



REPUBLIC OF NAURU

LEADERSHIP CODE ACT 2016

No. 34 of 2016

An Act to establish the Office of the Ombudsman and to set out minimum standards of behaviour and conduct for the Leaders of Nauru and for matters connected with or incidental to them

Certified: 10th June 2016

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Enacted by the Parliament of Nauru as follows:

PART 1 - PRELIMINARY

1 Short title

This Act may be cited as the *Leadership Code Act 2016*.

2 Commencement

(1) This Act commences on the date it is certified by the Speaker.

(2) This Act will apply only to those actions that occur after its commencement in subsection (2).

3 Purpose of the Act

The purpose of this Act includes:

(a) giving effect to the commitment of Leaders and people of Nauru to the principles of good governance;

(b) establishing a Code of Ethical Conduct governing the behaviour and conduct of Leaders and encouraging compliance with the Code;

(c) providing guidance, promoting and strengthening the integrity of Leaders of Nauru;

(d) promoting high standards of service by Leaders;

(e) encouraging and emphasising those positive attributes of professional conduct that characterise effective leadership;

(f) enabling Leaders to declare themselves publicly accountable;

(g) providing protection for informants who expose misconduct in office by Leaders;

(h) establishing the office of the Ombudsman.

PART 2 - INTERPRETATION

4 Interpretation

In this Act, unless the context requires otherwise:

'Ambassador' means a person sent by Nauru as a diplomat and its foreign representative to another country;

'assets' in relation to a Leader, includes any debt or pecuniary obligation owed to him by any person, company, body, corporation or unincorporated association;

'Auditor General' means the person appointed under Article 66(1) of the Constitution;

'Chief Correctional Officer'; means the person appointed in accordance with section 7 of the *Nauru Correctional Service Act 1999*;

'Chief Justice' means the person appointed in accordance with Article 49 of the Constitution;

'child' means a son or daughter, whether married or unmarried, and includes an adopted child, a step-child, or an ex-nuptial child;

'Clerk of Parliament' means the person appointed in accordance with Article 33(1) of the Constitution;

'close relative' of a Leader means, a spouse, a parent, brother, sister, nephew, niece or child and includes a person:

- (a) who is legally adopted; or
- (b) for whom the Leader is or was the care-giver such that there exists as between the Leader and that person a relationship in the nature of parent and child; and
- (c) includes the spouse of any person referred to in this definition and their children;

'Commissioner of Police' means the person appointed in accordance with section 6 of the *Nauru Police Force Act 1972*;

'Consul General' means a person sent by Nauru as a diplomat and its foreign representative to another country;

'Deputy Electoral Commissioners' means the persons appointed in accordance with section 24 of the Electoral Act 2016;

'Deputy Speaker' means the person elected in accordance with Article 35 of the Constitution;

'Electoral Commissioner' means the person appointed in accordance with section 14 of the *Electoral Act 2016*;

'gift' includes:

- (a) the transfer of money, property, or other benefit either:
 - (i) without recompense;

- (ii) for a consideration substantially less than full consideration,
- (b) a loan of money or property made on a permanent, or an indefinite basis; or
- (c) a service or any other benefit;

'head of department' means a person appointed in accordance with section 13 of the *Public Service Act 2016*;

'High Commissioner' means a person sent by Nauru as a diplomat and its foreign representative to another country;

'instrumentality of the Republic' means a statutory corporation or authority or a corporation owned and controlled by Government and subject to Cabinet or Ministerial direction;

'judicial officer' means:

- (a) a judge;
- (b) a magistrate;
- (c) a registrar or deputy registrar of the Supreme Court;

'Leader' has the meaning provided in section 8;

'Member' or **'Member of Parliament'** means a person elected in accordance with Article 28 of the Constitution and the Electoral Act 2016;

'Minister' means the Minister responsible for the administration of this Act;

'Minister of the Cabinet' means a person appointed in accordance with Article 19(1) of the Constitution;

'Ombudsman' means the person appointed in accordance with section 33 of this Act;

'personal interest' in relation to a Leader, includes the personal interest of a spouse, child, dependant, agent, or business associate which the Leader has knowledge or would have had knowledge if he or she had exercised due diligence having regard to all the circumstances;

'President' means the person elected in accordance with Article 16(1) of the Constitution;

'public funds' includes all the moneys, resources and entitlements owned by, owed to, or held by or on behalf of the Republic and includes money under the control of:

- (a) the Government of the Republic of Nauru;
- (b) a civil society organisation where the funds were received as grant-in-aid from the Government; or
- (c) a statutory body, government corporation, state-owned enterprise or instrumentality of the Republic;

'public property' includes any form of real or personal property in which the Government or public body has ownership or other property interest as well as any right or other intangible interest that is purchased with public funds, including the services of contractor personnel, office supplies, telephones and other electronic telecommunications equipment and services, mail, automated data, public body records and vehicles;

'public service employee' has the meaning given in the *Public Service Act 2016*;

'relative' of a person means a member of that person's family, whether related by birth, custom, adoption or marriage, where both of them know, believe or could easily ascertain that they were related;

'Speaker' means the Speaker of Parliament elected in accordance with Article 34 of the Constitution;

'Standing Orders' means the Standing Orders of the Parliament of Nauru.

5 Meaning of 'benefit'

A reference in this Act to a benefit derived by a person includes a reference to:

- (a) a benefit derived directly by the person; and
- (b) a benefit derived, directly or indirectly, by another person at the request or direction of the first person.

