



REPUBLIC OF NAURU

# PUBLIC SERVICE (AMENDMENT) ACT 2020

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No. 6 of 2020

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An Act to amend the *Public Service Act 2016*.

Certified: 4<sup>th</sup> June 2020

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Enacted by the Parliament of Nauru as follows:

**1 Short title**

This Act may be cited as the *Public Service (Amendment) Act 2020*.

**2 Commencement**

This Act commences on certification of the Speaker.

**3 Amendment of the Public Service Act 2016**

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

**4 Amendment of Section 3**

Section 3 is amended by:

(a) inserting the word 'or' after the semicolon in paragraph (a); and

(b) inserting a new subsection (3) as follows:

(3) This Act applies to all foreign service employees employed or posted in Nauru High Commissions, Consulates overseas or any other place as follows:

(a) provisions relating to Heads of Departments apply to the Heads of Missions; and

(b) provisions relating to other public service employees apply to all other staff of the Missions or Consulates.'

**5 Amendment of Section 4**

Section 4 is amended by:

(a) inserting the following words and their definitions in alphabetical order as follows:

**'Chairperson'** means the Chairperson of the Public Service Appeals Board referred to in section 105;

**'foreign service employee'** refers to a Nauruan employed by the Government in Nauruan High Commissions or Consular offices overseas and includes Honorary Consuls;

(b) deleting and substituting the following words and their definitions:

**'absent without leave'**, has the meaning as is defined section 5;

**'adoption order'**, has the same meaning it has in section 3 of the *Adoption of Children Act 1965*;

**'adoptive parent'**, has the same meaning it has in section 3 of the *Adoption of Children Act 1965*;

**'continuous period of service'**, has the meaning as is defined in section 6;

**'misconduct'** means a breach of the Code of Conduct or commission of a disciplinary offence prescribed by Regulations;

(c) deleting the following words and their definitions:

- (i) **'adopted child'**;
- (ii) **'Chairman'**;
- (iii) **'disciplinary action'**;
- (iv) **'family member'**;
- (v) **'information notice'**; and
- (vi) **'Regulations'**.

## **6 Amendment of Section 8**

Section 8(k) is amended by:

- (a) deleting the word 'of' where it appears the second time and substituting 'for';
- (b) renumbering paragraphs 'a' and 'b' to subparagraphs (i) and (ii);
- (c) inserting the word 'and' after the semicolon in subparagraph (i); and
- (d) deleting the comma and substituting a semicolon after the word 'authority' in subparagraph (ii).

## **7 Amendment of Section 13**

Section 13 is amended by:

- (a) deleting and substituting subsection (5) as follows:

'(5) Subject to section 25, the Cabinet shall determine:

- (a) the terms and conditions of employment; and
- (b) the functions and powers,

of a person appointed as the Secretary of a Department.

- (b) inserting new subsections (6) and (7) as follows:

'(6) The Cabinet may:

(a) in consultation with the relevant Minister, transfer to another Department or re-assign duties other than as Head of the Department; or

(b) terminate for misconduct or without any cause,

a Secretary of a Department appointed under subsection (4).

(7) Where the Secretary of a Department is terminated without cause, he or she shall be paid one month's salary in lieu of notice together with any accrued benefit under this Act.'

**8 Amendment of Section 15**

Section 15(2) is amended by deleting the word 'of' where it appears before the words 'the Chief Secretary' and substituting 'on'.

**9 Amendment of Section 21**

Section 21(3)(a) is amended by inserting the word 'and' immediately after the semicolon.

**10 Amendment of Section 27**

Section 27 is amended by deleting and substituting subsections (1) and (2) as follows:

(1) This section applies:

(a) if a person is appointed to a public service position; and

(b) immediately before the appointment, the person was not a public service employee; or

(c) to a temporary employee employed under Section 28.

(2) The appointment:

(a) is subject to an initial appointment of 6 months for any person in subsection (1)(b);

(b) of a temporary employee, who:

(i) has served a period of 6 months or any other period as a temporary employee in the public service;

(ii) has a satisfactory attendance record; and

(iii) the relevant Secretary or Head of Department provides a report of satisfactory performance,

the period of employment as temporary employee shall be credited to or is deemed to have been served as probationary period of 6 months.

