultation with the departments responsible for personnel management matters and treasury matters as defined by the Regulations; and
- (h) in order to administer the retirement provisions, a departmental heads shall maintain accurate and verifiable records of the dates of birth of all staff employed in the department and shall provide to the departmental head of the Department of Personnel Management such prescribed reports on retirement plans from time to time in accordance with the Regulations.

**58. RETIREMENT ON ACCOUNT OF INFIRMITY OR INCAPACITY.**

(1) In the event that an officer appears to the departmental heads, after full investigation of the circumstances -

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- (a) to be, by reason of mental or bodily infirmity or for any other reason, unfit to discharge or incapable of discharging the duties of his office efficiently; or
- (b) to have ceased to have the qualifications specified for their office, or to be or to have become legally disqualified from carrying out those duties or legally incompetent to carry them out,

the departmental heads, may retire the officer from the Public Service or transfer the officer to some other position of equal or lower status and pay in accordance with the criteria and the procedures in the General Orders.

(2) The retirement of an officer under this section shall not be deemed to be on account of mental or bodily infirmity unless it is so stated in the instrument affecting the retirement.

**PART XVI. - PROVINCIAL GOVERNMENT AND LOCAL-LEVEL GOVERNMENT ADMINISTRATION.**

**59. PROVINCIAL AND LOCAL-LEVEL ADMINISTRATIVE ORGANISATION.**

The Head of State, acting on advice, given after receiving a report from the Departmental Heads of the Department of Personnel Management, may, by notice in the National Gazette -

- (a) establish; or
- (b) abolish; or
- (c) alter the name of,

a provincial or local-level government administrative organisation in a province.

**60. FUNCTIONS OF A PROVINCIAL AND LOCAL-LEVEL GOVERNMENT ADMINISTRATIVE ORGANISATION.**

The functions of a provincial and local-level government administrative organisation in a province are -

- (a) to effect the administration required by the *Organic Law on Provincial Governments and Local-level Governments*; and
- (b) such other functions as are determined by the Head of State, acting on advice.

**61. PROCEDURES RELATING TO APPOINTMENTS, ETC., OF PROVINCIAL ADMINISTRATORS.**

The procedures relating to the substantive appointments, temporary appointments, suspension or termination of appointment of departmental heads referred to in Section 193 (*appointments to certain offices*) of the *Constitution*, as determined in the Regulations, apply to provincial administrators who are deemed departmental heads.

**62. TERMS AND CONDITIONS OF EMPLOYMENT OF PROVINCIAL ADMINISTRATORS.**

The terms and conditions of employment of a provincial administrator are as determined in a contract of employment as a deemed departmental heads made under Section 29 of this Act and the salaries and allowances are as determined by the Salaries and Remuneration Commission as detailed in the Regulations.

**63. ADDITIONAL FUNCTIONS OF PROVINCIAL ADMINISTRATORS.**

In addition to the functions specified in Section 74(1) of the *Organic Law on Provincial Governments and Local-level Governments*, the provincial administrator of a province -

- (a) is the chief adviser to the Provincial Governor and to the Provincial Executive Council; and

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- (b) subject to relevant national laws -
  - (i) is responsible to the Provincial Executive Council for strategic planning, project development and financial and human resource management; and
  - (ii) is responsible for bringing to the attention of the Provincial Executive Council the performance and service delivery of any other public authority in the province; and
- (c) is responsible for advising the Provincial Executive Council following consultation with the respective elected Member of the National Parliament of a district on the appointment of a district administrator.

### **64. PROCEDURES RELATING TO APPOINTMENT, ETC., OF DISTRICT ADMINISTRATORS.**

(1) A district administrator shall be appointed by the Provincial Administrator following the merit-based selection process and in consultation with the elected Member of Parliament representing the district, in accordance with the Regulations.

(2) The procedures relating to the substantive appointments, temporary appointments, suspension or termination of appointment of a district administrator are as prescribed in the Regulations.

### **65. TERMS AND CONDITIONS OF EMPLOYMENT OF DISTRICT ADMINISTRATORS.**

A district administrator shall be -

- (a) an officer of the Public Service appointed in accordance with the Regulations made under this Act; and
- (b) subject to the *Salaries and Conditions Monitoring Committee Act 1988* employed on terms and conditions determined by the departmental heads of the Department of Personnel Management after consultation with the Provincial Administrator of the province concerned.