6 Meaning of 'conflict of interest'

(1) A Leader has a conflict of interest in a matter if the Leader could benefit directly or indirectly from a decision on the matter and it relates in any way to:

- (a) property the Leader directly or indirectly owns or controls; or
- (b) property owned or controlled, directly or indirectly, by a member of the Leader's close relative; or
- (c) property in which the Leader has a beneficial interest of any kind, whether through a trust or otherwise.

(2) Despite subsection (1), it is not a conflict of interest if the Leader is acting as a member of a community or group.

7 Meaning of 'interest'

A Leader has an interest in a matter in either a business or personal capacity if the Leader or his or her close family, either alone or with someone else:

- (a) owns, directly or indirectly, property or other assets of any kind related to the matter; or
- (b) in the case of a company or other body corporate related to the matter owns shares in the company or body.

8 Meaning of Leader

In this Act, a Leader includes the following:

- (a) President;
- (b) Speaker of Parliament;
- (c) Deputy Speaker of Parliament;
- (d) Minister of the Cabinet;
- (e) Member of Parliament;
- (f) Clerk of Parliament;
- (g) Chief Justice;
- (h) Ambassadors, High Commissioners or Consuls General representing Nauru abroad;
- (i) Electoral Commissioner;
- (j) Deputy Electoral Commissioners;
- (k) judicial officers;
- (l) Auditor General;
- (m) Commissioner of Police;
- (n) Chief Correctional Officer;
- (o) head of a Department of the Public Service;
- (p) holder of any office established by legislation;

- (q) director of a corporation appointed by the President, Cabinet, Parliament, or a Minister or other officers of bodies of the Government;
- (r) representatives of Committees appointed by the President, Cabinet, Parliament, or a Minister;
- (s) any person holding the office of the Ombudsman established under this Act;
- (t) any person acting in the position of or as a temporary replacement for, a Leader; and
- (u) any other public service employee, or officer of Government, that legislation may declare to be a Leader for the purposes of this Act.

9 Property or benefit outside Nauru

A reference in this Act to property or to a benefit or advantage, includes a reference to property situated, or a benefit or advantage received, outside Nauru.

10 Custom

(1) Subject to subsection (2), the giving or accepting of a gift by a Leader is not a breach of this Act if done:

- (a) in accordance with custom and accepted customary practices; and
- (b) in the course of a traditional exchange of gifts; and
- (c) openly; and
- (d) for the benefit of a community or group rather than an individual.

11 Offences by other persons

A person other than a Leader, commits a breach against this Act if he or she:

- (a) takes part in conduct that breaches this Act;
- (b) obtains a benefit, directly or indirectly, from an act or omission that breaches this Act; or
- (c) exercises undue influence over, or in any other way brings pressure to bear upon a Leader, so as to influence, or attempt to influence, the Leader to breach this Act.

PART 3 – PRINCIPLES OF GOOD GOVERNANCE AND THE CODE OF ETHICAL CONDUCT

12 Breach of this Part

A Leader who breaches the provisions of this Part, is guilty of misconduct in office and is liable to a penalty under section 64.

13 Principles of Good Governance

A Leader in the exercise of his or her power must:

- (a) comply with the law;
- (b) uphold democratic processes and institutions, respecting the rule of law, the legislature and the independence of the judiciary;
- (c) exercise proper diligence, care and attention, always seeking to achieve high standards of public administration;
- (d) show respect for the customs, cultural heritage and traditions of the Nauruan people;
- (e) show respect for the natural environment;
- (f) show respect for religious belief;
- (g) show respect for the independence of the media;
- (h) afford no undue preferential treatment to any group or individual;
- (i) ensure that he or she does not act vindictively to the detriment of any person, group or body and must have regard for the rights, duties and proper interests of all others;
- (j) preserve the confidence of the Nauruan people in the integrity of the Government and in its Leaders;
- (k) promote peace and security.

14 Code of Ethical Conduct

Leaders are bound by the Code of Ethical Conduct and must abide by the following principles:

- (a) honesty and compassion;
- (b) making decisions in accordance with the law, and in the public interest and with regard to the merits of each case;
- (c) not have private interests other than those permitted by this Act;

- (d) arranging their affairs as to prevent real, potential or apparent conflicts of interest from arising;
- (e) not solicit or accept transfers of economic benefit other than incidental gifts, customary hospitality or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the Leader;
- (f) not step out of their official roles to assist private entities or persons in dealing with the government where this would result in preferential treatment to any person;
- (g) not knowingly take advantage of, or benefit from the information which is obtained in the course of their official duties and responsibilities;
- (h) not directly or indirectly use, or allow the use of government property of any kind, including property leased to the government, for purposes that would afford any type of economic benefit to the Leader;
- (i) on leaving public office, must not take advantage of, or benefit from, the information obtained during the course of his or her official duties with his or her previous public office.

15 Appointments to be made on merit

(1) A Leader must:

- (a) act fairly in appointing or recommending people to offices and positions for which he or she has responsibility;
- (b) not discriminate between persons participating in or seeking to participate in Government on account of their age, race, ethnicity, gender, disability, sexual orientation, religious beliefs, place of origin or political beliefs or opinions;
- (c) not use his or her political influence to bring about the appointment or promotion or suspension or dismissal of, or to obstruct the appointment or promotion, suspension or dismissal of an associate of a Leader;
- (d) not use his or her influence to unlawfully bring about the appointment, dismissal, suspension, or promotion of another Leader.

(2) A Leader who fails to comply with subsection (1) breaches this Act.

16 Loans, etc.

(1) Except as provided in subsection (2), a Leader must not accept a loan, advantage, or other benefit, whether financial or otherwise,

from any person, group, company or organisation for his or her own personal benefit.