**11            Amendment of Section 29**

Section 29 is deleted and substituted as follows:

**29            Review of status and leave entitlements of temporary employee**

- (1) The relevant Secretary must, two weeks before the end of the employment of the temporary employee, decide and inform the Chief Secretary whether:
  - (a) subject to section 27, the person be employed as a permanent employee;
  - (b) the person's temporary employment be continued for another period of five months only; or
  - (c) the person's employment is to end or lapse on the completion of any period or extended period of temporary employment.
- (2) In making a decision under subsection (1)(a), the relevant Secretary must:
  - (a) prepare a performance appraisal of the employee;
  - (b) ensure there is a relevant vacancy within the public service; and
  - (c) submit to the Chief Secretary for his or her decision.
- (3) If the relevant Secretary does not make a decision within the period stated in subsection (1), the Secretary is taken to have decided that the person's employment ends.
- (4) The temporary employee shall not be paid any salary or benefit beyond the period when his or her temporary employment ended.
- (5) Notwithstanding any other provisions of this Act, temporary employees shall be eligible for official travel, special leave, medical leave and official leave on the same terms and conditions as public service employees.
- (6) Subject to subsection (1), a temporary employee is eligible for recreation leave if he or she completes 12 months continuous period of service.

- (7) Where a temporary employee is absent from work without the prior leave or approval of his or her reporting officer or the relevant Secretary, he or she may be summarily terminated by the Chief Secretary on the recommendation of the relevant Secretary.'

**12 Amendment of Section 32**

Section 32 is deleted and substituted as follows:

**'32 Contract positions**

- (1) The Minister may with the approval of the Cabinet, determine any established permanent position in the public service to be held by a public service employee on a contract for a fixed period of time.
- (2) The Chief Secretary may upon the request of a relevant Secretary, establish a new contract position in a Department.
- (3) Where a contract position is vacant, the Chief Secretary may fill the position according to the process set out in section 34.
- (4) The determination of a position under subsection (1) shall be gazetted.'

**13 Amendment of Section 36**

Section 36 (3) is amended by deleting the words 'head of department' and substituting 'Secretary'.

**14 Amendment of Section 37**

Section 37 is deleted and substituted as follows:

**'37 Termination of employment – contract employee**

- (1) A contract employee may be terminated according to the terms and conditions of his or her contract.
- (2) Where a contract employee:
  - (a) abandons work without prior notification;
  - (b) is absent from work for a period of 14 days without prior approval;
  - (c) whilst on a category of leave attempts to extend leave by other forms of leave without any reasonable cause; or
  - (d) leaves the Republic with no intention to return,his or her contract shall be terminated without any notice.'

**15 Amendment of Section 51**

Section 51 is amended by:

- (a) deleting subsection (1A); and
- (b) deleting and substituting subsection (4)(a) as follows:

‘(a) the employee has completed an initial continuous period of service of 3 months;’ and

**16 Amendment of Section 66**

Section 66 is amended by deleting ‘section 6 of the *Births Deaths and Marriages Act 1957*’ and substituting ‘section 6 of the *Births Deaths and Marriages Registration Act 2017*’.

**17 Amendment of Section 77**

Section 77(3)(a) is amended by deleting the word ‘satisfies’ where it appears and substituting ‘satisfied’.

**18 Amendment of subdivision 9, Part 6**

Subdivision 9 of Part 6 is deleted and substituted as follows:

**Subdivision 9 – Furlough and long service leave**

**78 Purpose of furlough and long service leave**

- (1) Furlough and long service leave is available on full pay to a public service employee to enable the employee to be absent from duty in recognition of such employee’s length of service in the public service.
- (2) A public service employee becomes entitled to long service leave after completing a continuous period of service of 5 years.
- (3) A public service employee is entitled to furlough leave after having served in the public service for a continuous period of 10 years.
- (4) Where a public service employee who has become eligible for furlough or long service leave dies without taking the same, his or her estate shall be paid a sum equivalent to the amount of the employee’s long service leave.
- (5) For the purposes of furlough or long service leave:
  - (a) retirement includes retirement on other grounds such as medical, redundancy or termination without cause but excludes termination for misconduct; and
  - (b) public service employee includes contract employee.’