### **66. ADDITIONAL FUNCTIONS OF DISTRICT ADMINISTRATORS.**

In addition to the functions specified in Section 74(2) of the *Organic Law on Provincial Governments and Local-level Governments*, a district administrator, subject to direction and control of the Provincial Administrator, is -

- (a) the chief adviser to Local-level Governments in the district; and
- (b) responsible for planning and project development at district level; and
- (c) responsible for the supervision of officers and employees in the district; and
- (d) responsible for such other functions as directed by the Provincial Administrator.

### **67. ASSIGNMENT OF STAFF.**

(1) The departmental heads of the Department of Personnel Management may assign an officer to a provincial or local-level administrative organisation through procedures set out in the General Orders for that purpose.

(2) An officer assigned under Subsection (1) is responsible to the Provincial Administrator.

### **68. SECONDMENT OF STAFF TO AND FROM OTHER BODIES.**

(1) Subject to Subsection (2), a provincial administrator may arrange for the secondment of -

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- (a) an officer from the provincial or local-level administrative organisation to any other public or private body; or
- (b) a person from any other public or private body to the provincial or local-level administrative organisation,

for training or specialist service purposes.

(2) Before arranging a secondment under Subsection (1), a provincial administrator must consult with -

- (a) the departmental heads of the Department of Personnel Management; and
- (b) the departmental heads of the Department responsible for provincial and local-level government matters.

**69. MATTERS RELATING TO PROVINCIAL TREASURERS AND OTHER OFFICERS ASSIGNED TO PROVINCIAL AND DISTRICT TREASURIES.**

(1) Provincial treasurers and district treasurers are appointed by the departmental heads responsible for financial matters under the provisions of the *Public Finance (Management) Act 1995* and the Regulations under that Act, in accordance with the General Orders.

(2) Provincial treasurers and district treasurers are officers of the Public Service and shall be subject to the day to day supervision by the Provincial Administrator except for decisions to be taken pursuant to the *Public Finance (Management) Act 1995* and the Regulations under that Act.

(3) The recruitment, appointment, promotion, transfer, discipline or termination of provincial or district treasurers and other officers of the provincial and district treasuries are those applicable to officers under this Act.

(4) The Provincial Administrator shall provide regular reports to the Secretary for Finance on the discipline and performance of each provincial treasurer and district treasurer.

**70. PROVINCIAL GOVERNMENT AND LOCAL-LEVEL GOVERNMENT SECRETARIATS.**

- (1) The Head of State, acting on advice, may, by notice in the National Gazette -
- (a) establish; or
  - (b) abolish; or
  - (c) change the name of,

a provincial government and local-level government secretariat for a province.

(2) The Head of State, acting on advice, given after considering a recommendation from the Departmental Heads of the Department of Personnel Management, may, by notice in the National Gazette -

- (a) create; or
- (b) abolish; or
- (c) upgrade; or
- (d) downgrade; or
- (e) rename,

the office of the head of a Provincial Government or a Local-level Government Secretariat.

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(3) Subject to Subsection (4), a Provincial Administrator may, after consultation with the departmental heads of the Department of Personnel Management -

- (a) create; or
- (b) abolish; or
- (c) upgrade; or
- (d) downgrade; or
- (e) alter the designation or classification of,

an office in the Provincial Government or a Local-level Government Secretariat, other than the office of the Head of the Secretariat.

(4) The size of the establishment for a Provincial Government or a Local-level Government Secretariat shall not exceed -

- (a) three offices to service the Provincial Executive Council; and
- (b) four offices to service the Provincial Assembly; and
- (c) six offices to service each Local-level Government.

(5) The Head of a Provincial Government or a Local-level Government Secretariat is responsible to the Provincial Administrator for the efficient performance of the functions of the Secretariat.

**71. APPOINTMENTS TO OFFICES IN PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS SECRETARIAT, ETC.**

(1) The Provincial Administrator shall, on the recommendation of Public Service Selection Committee constituted under this Act, appoint the Head of the Provincial Governments and Local-level Governments Secretariat.

(2) Procedures for selection, appointment, promotion, transfer, discipline or termination of staff of a Provincial Government or a Local-level Government Secretariat are those applicable to officers of the Public Service and shall be administered by the Provincial Administrator.

(3) The departmental heads of the Department of Personnel Management may assign officers to a Provincial Government or a Local-level Government Secretariat for a specified period which may be extended.

(4) Staff seconded to a Provincial Government or a Local-level Government Secretariat from a body other than the Public Service shall be seconded in accordance with procedures of that body relating to secondment.