(2) Subsection (1) does not apply to a loan made on commercially profitable terms by a recognised lending or banking institution where the Leader has satisfied its normal business or lending criteria.

(3) A Leader who fails to comply with subsection (1) breaches this Act.

17 Undue influence

(1) A Leader must not exercise undue influence over, or in any other way bring pressure to bear on another Leader or any other person holding public office employed by an instrumentality so as to influence, or attempt to influence, the person to act in a way that is:

(a) in breach of this Act;

(b) improper;

(c) illegal;

(d) against the requirements of the legislation under which the person was appointed; or

(e) contrary in any other way to the requirements of the person's office or position.

(2) A Leader who fails to comply with subsection (1) breaches this Act.

18 Bribery

(1) A Leader must not ask for, receive or obtain, or agree or attempt to receive or obtain any property, benefit or favour of any kind for himself or herself, a close relative or an associate in consideration of his or her actions in carrying out his or her duties as a Leader being influenced in any manner, or on account of his or her having acted as a Leader in any manner.

(2) A Leader who fails to comply with subsection (1) breaches this Act.

(3) A Leader may also be charged under the *Crimes Act 2016*.

19 Insider information

(1) A Leader must not use information that is gained in the execution of his or her office and which is not available to the general public to further or seek to further his or her private interests.

(2) A Leader who fails to comply with subsection (1) breaches this Act.

20 Multiple office holding

- (1) A Leader must not hold more than one public office or any other office for remuneration or allowance purposes at one time.
- (2) Despite subsection (1), a Leader may hold more than one public office if:
 - (a) permitted by law; or
 - (b) approved by Cabinet.
- (3) A Leader who fails to comply with this section breaches this Act.

21 Misuse of public assets, resources and funds

- (1) A Leader must not use any public assets, resources or funds:
 - (a) for any purpose other than the purpose for which those assets, resources or funds were appropriated; or
 - (b) in a manner that is grossly uneconomical.
- (2) A Leader who fails to comply with subsection (1) breaches this Act.

22 Abuse of defamation laws

- (1) A Leader must not:
 - (a) threaten or institute proceedings for defamation without pursuing the proceedings to court;
 - (b) use any public funds to finance any proceedings for defamation;
 - (c) bring or continue any proceedings for defamation claiming that an instrumentality of the Republic has been defamed;
 - (d) seek or accept punitive damages for defamation in cases where this is likely to deter further public discussion of matters of public benefit, unless the Leader alleges that the defendant in the proceedings was motivated by malice against the Leader or by reckless pursuit of profit.
- (2) A Leader who fails to comply with subsection (1) breaches this Act.

23 Abuse of *ex-gratia* payments

- (1) A Leader must not offer an associate, or accept from an associate, any *ex-gratia* payment out of public funds in circumstances where it might appear to the average informed citizen that the payment would not have been made at all, or that a substantially smaller

amount would have been paid, if persons other than that Leader's associate had been involved.

(2) For the purposes of this section, when a payment is made from public funds to settle a civil action out of court:

(a) that payment is deemed to be an *ex-gratia* payment; and

(b) the legal merits and the likelihood of success of the civil action are relevant when determining how that payment might appear to the average informed citizen.

(3) A Leader who fails to comply with subsection (1) breaches this Act.

24 Disclosure of conflict of interest

(1) A Leader must not participate in the deliberations of a public body or board or council or commission or committee, of which he or she is a member at any meeting at which any matter in which he or she has a personal interest is to be discussed.

(2) A Leader who fails to comply with the provisions of this section breaches this Act and:

(a) ceases to be a member of that public body, board, council, commission, or committee; and

(b) where any loss is caused, make good the loss.

(3) Before a Leader deals with a matter in the course of his or her duties in which he or she has a personal interest, the Leader must, in writing, inform the person or public body or institution concerned, of the nature and extent of his or her interest.

25 Divesting of interests

(1) Every Leader must detach himself or herself of any interest that is foreseeably likely to cause regular or frequent conflicts of interest.

(2) If a Leader has applied to the Ombudsman for a clearance under section 43 and the Ombudsman has certified that a conflict of interest exists, then the Leader must either:

(a) sell or give away the interest; or

(b) transfer the interest to a blind trust managed by others for as long as the Leader remains in office or retains that interest.

(3) A Leader who fails to comply with subsection (2) breaches this Act.

26**Government contracts**

- (1) A Leader must not have any direct interest in any contract or agreement with the Government or any Government instrumentality or corporation, unless:
 - (a) the Leader does so as a member of, and in common with, other members of a registered business consisting of at least 10 persons or shareholders; and
 - (b) the contract or agreement was awarded to that registered business on a competitive commercial basis and through a transparent and impartial process.
- (2) A Leader cannot void, repudiate, or escape a binding contract or agreement merely to avoid breaching this section if this would disadvantage others.
- (3) A Leader who fails to comply with subsection (1) breaches this Act.