**79 Calculation of long service leave**

- (1) The Chief Secretary may grant long service leave as follows:
  - (a) where the period of service is not less than 5 years but is less than 8 years, 20 working days;
  - (b) where the period of service is not less than 8 years but is less than 10 years, 40 working days; and
  - (c) where the period of service is not less than 12 years, but is less than 15 years, 60 working days.
- (2) Where a public service employee has taken his or her long service leave, he or she is not eligible for additional long service leave.
- (3) A public service employee shall apply to the Chief Secretary at least one month before he or she intends to take a period of long service leave.
- (4) The Chief Secretary may only grant long service leave to the extent of the employee's long service balance if:
  - (a) the employee has completed a period of service provided for under section 79(1);
  - (b) the relevant Secretary consents to the grant of leave; and
  - (c) the period of leave is a multiple of three weeks.
- (5) The relevant Secretary may only refuse to consent to grant leave for operational reasons.
- (6) If the relevant Secretary refuses to grant leave for operational reasons, the Secretary must consult with the employee to determine the alternative time for the employee to take leave.

**80 Calculation and taking of furlough leave**

- (1) A public service employee who has served in the public service for a continuous period of 10 years is eligible for furlough leave of 60 days and 9 days after completion of each additional year of service.
- (2) Furlough leave accrued under subsection (1) shall only be granted by the Chief Secretary on the retirement or resignation of a public service employee.
- (3) The Chief Secretary may allow the encashment of furlough leave upon retirement or resignation of a public service employee.

**19 Amendment of Section 82**

Section 82 is amended by:

- (a) deleting the full stop and substituting a semicolon immediately after the word 'redundancy' in paragraph (e);
- (b) inserting the word 'and' after the word 'redundancy' in paragraph (e); and
- (c) inserting new paragraphs (f), (g) and (h) as follows:
  - '(f) if the employee is terminated for misconduct;
  - (g) where he or she is convicted of a criminal offence; or
  - (h) if the Chief Secretary terminates the employee under section 27(7).'

**20 Insert new Section 82A**

A new Section 82A is inserted as follows:

**'82A Criminal offences**

- (1) Where a public service employee is charged with a criminal offence, he or she shall be suspended without remuneration from the public service pending the final determination of the criminal case.
- (2) Where a public service employee has been convicted of a criminal offence, irrespective of the sentence imposed by the court, he or she shall be summarily terminated from employment in the public service.
- (3) This Section applies to any person employed in the public service.'

**21 Amendment of Section 94**

Section 94(2) is amended by deleting the words 'an information' where they appear.

**22 Amendment of Section 96**

Section 96 is amended by deleting the words 'repetition of minor' where they appear.

**23 Amendment of Section 97**

Section 97 is deleted and substituted as follows:

**'97 Disciplinary matters and procedure**

- (1) The Minister may, by regulations prescribe misconduct, the procedure for investigating and determining disciplinary charges and other disciplinary matters relating to misconduct.

- (2) For the purposes of *Articles 68(1)(c) and 68(2) of the Constitution*, the Chief Secretary shall have the power to discipline a Head of Department or a person in charge of a department and report his or her findings and recommendations to the Minister for consideration by the Cabinet.

**24 Amendment of Section 99**

Section 99(1) is amended by deleting the word 'serious' where it appears.

**25 Amendment of Section 100**

Section 100 is deleted and substituted as follows:

**'100 Notice requirement – for termination of employee**

- (1) This section applies to a public service employee if
- (a) the employee's employment is terminated on the ground of redundancy under Division 4; or
  - (b) the employee is terminated without cause.
- (2) The employee in subsection (1) must be given:
- (a) four weeks' notice of the termination; or
  - (b) an amount equal to the employee's salary of one month.
- (3) For the avoidance of any doubt, an employee who is terminated on the ground of misconduct is not entitled to any period of notice or payment of salary in lieu.'