**PART XVII. - GENERAL ORDERS AND CODES OF CONDUCT.**

**72. GENERAL ORDERS.**

(1) The departmental heads of the Department of Personnel Management may give to officers directions (to be known as "General Orders"), not inconsistent with this Act, as to any matter prescribed by this Act or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, or for the more efficient control and management of the Public Service and the welfare of the officers and employees.

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(2) The General Orders formulated by the departmental heads of the Department of Personnel Management shall be made only in respect of the policy decisions of the National Executive Council in relation to this Act and shall encompass equitable and socially inclusive principles and values.

### **73. CODES OF CONDUCT.**

(1) The Head of State, acting on advice, given after considering recommendations from the departmental heads of the Department of Personnel Management, may issue -

- (a) a Code of Business Ethics and Conduct for all officers and employees of the National Public Service; and
- (b) a Code of Conduct relating to the specialised function of any department, office or division of the National Public Service.

(2) A Code issued under Subsection (1) -

- (a) shall be published in the National Gazette; and
- (b) may otherwise be published or circulated in such manner as the departmental heads of the Department of Personnel Management determines.

(3) A Code under Subsection (1) shall specify the persons to whom it applies and it is the duty of each person to comply with the Code.

(4) A person who fails to comply with a Code issued under Subsection (1) shall -

- (a) where the failure constitutes an offence or breach of duty under any other law, be dealt with in accordance with that other law; and
- (b) where the failure does not constitute an offence or breach of duty under any other law, be considered to have committed a serious disciplinary offence for the purposes of Section 52 or a serious disciplinary offence under a contract or employment under Section 53.

### **74. GENDER EQUITY AND SOCIALLY ACCEPTABLE INCLUSIVENESS.**

(1) In accordance with the provisions of the *Constitution*, all matters determined in relation to the requirements of this Act shall be underpinned by equitable and socially inclusive principles and values that exhibit fairness and transparency.

(2) These principles and values ensure that the rights, privileges, obligations and duties of individuals are protected irrespective of race, tribe, place of origin, political opinion, colour, creed, sex or social constructions of gender.

(3) The making of additional processes, policies or laws to address under/privileged or less advantaged people shall be supported by this Act.

## **PART XVIII. - MISCELLANEOUS.**

### **75. INTERPRETATION OF PART XVIII.**

In this Part -

“designated position” means an office declared under Section 76 to be a designated position for the purposes of this Part;

“the Education Gazette” means the publication known as the Papua New Guinea Education Gazette published under the authority of the departmental heads of the department responsible for education matters;

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“teacher” means a teacher within the meaning of the *Education Act 1983*.

### **76. DESIGNATED POSITIONS.**

The departmental heads of the department responsible for education matters may, by notice in the Education Gazette, declare offices, the occupants of which are required to be teachers, and teaching officers in the department responsible for education matters for which teaching qualifications are desirable, to be designated positions for the purposes of this Part.

### **77. APPOINTMENTS TO DESIGNATED POSITIONS.**

(1) Subject to the *Teaching Service Act 1988* any member of the Teaching Service may be appointed to a designated position.

(2) An appointment referred to in Subsection (1) is not subject to probation.

(3) Subject to Subsection (2), Part IX (*recruitment and appointment of officers*) applies to and in relation to an appointment in accordance with Subsection (1) as though it were a promotion.

(4) A member of the Teaching Service who is appointed to a designated position in accordance with this section is entitled, in place of any existing or accruing rights to which he was entitled in the Teaching Service immediately before the appointment, to such rights as are determined by the departmental heads of the Department of Personnel Management and specified in the officer's instrument of appointment.

(5) In this section, “existing or accruing rights” means rights or contingent rights in respect of -  
(a) sick leave; and  
(b) recreation leave; and  
(c) furlough; and  
(d) leave fares,

other than any such rights to the extent that he has already received benefits in respect of them in the Teaching Service.

(6) The service in the Teaching Service of a member of that Service who is appointed to a designated position in accordance with this section, and any previous service in the Public Service that was continuous with that Service shall, for the purposes of this Act, be counted as service in the Public Service.

(7) This Act does not prevent a member of the Teaching Service who is appointed to a designated position in accordance with this section from being transferred or promoted to an office other than a designated position, but on promotion or transfer he or she shall be deemed, for all the purposes of this Act, to be an employee unless he was a transferred officer within the meaning of Section 125 of the *Teaching Service Act 1988*.

### **78. ELIGIBILITY FOR APPOINTMENT TO OFFICES GENERALLY.**

(1) Notwithstanding this Act but subject to Subsection (2), a member of the Teaching Service who ceased to be an officer of the *Teaching Service Act 1988* is eligible to apply for promotion to any vacant position.