27**Customary gifts or benefits in kind**

- (1) Subject to subsection (3), any gift or donation to a public Leader on any public or ceremonial occasion, or commission to a Leader on any transaction shall be treated as a gift or donation or commission to the Government and must be declared to the Ombudsman no later than 30 days after the gift was received.
- (2) The particulars of a declaration made under subsection (1) must be entered in a register that must be kept in such form as the Ombudsman approves and made available for inspection by members of the public at all reasonable times.
- (3) An exception to this section is if the gift was given and accepted:
 - (a) according to the customs of Nauru;
 - (b) according to the customs of another sovereign nation; or
 - (c) for the benefit of a group or community rather than that of an individual.
- (4) The burden rests on the Leader making a claim that a gift has been given or received according to Nauruan or another custom to prove such claim on the balance of probabilities.
- (5) Where a Leader is in doubt as to the need for a declaration or the appropriateness of accepting an offer of a gift, hospitality or other benefit, that Leader may consult the Ombudsman for advice.
- (6) The following general rules apply to gifts given to or received by Leaders:

- (a) all gifts above the value of \$1,000 including gifts given or received, and customary gifts must be declared and reported to the Ombudsman;
- (b) all gifts, including customary gifts received valued at less than \$2,000 may be retained for personal use or benefit;
- (c) all gifts received valued in excess of \$2,000 must be surrendered to the Ombudsman which may then be sold in a public auction from time to time, remitting any proceeds received into the Government Treasury.

(7) A Leader who fails to comply with the provisions of this section commits a breach of this Act.

28 Counselling

Any person who knowingly aids, abets, counsels, procures or conspires with or encourages a Leader to engage in conduct or behaviour which may lead or does lead to a breach of this Act is guilty of an offence and liable upon conviction to a term of imprisonment not exceeding 5 years or a fine of \$20,000 or to both.

29 Attempts

Any person who attempts to commit an offence punishable under this Act is deemed to have committed the offence.

30 Liability of a Leader

- (1) Any action taken or omitted to be taken by a person as the employee, agent or associate of a Leader is, for the purposes of this Act, considered as done or omitted to be done by that Leader.
- (2) In any proceedings under this Act against any Leader in respect of anything alleged to have been done or omitted to be done by an employee, agent or associate of that Leader, it is a defence for that Leader to prove that:
 - (a) in the case of an employee or associate, the Leader took such steps as were reasonably practicable to prevent that employee, agent or associate from doing or omitting to do that thing; or
 - (b) in the case of an agent, the act or omission exceeded the express or implied authority given by the Leader.

PART 4 – OFFICE OF THE OMBUDSMAN

31 Establishment of the office of the Ombudsman

There is hereby established the office of the Ombudsman.

32 Functions of the Ombudsman

The Ombudsman has the following functions:

- (a) to investigate and report on any complaints or allegations of misconduct by a Leader;
- (b) to enquire into any defects in administrative practice appearing from any matter being enquired into;
- (c) issue rulings or interpretations, clarifying the meaning and effect of the provisions of this Act;
- (d) to enquire into any case of an alleged or suspected discriminatory practice by a Leader;
- (e) to give prior advice or clearances on potential breaches of this Act;
- (f) to provide reasonable and appropriate assistance and advice to Leaders;
- (g) to devise and carry out programmes of public education, including the dissemination of information on this Act;
- (h) to enquire into any complaint or matter referred by a Parliamentary Committee; and
- (i) such other functions as may be prescribed.

33 Appointment and removal of the Ombudsman

(1) The Ombudsman is appointed by a selection panel consisting of:

- (a) the President;
- (b) a Judge of the Supreme Court of Nauru other than the Chief Justice; and
- (c) a community representative agreed to by the President and the Judge.

(2) The Ombudsman may only be removed:

- (a) upon recommendation of the selection panel in subsection (1); and
- (b) approval of the recommendation in subsection (2)(a) by two-thirds majority of the members of Parliament.

(3) The panel may only make recommendation for removal of the Ombudsman:

- (a) if he or she breaches any provision of this Act;
- (b) for inability to perform adequately the functions of his or her office or position, whether arising from infirmity of body or mind or other cause;
- (c) for misconduct or misbehaviour.

34 Terms and conditions of appointment of the Ombudsman

The Ombudsman is appointed for a period of 5 years on the terms and conditions approved by the President and the selection panel in section 33(1).

35 Oath of Office

The Ombudsman must, upon being appointed, swear or affirm an oath of office before the Chief Justice of the Supreme Court as provided in Schedule 1.

36 Qualifications of the Ombudsman

(1) The Ombudsman must be a person who:

- (a) is qualified to be appointed as a Judge of the Supreme Court of Nauru or a court of equivalent standing in the Commonwealth; and,
- (b) has extensive knowledge and experience in governance and public administration;
- (c) is capable of fulfilling the position with independence and impartiality; and
- (d) is neither a citizen nor national of Nauru.

(2) A person is disqualified for appointment as the Ombudsman if he or she:

- (a) holds a public office, including any instrumentality of the Republic; or
- (b) is a person who has been declared bankrupt; or
- (c) has been convicted and is under sentence or is subject to be sentenced for an offence punishable by imprisonment for one year or longer.

37 Independence of the Ombudsman

The Ombudsman must comply with the provisions of this Act, but otherwise is an independent office and is not subject to direction or control by any other person or authority.

38 Decisions of the Ombudsman

Any decision of the Ombudsman to parties affected under this Act or a resolution that a particular investigation must be carried out must:

- (a) be communicated by written notice; and
- (b) signed by the Ombudsman.

39 Appointment and employment of other staff of the Office of the Ombudsman

- (1) The Ombudsman may appoint such other staff and employees to assist in carrying out the functions of the Office of the Ombudsman.
- (2) The staff of the Ombudsman's office must, before starting employment, take before the Ombudsman, the oath of secrecy set out in Schedule 2.

40 Ombudsman to provide annual report

- (1) The Ombudsman must, as soon as practicable after the end of each financial year, present to Parliament a written report detailing the performance of the Ombudsman's functions for that financial year.
- (2) The report must be in general terms and must contain the names of Leaders who sought the Ombudsman's clearance or advice.