**26 Amendment of Section 103**

Section 103(2) is deleted and substituted as follows:

'(2) A public service employee, who is terminated under subsection (1), shall be paid for the accrued:

- (a) annual leave; and
- (b) long service leave.'

**27 Repeal and replace Part 8**

Part 8 is repealed and replaced as follows:

## **'PART 8 – PUBLIC SERVICE APPEALS BOARD**

### **Division 1 – Administrative matters**

#### **105 Election of member and term of office**

- (1) The Board shall be constituted in accordance with Article 70 of the Constitution which shall consist of:
  - (c) the Chief Justice as the Chairperson;
  - (d) a person to be appointed by the Cabinet; and
  - (e) a person elected by public officers.
- (2) The election of the member of the Board must be conducted in accordance with the rules that may be prescribed by Cabinet.
- (3) The maximum term that a member, other than the Chairperson, may serve on the Board is 3 years.

#### **106 Secretary to the Board**

The Deputy Registrar of the Supreme Court shall serve as secretary to the Board.

#### **107 Oath and affirmation of member**

- (1) Each member of the Board, other than the Chairperson, must take an oath or make an affirmation as provided in Schedule 2, before exercising a power or performing a function as a member of the Board.
- (2) The oath or affirmation must be taken or made before the Chairperson.

#### **108 Allowances for members**

A member of the Board shall be paid the fees and allowances determined by Cabinet and published in the Gazette.

### **Division 2 – Appeals**

#### **109 Appealable decisions**

- (1) An aggrieved public service employee may appeal any of the following decisions made by the Chief Secretary:
  - (a) appointment of a person or promotion of another public service employee;
  - (b) where the employee was found to have committed a misconduct and a penalty imposed by the Chief Secretary;

- (c) transfer of the employee for reasons other than as a penalty for misconduct; or
  - (d) reduction of the employee's classification.
- (2) Where an aggrieved public service employee has appealed against a decision to appoint or promote another person to a position, the appeal lapses where:
- (a) the employee is promoted to a position of the same or equivalent classification;
  - (b) the appointment or promotion of the other person is cancelled; or
  - (c) that position becomes vacant.

**110 Decisions not appealable**

- (1) A public service employee is not entitled to appeal a decision:
- (a) for the appointment or promotion of a person to a position unless:
    - (i) the employee was an applicant for that position; or
    - (ii) the position applied for would have resulted in a promotion;
  - (b) to terminate the employment without any cause;
  - (c) where the employee was terminated after a criminal conviction.
- (2) Where an employee admits an allegation of misconduct, the right of appeal shall be limited to the penalty.

**111 Procedure for commencing an appeal**

- (1) An aggrieved public service employee shall commence an appeal by filing a notice of appeal with the secretary to the Appeals Board within 14 days of the receipt of the decision of the Chief Secretary.
- (2) A copy of the notice of appeal in subsection (1) shall be served to the Chief Secretary.
- (3) The notice of appeal shall be in writing and include the grounds for the appeal.

**112 Chief Secretary to provide documents**

The Chief Secretary shall:

- (a) file the relevant documents or evidence, with the secretary to the Board, which were submitted to him or her for consideration in making the decision; and
  - (b) provide a copy of the documents under paragraph (a) to the appellant,
- within 14 days of the receipt of the notice of appeal.

**113 Hearing of appeal**

- (1) The Board shall:
  - (a) list the notice of appeal before it by no later than 30 days from the date of the filing of the notice of appeal under section 111 with the secretary to the Board; and
  - (b) issue notice to parties to attend before the Board.
- (2) At the hearing of the appeal, the aggrieved public service employee may appear in person, be assisted by another person or represented by a legal practitioner.
- (3) The hearing of the appeal may be by written or oral submissions or as the Board may direct.
- (4) No additional or fresh evidence shall be permitted for an appeal hearing without the prior leave of the Board.
- (5) The Board shall not grant leave under subsection (3), to adduce evidence which was not adduced before the Chief Secretary, unless the party seeking to adduce the evidence demonstrates that:
  - (a) the evidence could not have been earlier obtained with reasonable diligence;
  - (b) the evidence is likely to materially influence the outcome of the appeal; and
  - (c) the evidence is credible.
- (6) The hearing must not be open to the public.
- (7) No appeal or proceedings before the Board shall be dismissed for want of any form or procedure.
- (8) The Board may set its own procedure for the hearing of appeals.