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(2) For the purposes of this Part, the pay, or scale of rates of pay, to which a member of the Teaching Service is entitled as a member must be taken into account as though it were the pay, or the scale of rates of pay, to which he is entitled in the Public Service.

**79. ENGAGEMENT IN OUTSIDE EMPLOYMENT AND ACQUISITION OF LAND.**

(1) Subject to this section, except with the permission of the departmental heads of the Department of Personnel Management (which permission may be withdrawn at any time) an officer shall not -

- (a) accept or continue to hold a position in or under the Government of another country or in or under any public or municipal corporation; or
- (b) accept or continue to hold or discharge the duties of, or be employed in, a paid job in connection with any banking, insurance, agricultural, mining, mercantile or other commercial business, whether carried on by a corporation, a firm or an individual; or
- (c) engage in or undertake any business as principal or as agent; or
- (d) engage or continue in the private practice of any profession, occupation or trade; or
- (e) enter into any employment, whether remunerative or not, with any person, company or firm who or which is so engaged; or
- (f) accept or engage in any remunerative employment other than in connection with the duties of his office or offices in the Public Service.

(2) Subject to the succeeding provisions of this section, Subsection (1) does not prevent an officer from becoming a member or shareholder only of an incorporated company or of a company or society or persons registered under a law of the country or elsewhere, but he shall not take any part in the conduct of the business of the company or society otherwise than by the exercise of his right to vote as a member or shareholder.

(3) The departmental heads of the Department of Personnel Management may, by notice in the National Gazette, list companies and societies or persons which are authorised companies and societies for the purposes of this section.

(4) Except with the written consent of the departmental heads of the Department of Personnel Management, an officer shall not personally or by his agent -

- (a) hold shares in a company or society of persons operating in the country other than in a company or society authorised under Subsection (3); or
- (b) acquire land in the country other than land on which a building is or is to be erected that is to be occupied by him as a resident or a dwelling-house for occasional use by him for purposes of health.

(5) For the purposes of Subsection (4), the wife or husband of an officer may be deemed to be the agent of the husband or wife, as the case may be.

(6) Subsection (4) does not prevent an officer from acquiring land in accordance with custom.

(7) Notwithstanding this section, an officer may, with the approval of the departmental heads of the Department of Personnel Management (which approval may at any time be withdrawn) act as a director of a co-operative company.

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### **80. AIR INSURANCE COVER.**

- (1) Subject to Subsection (9), where an officer travels by air on official duty and suffers death or permanent incapacity as a result, the State is liable in accordance with this section.
- (2) The amount of liability of the State under this section is an amount, being not less than K4,000.00 and not exceeding K30,000.00 as determined by the Head of State, acting on advice, on receipt of a report by a Committee of Inquiry appointed by the Minister.
- (3) The amount of liability of the State under Subsection (2) is reduced by any ticket insurance entitlement or by any payment in the nature of insurance due or received from the airline concerned, or by arrangement with it.
- (4) In the case of the death of an officer, the State is not liable under this section where there are no dependants of the officer surviving him.
- (5) In the case of the death of an officer leaving dependants, the amount payable under this section shall be apportioned between the dependants of the officer in such manner as is fixed by the Minister.
- (6) Any amount that would otherwise be payable under this section shall be reduced by the amount of any damages received from the owner or operator of the aircraft involved.
- (7) Where damages are received by the owner or operator of the aircraft involved after payment has been made under this section, the amount by which the payment would otherwise have been reduced under this section may be recovered as a debt by the State from the person receiving the damages.
- (8) Any payment made under this section is in addition to and not in substitution for or reduction of any liability of the State under the *Workers' Compensation Act 1978*.
- (9) This section does not apply to an officer travelling in his or her own aircraft.

### **81. REGULATIONS.**

The Head of State, acting on advice, may make Regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, or for the more efficient control and management of the Public Service, and in particular for prescribing penalties.

## **PART XIX - REPEAL.**

### **82. REPEAL.**

- (1) Subject to Subsection (2), the Acts specified in Schedule 2 are repealed.
- (2) The Acts repealed by Subsection (1) shall remain in operation after the coming into operation of this Act to the extent necessary to give effect to Sections 83, 84 and 85 of this Act.

**PART XX. - TRANSITIONAL AND SAVING.**

**83. TRANSFER OF DEPARTMENTS.**

The departments established under the repealed Acts and in existence immediately before the coming into operation of this Act, are, on that coming into operation, deemed to be departments established under Section 20.