41 Funding of the Office of the Ombudsman

Parliament must ensure that the Office of the Ombudsman is allocated sufficient resources from the national budget for the timely and effective performance of its duties and functions.

42 Rulings by Ombudsman

- (1) A ruling published by the Ombudsman is valid if:
 - (a) it represents a reasonable interpretation of, and is consistent with, the Act; and
 - (b) it is generally applicable and is not limited to any particular person, place or thing.

- (2) If the validity of a ruling by the Ombudsman is challenged, whether in the course of civil or criminal proceedings, the Supreme Court must make a declaration as to the validity of any such ruling.

43 Advice and clearance by Ombudsman

- (1) The Ombudsman may, if requested by a Leader, give advice concerning a possible breach of the Act or on any matter with respect to the obligations of a Leader under this Act.
- (2) When giving advice, the Ombudsman may also include a clearance declaring that any conduct or activity proposed by a Leader for which advice is sought, does not breach this Act.
- (3) The Ombudsman may only give a clearance if:
- (a) the clearance relates to a possible breach of this Act that has not yet occurred or commenced;
 - (b) the clearance relates to the Leader who requested it;
 - (c) the clearance is requested by written notice that is signed by the Leader and that discloses all relevant information that the Leader does or should know about the possible breach;
 - (d) the clearance is given in writing;
 - (e) the clearance contains all information given to the Ombudsman by the Leader concerned; and
 - (f) if the Ombudsman considers that the clearance should be conditional on certain terms, the clearance must specify those terms.
- (4) A clearance given by the Ombudsman is valid and conclusive unless:
- (a) the giving of the clearance was plainly contrary either:
 - (i) to this Act;
 - (ii) to a valid ruling published by the Ombudsman before the clearance was given;
 - (b) the Ombudsman gave the clearance only, or mainly because of, fraud, duress or inducement;
 - (c) the subsequent conduct of the Leader is substantially contrary to any terms specified in the clearance in accordance with subsection (3)(f); or

- (d) the information contained in the clearance is false or misleading in any serious respect.
- (5) The Ombudsman may ask the Leader seeking advice under subsection (1), for further information for the purpose of determining whether or not to give clearance.
- (6) The Ombudsman may refuse to give clearance if he or she reasonably believes:
 - (a) there is insufficient information to give a clearance; or
 - (b) under all circumstances, giving the clearance would not be consistent with this Act.
- (7) A Leader must not make any statement, whether express or implied:
 - (a) falsely claiming that he or she has been given a clearance; or
 - (b) making any false statement or misleading claim as to the contents or terms of a clearance that he or she has been given.
- (8) A Leader who fails to comply with subsection (7) breaches this Act.
- (9) A decision of the Ombudsman relating to clearances or the revocation of, is final and may not be appealed further.

44 Relevant factors when considering a clearance

When deciding whether or not to give a clearance on a possible breach of this Act or whether to make any clearance subject to specified terms, the Ombudsman may:

- (a) have regard to the following factors:
 - (i) the difficulty of explaining to the average person the justification for the clearance;
 - (ii) whether the extra benefit, if any, for the Leader would be trivial;
 - (iii) the closeness of the relationship between the Leader or any associate concerned; and
- (b) have regard to any other codes of conduct, legislation, or standards that the Ombudsman considers appropriate.

45 Revocation of clearance

- (1) The Ombudsman may revoke a clearance previously given to a Leader if it appears that:

(a) the clearance is invalid under section 43(4); or

(b) is valid by mistake.

(2) If a clearance is revoked under subsection (1) (b) or section 43(4)(a)(ii), the Leader does not breach this Act by reason of any conduct the Leader engaged in before the clearance was revoked.

PART 5 – SUPPLEMENTARY PROVISIONS APPLICABLE TO MINISTERS OF GOVERNMENT

46 Relationship between this Part and the Constitution

The provisions of this Part will, in so far as they apply to Ministers of the Cabinet, give effect to the oath sworn in accordance with Article 18(2) of the Constitution.

47 Cabinet Minister's responsibility

(1) A Cabinet Minister must not act inconsistently with the principle of collective responsibility of Ministers for the policy of the Government and the conduct of its affairs and, in particular, must not:

(a) publicly contradict or disassociate himself from any policy adopted by Cabinet;

(b) issue public statements criticising another person holding Ministerial office; or

(c) make unauthorised disclosures of Cabinet discussions, decisions or documents.

PART 6 – FINANCIAL DISCLOSURES

48 Register of Leaders Interests

(1) The Ombudsman must keep, in the form or form considered appropriate, including in electronic form, a register to be known as the Register of Leaders Interests which is a record for each Leader, the information given by the Leader in accordance with section 50.

(2) Upon the filing of each statement, the Ombudsman may examine every statement that is lodged with it and must ensure that such statement complies with the requirements of this Part.

(3) The Ombudsman must not make any adverse decision without giving the Leader the opportunity to be heard.

(4) Where, upon examination subsection (2), the Ombudsman is satisfied that a statement has been fully made in compliance with the Act, the Ombudsman must then forward to a person to whom this section applies, a Certificate of Compliance.

49 Lodging of annual statement of interest

- (1) Every Leader must lodge an annual statement for the preceding year, specifying details of the Leader's income, assets and liabilities.
- (2) The annual statement for each year must be delivered to the Ombudsman:
 - (a) within 3 months of the day on which that person became a Leader, whether or not for the first time; or
 - (b) on or before the last day of December, whichever is the later.
- (3) The annual statement lodged in accordance with subsection (1) forms part of the Register.