**114 Decision on appeal**

- (1) The Board may:
  - (a) confirm part or whole of the decision;
  - (b) set aside part or whole of the decision and substitute its own decision; or
  - (c) refer the decision back to the Chief Secretary for re-determination with appropriate directions.
- (2) For the purposes of subsection (1)(b), the Board in substituting its own decision has the same power vested to the Chief Secretary to make the decision.

**115 Orders for reinstatement or compensation**

- (1) Where the Board sets aside a decision to terminate the aggrieved public service employee, the Board may:
  - (a) reinstate the employee to the same position which he or she occupied immediately before the decision appealed against; or
  - (b) reinstate the employee but demote to a position lower than what he or she occupied immediately before the decision was made.
- (2) Subject to subsection (4), where the Board makes a decision to reinstate the aggrieved public service employee, the Board may make the following orders:
  - (a) in case of subsection 1(a), to reinstate the salary and benefit to which the employee was entitled for his or her position held immediately prior to termination; or
  - (b) in case of subsection 1(b), where an employee is demoted, payment of salary and benefit based on the demoted position with retrospective effect from the date of the decision to terminate, or where suspended to the date of such suspension.
- (3) Where the Board sets aside a decision to terminate the aggrieved public service employee and the position which the public service employee had occupied immediately before the decision to terminate was made, is abolished or it is otherwise not practical to reinstate the public service employee, he or she shall be paid compensation equivalent to 3 months' salary to which the public service employee was entitled on the date of termination.
- (4) The Board may order compensation to be paid to an aggrieved public service employee under subsection (1) a sum of money not

exceeding 6 months salary for the period provided in subsection (4).

- (5) Any period of time which is treated as leave without pay under subsection (4) shall not affect the calculation and determination of the continuous period of service in the public service.
- (6) The redundancy payment or any accrued benefit after demotion, must be on the demoted position.

**116 Compliance with order for reinstatement**

- (1) Where a decision for reinstatement is made, the Board shall direct the Chief Secretary to comply with the decision within 30 days of the date of the delivery of the decision.
- (2) The employee shall be paid salary and benefit with effect from the date of the delivery of the decision whether or not the employee is reinstated with immediate effect.

**117 Decision**

- (1) The Board shall deliver its decision in writing within 14 days of the hearing of the appeal.
- (2) A copy of the decision shall be provided to the Chief Secretary and the aggrieved public service employee.
- (3) The Board shall have no power to order costs against either party.

**117A Limitation on appealing decision of Board**

- (1) There shall be no appeal against the decision of the Board.
- (2) The decision of the Board is subject to judicial review on the grounds of:
  - (a) jurisdictional error; and
  - (b) error of law.

**28 Amendment of Section 124**

Section 124 is amended by inserting a new subsection (3) as follows:

- (3) Subsection (2) applies *mutatis mutandis* to any amendment to this Act.

**29 Amendment to Section 130**

Section 130 is amended by inserting a new subsection (4) as follows:



- (4) For the purposes of interpretation, Public Service Circulars issued by the Chief Secretary have the same effect as Regulations made under this Act.

**30 General amendment**

Where there is reference to:

- (a) 'head of Department', the same should be referred to as 'Head of Department';
- (b) 'long service leave', the same should be referred to as 'furlough leave' where appropriate.

**31 Savings and transition**

- (1) Any salary or benefit accrued by an employee under the existing provisions of the Act before this amendment shall remain.
- (2) Where a public service employee has already taken long service leave before this amendment, he or she is not eligible for any additional furlough leave.