**84. TRANSFER OF OFFICES.**

All offices (including offices of departmental heads) established under the repealed Acts and in existence immediately before the coming into operation of this Act are, on that coming into operation, deemed to be offices created under this Act with the same -

- (a) designation; and
- (b) duties; and
- (c) requirements or qualifications; and
- (d) classifications,

that they had, and in the same departments as they were in, under the repealed Acts immediately before the coming into operation of this Act.

**85. TRANSFER OF OFFICERS.**

(1) A person who, immediately before the coming into operation of this Act, was a departmental heads under the repealed Acts is deemed, on that coming into operation, to be a departmental head under this Act.

(2) An officer who, immediately before the coming into operation of this Act, was the substantive occupant of an office under the repealed Acts is deemed, on that coming into operation, 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 Acts is, on that coming into operation, deemed to be an unattached officer under the equivalent provision of this Act.

(4) Where a person to whom Subsections (1), (2) or (3) applies was, immediately before the coming into operation of this Act, an officer on probation under the repealed Acts, he is deemed to be an officer on probation under this Act for the period of probation remaining unexpired immediately before that commencement.

(5) A person who, immediately before the coming into operation of this Act, was an employee under the repealed Acts is, on that coming into operation, deemed to be an employee under this Act.

(6) An officer or employee who was, immediately before the coming into operation of this Act, acting in an office by virtue of the provisions of the repealed Acts, shall, on that commencement, continue to act under this Act.

**86. DISCIPLINARY OFFENCES.**

(1) Where, prior to the coming into operation of this Act, an officer has been charged with committing a disciplinary offence under the repealed Acts, and on that coming into operation, the procedure set out for dealing with the disciplinary offence under the repealed Acts had not been completed, that disciplinary offence shall continue to be dealt with in accordance with the provisions of the repealed Acts.

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(2) For the purposes of this Act, an offence against the repealed Acts committed prior to the coming into operation of this Act, but in respect of which no charge had been made at that coming into operation, is deemed to be a disciplinary offence under Section 51 of this Act.

### **87. PROCEDURES IN RESPECT OF APPOINTMENTS, ETC.**

Where, before the coming into operation of this Act procedures required in respect of an appointment, promotion or transfer commenced under the repealed Acts, have not been finalised, at that coming into operation of this Act, the departmental heads of the Department of Personnel Management may order -

- (a) that the matter be finalised using the procedure under the repealed Acts; or
- (b) that the matter be finalised under the procedure provided for in this Act and that so much of the procedure as was carried out under the repealed Acts be considered, in so far as appropriate; or
- (c) that the procedure is, so far as carried out under the repealed Acts, disregarded, and the matter proceed from the beginning, under the procedure provided for in this Act.

### **88. ACTS, ETC., DONE UNDER REPEALED ACTS.**

(1) All acts, matters or things done or suffered under or for the purposes of the repealed Acts or the Regulations or Determinations or General Orders made under the repealed Acts are deemed to have been done or suffered under the equivalent provisions of this Act or the Regulations or the General Orders.

(2) Without limiting the generality of Subsection (1), but subject to Sections 83 and 84, that subsection applies to any act, matter or thing relating to appointment, promotion, transfer or discipline.

### **89. SERVICE.**

All periods that were counted as service of a person under the repealed Acts are counted as service for the equivalent purposes under this Act.

### **90. PROVINCIAL ADMINISTRATION.**

Section 109 (*the assigned personnel*) of the *Organic Law on Provincial Governments and Local-level Governments* in relation to administration applies for the purposes of this Act.

## **SCHEDULE 1.**

### **OATH AND AFFIRMATION OF OFFICE.**

Sec. 35.

#### *Oath.*

"I, <Name>, do swear that I will well and truly serve the Independent State of Papua New Guinea as an officer of the National Public Service.

So help me God!"

#### *Affirmation.*

"I, <Name>, do solemnly and sincerely promise and declare that I will well and truly serve the Independent State of Papua New Guinea as an officer of the National Public Service."

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SCHEDULE 2.

REPEALED ACTS.

Sec. 82(1).

*Public Services (Management) Act 1995.*

*Public Services (Management)(Amendment) Act 1998* (No. 24 of 1998).

*Public Services (Management)(Amendment) Act 2002* (No. 24 of 2002).

*Public Services (Management)(Amendment) Act 2003* (No. 2 of 2003).

*Public Services (Management)(Amendment) Act 2004* (No. 2 of 2004).

I hereby certify that the above is a fair print of the *Public Services (Management) Act 2013* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Public Services (Management) Act 2013* was made by the National Parliament on 26 November, 2013 by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.