50 Contents of annual statement

- (1) The annual statement must set out the details of the income, assets and liabilities of:
 - (a) the Leader;
 - (b) any spouse, de facto spouse and dependent child of the Leader, if known; and
 - (c) any trust of which the Leader, or (if known) any spouse, de facto spouse, child of the Leader, is a beneficiary.
- (2) The details to be set out in the annual statement are:
 - (a) all land, houses and other property whether owned or leased;
 - (b) all vehicles;
 - (c) all shares in companies (public or private);
 - (d) all income;
 - (e) all financial liabilities;
 - (f) all directorships in companies (public or private);
 - (g) all directorships or other offices held in unincorporated bodies;
 - (h) any company (public or private) owned in full or part by the Leader;
 - (i) any assets acquired or disposed of during the period covered by the statement;

- (j) any liabilities acquired or discharged during the period of the period covered by the statement;
 - (k) a concise description of any trust to which the Leader is a beneficiary or trustee;
 - (l) any fund to which the Leader contributes;
 - (m) particulars of any political, trade or professional association to which the Leader belongs;
 - (n) any other substantial interest whether pecuniary or not, which the Leader considers may appear to raise a material conflict between his or her private interests and public duty.
- (3) The details must include income, assets and liabilities inside and outside of Nauru.
- (4) However, an annual statement need not include:
- (a) any liabilities in respect of a Leader's family home; or
 - (b) the personal effects of the Leader, or of a spouse or child of the Leader but any personal effect or property valued in excess of \$5,000 must be declared.
- (5) A Leader must notify the Ombudsman of any changes which may occur with regard to his or her annual statement, within 2 months of the change occurring.

51 Unaccounted income or property of a Leader

Where, in a statement lodged with the Ombudsman in accordance with section 49, a Leader discloses an income, property or assets which are insufficient to support the accretion in value of the net assets disclosed so as to raise the inference that there must have been other income to account for the extent of acquisition of such income, property or assets the Leader will be deemed to have been in possession of such income, property or assets which have not been disclosed and the burden is on him or her to establish the source of that further income.

52 Secrecy and confidentiality

- (1) The Ombudsman and his or her staff must maintain secrecy and confidentiality on matters and information that come to their knowledge under this Act.
- (2) Any statement lodged with the Ombudsman and the records of the Ombudsman with respect to those statements are secret and confidential and must not be made public, except where a particular statement or record is required to be produced for the purpose of, or

in connection with, any court proceedings against, or inquiry in respect of the person lodging the statement.

53 Failure to lodge statement

A Leader is in breach of this Act if the Leader:

- (a) fails to lodge an annual statement by the required deadline or within 30 days after the Ombudsman has sent that Leader a written notice reminding the Leader to do so, whichever is the later; or
- (b) files a statement knowing that it is false or misleading in any relevant detail.

54 Extension of time

- (1) Despite section 53, the Ombudsman may, in any particular case, for good cause, extend the time for furnishing a statement for a further period not exceeding 8 weeks.
- (2) The Ombudsman may not grant more than one extension of time for a Leader to lodge his or her annual statement in any one calendar year.

55 Names of Leaders published annually

The Ombudsman must ensure that the following is published in the Government Gazette by May 30 in each year:

- (a) the names and positions of all Leaders who have lodged their annual statements; and
- (b) the names and positions of all Leaders who have not lodged their annual statements by the required deadline.

PART 7 - INVESTIGATION OF BREACHES

56 Investigation of complaints

- (1) The conduct of one or more Leaders must be investigated and reported upon:
 - (a) if the Ombudsman receives a complaint from a person that the Leader has, or that those Leaders together have, committed a breach of this Act; or
 - (b) if the Ombudsman believes that the Leader may have, or that those Leaders together may have, committed a particular breach of this Act, and brings this to himself or herself as a written complaint.

- (2) If the Leader or Leaders named in the complaint is or includes the Ombudsman or his or her associates then the complaint must be forwarded to the Commissioner of Police for further investigation with the report of the investigation forwarded to the Speaker of Parliament for a decision to be made at the next sitting of Parliament on the continued appointment of the Ombudsman.
- (3) For all other complaints not including the Ombudsman, the complaint must be brought to or immediately referred to the Ombudsman, and the investigation must be carried out, and any decisions relating to that complaint must be made by the Ombudsman.

57 Mode of Complaint

A complaint to the Ombudsman must be made in writing and must be signed by the person making the complaint.

58 Commissioner of Police requested to investigate

The Commissioner of Police on the request of the Ombudsman must:

- (a) ensure that the police force investigates the complaint; and
- (b) that within 60 days of the request being made by the Ombudsman:
 - (i) forward the results of the police investigation to the Director of Public Prosecutions and to the Ombudsman if the Commissioner of Police is of the view that there is sufficient evidence to prosecute; or
 - (ii) inform the Ombudsman in writing giving reasons for the decision if he or she finds insufficient evidence to support the complaint.

59 Principles of natural justice

In exercising his or her powers and functions under this Act, the Ombudsman must act:

- (a) in accordance with the principles of natural justice; and,
- (b) in a manner that is just, fair, and independent; and,
- (c) according to equity and good conscience.

60 Anonymity and protection of informants

- (1) Subject to subsection (2), the Ombudsman must take every step necessary to protect the identity of informants who expose misconduct by a Leader.

(2) If the person bringing the complaint requests in writing that his or her name not be published, then his or name must not be disclosed to anyone except:

(a) to the Ombudsman or the Commissioner of Police; or

(b) to the Director of Public Prosecutions; or

(c) as permitted or required by a court order.

