

No. 19 of 1995.

***Public Services (Management) Act 1995.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 19 of 1995.

***Public Services (Management) Act 1995.***

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Public Services (Management) Act 1995,***

Being an Act—

- (a) to make provision for the appointment, conditions of employment, constitution, powers, procedures and functions of the Public Services Commission in accordance with Section 190 (*Establishment of the Commission*) and 191 (*Functions of the Commission*) of the *Constitution*; and
- (b) to implement Section 195 (*Organization, etc., of the State Services*) of the *Constitution* in relation to the Public Service; and
- (c) to 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)<sup>1</sup> to 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.

**PART I. – PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

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

- (a) freedom of expression conferred by Section 46 of the *Constitution*; and

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<sup>1</sup> Paragraph (d) of the Long title added by the *Public Services (Management) (Amendment) Act 1998* (No 24 of 1998), s2.

- (b) freedom of assembly and association conferred by Section 47 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*; and
- (d) the right to vote and stand for public office conferred by Section 50 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.

## 2. INTERPRETATION.

In this Act, unless the contrary intention appears—

<sup>2</sup>“**Central Agencies Co-ordination Committee**” means the Central Agencies Co-ordination Committee established by Section 24 of the Prime Minister Act 2002;

“**Chairman**” means the Chairman of the Commission appointed under Section 5;

<sup>3</sup>“**Chief Secretary to Government**” means the Chief Secretary to Government under Section 19 of the Prime Minister 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;

<sup>4</sup>“**Code of Conduct**” means a Code of Conduct issued under Section 70A;

“**Commission**” means the Public Services Commission;

“**Departmental Head**” means the Head of a Department of the Public Service and includes the persons referred to in Section 75 and 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

<sup>2</sup> Section 2 Amended by No. 24 of 2002, s. 1.

<sup>3</sup> Section 2 (definition of “Chief Secretary to Government”) added by the *Public Services (Management) (Amendment) Act 1998* (No 24 of 1998), s3(a); Section 2 Amended by No. 24 of 2002, s. 1.

<sup>4</sup> Section 2 Amended by No. 24 of 2002, s. 1.

- (b) children under the age of 16 years who are wholly dependent on and maintained by the officer; and
- (c) relatives who are wholly dependent on and maintained by the officer in such circumstances that, in the opinion of the Departmental Head of the Department of Personnel Management, they should be regarded as forming part of the officer's family;

**“General Orders”** means the General Orders provided for by Section 70;

**“office”** means an office in the Public Service created under Section 22 or 33, or provided under Section 34;

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

- (a) an employee; and
- (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 or employee who, by virtue of his office, is responsible for the supervision and general working of a branch or section of a Department, and includes an officer or employee 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 his appointment, promotion, demotion, transfer, suspension, disciplining or cessation or termination of employment (except cessation or termination at the end of his normal period of employment as determined in accordance with law), or otherwise;

**“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;

**“Provincial Administrator”**<sup>5</sup> 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;

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<sup>5</sup> Section 2 Amended by No. 2 of 2003, s. 1.

**“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 unincorporate) established by or under an Act or Constitutional Law other than—

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

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

**“seniority”**, in relation to an officer, means his 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;

**“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, in respect of officers and employees, of the *Public Services Conciliation and Arbitration Act 1969* or any determination under it.

<sup>6</sup> Section 2 (definition of “public body”) added by the *Public Services (Management) (Amendment) Act 1998* (No 24 of 1998), s3(b).

<sup>7</sup> Section 2 Amended by No. 2 of 2003, s. 1.

**PART II. – THE PUBLIC SERVICES COMMISSION.**

**5<sup>8</sup>. [REPEALED.]**

**6. CONDITIONS OF EMPLOYMENT.**

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

**7. 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.

**8. DISQUALIFICATION FROM OFFICE.**

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

**9. 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

<sup>8</sup> Section 5 Repealed by No. 2 of 2003, s. 2.

Guinea or solicit, accept or receive any other benefit in addition to his 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 such a nominee; or
  - (ii) any direct or indirect financial benefit received by the member as such a nominee is 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.

## **10. 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) shall be deemed to commence 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.

## **11. 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 Chairman or a member of the Commission and a person shall not be appointed or re-appointed for a period that extends beyond the date on which he will attain the age of 60 years.

(2)<sup>9</sup> <sup>10</sup>The Head of State, acting with, and in accordance with, the advice of the Public Services 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 Chairman or a member of the Commission but in no case shall the Chairman or a member of the Commission continue to act as Chairman or a member of the Commission after he has attained the age of 65 years.

<sup>9</sup> Section 11 Subsection (2) amended by No. 2 of 2003, s. 3.

<sup>10</sup> Section 11 Subsection (2) amended by No. 2 of 2003, s. 3.

**12. ACTING CHAIRMAN AND ACTING MEMBERS OF THE COMMISSION.**

<sup>11</sup>(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 Chairman of the Commission –

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

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

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

**13. 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 shall not knowingly make any false or misleading statements in any evidence before the Commission.

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 that subsection, is guilty of an offence.

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<sup>11</sup> Section 12 Substituted by No. 2 of 2003, s. 4.

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 so to do under that subsection, is guilty of an offence.

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 Paragraph (a), (c), (d) or (e); and
- (g) an employee,

but does not include a member of the Defence Force.

#### 14. 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 organization) 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 or that 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.



**15. PROCEDURES OF THE COMMISSION.**

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

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

(3) If the Chairman is not present at a meeting of the Commission, the member of the Commission most senior—

(a) in length of service as a Commissioner; or

(b) if all members present have equal length of service as Commissioner—in age,

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.

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

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

**16. DELEGATION BY THE COMMISSION.**

(1) The Commission may, by instrument in writing under the hand of the Chairman, 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.

**17. ANNUAL REPORT BY 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.

**17A. SECRETARIAT OF THE COMMISSION.**

<sup>12</sup>(1) There shall be Secretariat of the Commission 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 Secretariat.

(3) The terms and conditions of employment of the Head of 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 of the Secretariat who –

- (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, of the staff of the Secretariat; and
- (c) shall be subject to appointment, revocation of appointment and discipline by the Head of the Secretariat,

and the Head of the Secretariat is accorded the powers necessary to enable him to carry out his functions under this section.

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<sup>12</sup> Section 17A Inserted by No. 24 of 2002, s. 2.

**PART III.<sup>13</sup> – REVIEW OF PERSONNEL MATTERS.**

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

<sup>14</sup>(1) The Commission shall, following a complaint made by an officer to the Commission in accordance with Subsection (2), review a decision on a personnel matter relating to appointment or 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 was made, but the Chairman 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 procedure to be followed in a review under this section is as follows: –

- (a) the Commission shall summons –
  - (i) the Departmental Head of the Department of Personnel Management or his delegate; and
  - (ii) the Departmental Head of the Department in which the officer is or was employed, or his delegate, to represent that Department; and
  - (iii) 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;
- (b) the persons summonsed under Paragraph (a) shall make themselves available to appear before the Commission within 14 days of the date of summons;
- (c) the Commission shall –
  - (i) consider all the facts relative to the matter, including –
    - (A) the views of the persons summonsed under Paragraph (a); and
    - (B) the personnel management policies of the National Public Service; and
    - (C) the cost implications of any decision which it may make; and

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<sup>13</sup> Part III Substituted by No. 24 of 2002, s. 3.

<sup>14</sup> Section 18 Substituted by No. 24 of 2002, s. 3.

- (ii) make a decision to uphold, vary or annul the decision the subject of the complaint; and
  - (iii) give immediate notification of its decision to the persons summonsed under Paragraph (a);
- (d) the decision of the Commission under Paragraph (c)(ii) –
- (i) 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
  - (ii) shall become binding after a period of 30 days from the date of the decision.

**PART IV. – REVIEW OF ORGANIZATIONAL MATTERS.**

**19. REVIEW OF ORGANIZATIONAL MATTERS.**

(1) In the performance of its duty under Section 19(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 view of the individual members of the Commission as representatives of officers of long-standing and experience in the National Public Service.