61 Rejecting trivial complaints

(1) The Ombudsman must ensure that every complaint he or she receives is investigated fully, unless he or she decides not to commence an investigation, or decides to suspend or terminate an investigation already commenced, because he or she considers that:

(a) the complaint is trivial, frivolous, vexatious or not made in good faith; or

(b) the complaint has been too long delayed to justify an investigation; or

(c) the subject matter of the complaint is outside the jurisdiction of the Ombudsman or the Commissioner of Police.

(2) If the Ombudsman decides not to commence an investigation, or decides to suspend or terminate an investigation already commenced, this does not prevent the Ombudsman from later investigating that matter, or any related matter, on his or her own initiative.

(3) A decision by the Ombudsman to suspend an investigation into a complaint must be communicated to the Commissioner of Police if the investigation was being conducted by the police.

62 Conduct of proceedings – evidence

In conducting an investigation, hearing or other proceeding under this Act, the following apply:

(a) the ordinary rules relating to the admissibility of evidence in criminal trials;

(b) criminal proceedings against a Leader for a breach of this Act are to be conducted in the same way as any other criminal proceedings; and

(c) forfeiture proceedings under this Act are to be conducted in the same way as civil proceedings for the recovery of a debt or other property.

63 Completed report

- (1) If an investigation is conducted by the Ombudsman, he or she must give a copy of the report to the Commissioner of Police within 30 days if, in his or her opinion, the complaint involves criminal misconduct.
- (2) The Ombudsman must obtain the response of the Leader or any other person concerned in his or her report, and that response must be incorporated into the report, before a copy is given to the Commissioner of Police.
- (3) The Commissioner of Police, may, upon receiving a report under this section:
 - (a) conduct further investigation; or
 - (b) if no further investigation is required, forward the report to the Director of Public Prosecution.
- (4) No action for defamation may lie against the Ombudsman for making such a report.
- (5) Where the investigation is in response to a complaint against a decision or action of a public office, the Ombudsman must give a copy of his or her report to the Office concerned and the complainant after taking their views or comments in consideration.

64 Penalties for misconduct

- (1) If the Ombudsman makes a determination that a Leader has engaged in misconduct in office, the Ombudsman may impose one of the following penalties:
 - (a) if the Ombudsman holds the misconduct to be minor or technical in nature, he or she may order counselling, censure, a warning or a reprimand of the Leader;
 - (b) if the Ombudsman holds the misconduct to be more than minor or technical, but was not serious misconduct, he or she may impose a fine of not more than \$2,000;
 - (c) if the Ombudsman holds the misconduct to be serious misconduct, he or she must forward a report to the Director of Public Prosecutions recommending prosecution.
- (2) Any fine imposed by the Ombudsman must be paid within 60 days and failure to do so will result in the Leader being imprisoned for a term of not less than 3 months.

65 Factors in determining whether misconduct is serious

For the purposes of determining whether or not misconduct engaged by a Leader is serious misconduct, the Ombudsman must have regard to the following matters:

- (a) the nature of the conduct;
- (b) the motive of the Leader;
- (c) the extent to which the conduct of the Leader may have placed the Leader in a position in which he or she could be perceived as having a conflict of interest or being compromised in the fair exercise of the public or official duties;
- (d) the extent to which the conduct of the Leader may have demeaned his or her office;
- (e) the extent to which the conduct of the Leader may have allowed his or her integrity to be called into question;
- (f) the extent to which the conduct of the Leader may have undermined, endangered or diminished respect for and confidence in the integrity of the government or government institutions of Nauru;
- (g) whether the Ombudsman has previously determined that the Leader has engaged in misconduct in office, whether or not serious misconduct;
- (h) the extent to which the international reputation of Nauru has been damaged;
- (i) the extent of any financial loss to Government; or
- (j) any other considerations of public policy the Ombudsman considers relevant.

66 Appeals from decisions of the Ombudsman

- (1) A Leader who is aggrieved by a decision or determination of the Ombudsman may appeal only on a question of law to the Supreme Court against such decision or determination.
- (2) Any appeal under subsection (1) must be made within 45 days of the Leader being given notice of the decision of the Ombudsman.
- (3) Application for leave to appeal must be made to the Ombudsman whose decision or determination is sought to be appealed against, identifying the question or questions of law to be determined by the Supreme Court.

- (4) In the event that the Ombudsman refuses to grant leave, the application for leave may be made directly to the Supreme Court and the Supreme Court may determine whether or not such leave should be granted.
- (5) The Supreme Court is at liberty to decide the question of law on the papers but if it so decides, it may order an oral hearing of the application for leave and may proceed to fix a date for the hearing of such application.
- (6) No appeal lies from any decision of the Supreme Court on the question of leave and such decision is final.

67 Powers of the Supreme Court

- (1) In the event that leave to appeal to the Supreme Court is not granted by the Supreme Court under section 66, the decision or determination of the Ombudsman must stand.
- (2) In the event that leave to appeal is granted by the Supreme Court it must fix a date for the hearing of the appeal.
- (3) At the hearing of the appeal, the Supreme Court has the power to make the following orders:
 - (a) that the appeal be allowed and the matter be remitted to the Ombudsman for a re-determination of the matter;
 - (b) that the appeal be dismissed and that the decision and determination of the Ombudsman be confirmed;
 - (c) any such orders it may deem necessary in the interests of justice including orders as to costs.
- (4) No appeal lies from any decision of the Supreme Court under this section.
- (5) The Chief Justice may prescribe and publish rules and forms as may be appropriate for the conduct and hearing of applications for leave to appeal and the hearing of appeals under this section.

PART 8 – PROSECUTION OF BREACHES

68 Criminal related allegations

- (1) On a criminal related allegation, the Director of Public Prosecution must:
 - (a) consider the report submitted by the Commissioner of Police under section 58; and

- (b) within 45 days of receiving this report, decide whether to prosecute the Leader or his or her associates or refer the report back to the Commissioner of Police for further investigation with copies to the Ombudsman; and
 - (c) after receiving the results of the investigation, decide whether there are sufficient grounds to prosecute the Leader or any other person.
- (2) After considering the report under subsection (1)(a) or the results of the further investigation under subsection (1)(c), the Director of Public Prosecutions may determine not to prosecute a Leader or his or her associates.
- (3) If the Director of Public Prosecutions decides not to prosecute a Leader on the grounds in subsection (2), he or she must follow the procedure set out in section 69(3).
- (4) Any Leader mentioned under this Part must not act on the provisions of this section and section 69 if the allegations are against him or her.

69

Prosecution by the Director of Public Prosecutions

- (1) Where there are sufficient grounds or evidence to support the prosecution under this Act or any other Act, the Director of Public Prosecutions must prosecute that prima facie case within 3 months of receiving the Commissioner of Police's report.
- (2) The Director of Public Prosecutions may decide not to prosecute only on the basis that there is either insufficient grounds or evidence to support a prosecution.
- (3) If the Director of Public Prosecutions decides not to prosecute a Leader or any other person, he or she must:
- (a) notify the Ombudsman and the Commissioner of Police of his or her decision within 21 days of making the decision giving reasons for that decision; or
 - (b) if the Ombudsman is the subject of the complaint, notify the President;
 - (c) notify parties concerned; and
 - (d) publish a notice in the Gazette within 14 days of the decision, stating that he has decided not to prosecute and the reasons for such a decision.

70 Forfeiture of gains

- (1) If a Leader who has been convicted of a breach of this Act has or is believed to have obtained property or any other benefit from such breach, the Ombudsman may refer the matter to the Supreme Court to make the following orders:
- (a) all such properties obtained must be forfeited to the Government; or
 - (b) the Leader must pay a pecuniary penalty equivalent to the value of the benefit he or she obtained; or
 - (c) both, but the total amount to be paid must not exceed the value of the property or benefit obtained.
- (2) This section applies also to any other person other than the Leader who has obtained property or a benefit in any way from the conduct that constituted the breach.

71 Effect of forfeiture order

- (1) If the Supreme Court makes a forfeiture order against property, the property vests absolutely in the Government of Nauru.
- (2) Every person who is charged with the responsibility of recording the ownership of property must take notice of any further order and must take all necessary steps to record the ownership of such property in the name of the Government of Nauru.

72 Hardship factor

The Supreme Court must, before making an order, consider the hardship that making the order would cause to any other person who did not breach this Act and would be affected by such order, especially if such person is not himself or herself a Leader.

73 Suspension from office

- (1) The Supreme Court may, if the Ombudsman so requests, make an order suspending from office a Leader who is under suspicion for breach of this Act whilst investigations are pending.
- (2) A Leader who is suspended pursuant to subsection (1), will continue to receive 50% of his or her net salary and will continue to receive all allowances, entitlements and privileges.

74 Defence to prosecution

- (1) It is not a defence to a prosecution under this Act that the accused was no longer a Leader at the time he or she was investigated, prosecuted, convicted or sentenced.

- (2) To establish jurisdiction, it is sufficient for the prosecution to establish that the accused was a Leader at the time the offence was committed.

PART 9 - MISCELLANEOUS

75 Regulations

The Minister may at any time make regulations, not inconsistent with this Act, for all or any of the following purposes:

- (a) prescribing standards of conduct for Leaders; and
- (b) prescribing exemptions and conditions in respect of the rules of conduct for Leaders; and
- (c) providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

76 Privileges of Parliament

Nothing in this Act affects the privileges of the members of Parliament.

77 Amendment of this Act

This Act may not be amended except:

- (a) through a two-thirds majority vote in its favour; and
- (b) if there has been an interval of not less than 90 days between the introduction of the proposed amendment in Parliament and the passing of the proposed amendment by Parliament.

78 Offence of false allegation

A person who makes an allegation under this Act, knowing it to be false is guilty of an offence and liable upon conviction to a term of imprisonment not exceeding 2 years.

79 Payments and remuneration

Any fees, expenses or remuneration payable to the Ombudsman may be paid out from the Government Treasury.

80 Derogation from other laws

Nothing in this Act has the effect of limiting or derogating from any other law of Nauru and the conclusion of proceedings under this Act does not prevent the institution of criminal or other proceedings under any other law in respect of the Leader concerned.

SCHEDULE 1

Section 35

OATH OF OFFICE OF OMBUDSMAN

I, *, swear/affirm [by Almighty God] that I will well and truly serve as the Ombudsman of the Republic of Nauru, that I will not disclose or make known any information that comes to my knowledge and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will. [So help me God!]

.....
OMBUDSMAN

.....
[DATE]

.....
Hon. CHIEF JUSTICE

.....
[DATE]

*State name

SCHEDULE 2

Section 39(2)

OATH/AFFIRMATION OF SECRECY OF OMBUDSMAN AND STAFF

I, *, [swear by the Almighty God]/[affirm] that I will not directly or indirectly, except as may be required in the discharge of my duties under the Leadership Code Act 2016, divulge any information received by me or on behalf of myself under the Act.

.....

**Ombudsman
Republic of Nauru**

.....

[DATE]