**PART V. – ORGANIZATION OF THE NATIONAL PUBLIC SERVICE.****20. DEPARTMENTS OF THE PUBLIC SERVICE.**

(1)<sup>15</sup> <sup>16</sup>There shall be –

- (a) a Department of the Prime Minister and National Executive Council established under Section 16 of the Prime Minister Act 2002; and
- (b) a Department of Personnel Management; and
- (c) such other 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
- (b) abolish a Department; or
- (c) alter the name of a Department (including the Department of Personnel Management).

**21. FUNCTIONS OF DEPARTMENTS.**

<sup>17</sup>The functions of –

- (a) the Department of the Prime Minister and National Executive Council are as provided for under Section 18 of the Prime Minister Act 2002; and
- (b) the Department of Personnel Management are, subject to Section 24(2), as determined by the Head of State, acting on advice; and
- (c) each Department, other than those referred to in Paragraph (a) and (b), are as 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.

**21A. CHIEF SECRETARY TO GOVERNMENT.**

<sup>18</sup>(1) There is established within the National Public Service an office of Chief Secretary to Government.

(2) The Departmental Head of the Department of the Prime Minister and National Executive Council is the Chief Secretary to Government.

<sup>15</sup> Section 20(1) repealed and replaced by the *Public Services (Management) (Amendment) Act 1998* (No 24 of 1998), s4; Section 20 Subsection (1) substituted by No. 24 of 2002, s. 4.

<sup>16</sup> Section 20(1) repealed and replaced by the *Public Services (Management) (Amendment) Act 1998* (No 24 of 1998), s4; Section 20 Subsection (1) substituted by No. 24 of 2002, s. 4.

<sup>17</sup> Section 21 Substituted by No. 24 of 2002, s. 5; Part VA added by the *Public Services (Management) (Amendment) Act 1998* (No 24 of 1998), s5.

<sup>18</sup> Section 21A added by the *Public Services (Management) (Amendment) Act 1998* (No 24 of 1998), s5.

(3) The Chief Secretary to Government is the senior officer of the National Public Service.

**21B. FUNCTIONS OF CHIEF SECRETARY TO GOVERNMENT.**

<sup>19</sup>The functions of the Chief Secretary to Government are—

- (a) to be the principal adviser to the Prime Minister and to the National Executive Council; and
- (b) to co-ordinate policies and initiatives of the National Executive Council; and
- (c) to ensure that decisions, directions and policies of the National Executive Council are implemented by the National Public Service and by public bodies; and
- (d) to ensure that the National Public Service and public bodies perform effectively and are accountable to the National Executive Council and to the Parliament; and
- (e) such other functions as are determined by the National Executive Council.

**21C. POWERS OF THE CHIEF SECRETARY TO GOVERNMENT.**

<sup>20</sup>(1) The Chief Secretary to Government may at any time, for the purpose of the performance of his function under this Act or any other law—

- (a) enter premises occupied or used by—
  - (i) a Department; or
  - (ii) a Provincial Government; or
  - (iii) a public body; and
- (b) question a person who appears likely to have information relevant to the functions of the Chief Secretary to Government; and
- (c) require any person to provide information relative to the functions of the Chief Secretary to Government; 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 Chief Secretary to Government; and
- (e) issue directions relative to his functions to a Departmental Head and to the head of a public body.

(2) All Departmental Heads, heads of public bodies and officers of the National Public Service and of public bodies shall co-operate with the Chief Secretary to

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<sup>19</sup> Section 21B added by the *Public Services (Management) (Amendment) Act 1998* (No 24 of 1998), s5.

<sup>20</sup> Section 21C added by the *Public Services (Management) (Amendment) Act 1998* (No 24 of 1998), s5.

Government in the performance of his functions and the exercise of his powers under this Act.

**21D. ANNUAL REPORT BY CHIEF SECRETARY TO GOVERNMENT.**

<sup>21</sup>(1) The Chief Secretary to Government shall, no later than 31 March in each year, give to the Prime Minister, for presentation to the National Executive Council, a report in respect of implementation by the National Public Service and public bodies, during the year ending 31 December preceding, of Governmental policies and decisions.

(2) Nothing in Subsection (1) prevents the Chief Secretary to Government from making, on his own initiative or at the direction of the Prime Minister, other reports on the implementation, by the National Public Service and public bodies, of Governmental policies and decisions.

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<sup>21</sup> Section 21D added by the *Public Services (Management) (Amendment) Act 1998* (No 24 of 1998), s5.



**PART VI. – DEPARTMENTAL HEADS.**

***Division 1.***

***General.***

**22. DEPARTMENTAL HEADS.**

<sup>22</sup>(1) The functions of –

- (a) an office of Departmental Head of the Department of the Prime Minister and National Executive Council in accordance with Section 17 of the Prime Minister Act 2002; and
- (b) an office of Departmental Head of the Department of Personnel Management created by the Head of State, acting or advice, by notice in the National Gazette; and
- (c) such other offices of Departmental Head as are created by the Head of State, acting on advice, by notice in the National Gazette.

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

- (a) abolish; or
- (b) alter the designation of,

an office of Departmental Head established under Subsection (1)(c).

**23. DELEGATION BY DEPARTMENTAL HEAD.**

A Departmental Head (including the Departmental head of the Department of Personnel Management) may, in respect of an officer or employee or employees included in a class of officers or employees, by writing under his hand delegate to a person all or any of his powers and functions under this Act (except this power of delegation).

**24. RESPONSIBILITIES OF DEPARTMENTAL HEADS.**

(1) A Departmental Head–

- (a) is responsible for the general working and efficient conduct of his Department; and
- (b) shall report to the Departmental Head of the Department of Personnel Management whenever the necessity arises, any alterations that are, in his opinion–
  - (i) necessary or expedient for the more economical, efficient or convenient working of his Department or any branch of it; or

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<sup>22</sup> Section 22 Substituted by No. 24 of 2002, s. 7.

- (ii) necessary in the salaries or allowances of any of the officers under his control; and
  - (c) shall bring to the attention of the Departmental Head of the Department of Personnel Management any matter, whether in relation to an officer or to the work of a branch or section of his Department, with which he thinks it desirable for the Departmental Head of the Department of Personnel Management to be acquainted; and
  - (ca)<sup>23</sup> is responsible for ensuring that Governmental policies and decisions relative to his Department are implemented and for co-operating with, and complying with any directions issued by, the Chief Secretary to Government in this regard; and
  - (d) is otherwise responsible for such powers, functions and duties as may be delegated to him under this Act.
- (2) The Departmental Head of the Department of Personnel Management—
- (a) is responsible for—
    - (i) the proper administration of this Act; and
    - (ii) the application and interpretation of terms and conditions of employment in the National Public Service; and
    - (iii) the setting of terms and conditions of employment for the National Public Service and the setting and prescribing of conditions of service of the National Public Service; and
    - (iv) the conduct of industrial relations with public sector employee organizations; and
    - (v) the retrenchment of officers from the National Public Service; and
    - (vi) the formulating of General Orders under Section 70; and
  - (b) has such other functions and duties as are specified under Section 21(2) or otherwise in this Act; and
  - (c) is responsible for selection of—
    - (i) persons for appointment as officers; and
    - (ii) officers for appointment, promotion and transfer,
 

in accordance with the procedures specified in the General Orders.

(3) In the implementation of the functions specified in Subsection (2)(a)(iii), (iv) and (v), the Departmental Head of the Department of Personnel Management may consult with the Departmental Heads of the Departments of the Prime Minister and of the Department responsible for financial matters and of the Department responsible for planning matters.

<sup>23</sup> Section 24(1)(ca) added by the *Public Services (Management) (Amendment) Act 1998* (No 24 of 1998), s6.

**24A. WORK PERFORMANCE OF DEPARTMENTAL HEADS.**

<sup>24</sup>(1) The Head of State, acting on advice, given after consideration of recommendations made by the Chairman of the Central Agencies Co-ordination Committee in conjunction with the Commission, may make regulations prescribing standard criteria and procedures for the regular appraisal by the Central Agencies Co-ordination of the performance and discipline of Departmental Heads.

(2) The Central Agencies Co-ordination Committee shall, through the Departmental Head of the Department of Personnel Management, provide to the Commission, in the prescribed manner, regular appraisals of the performance and discipline of Departmental Heads (other than Departmental Heads who are members of the Central Agencies Co-ordination Committee) and the Commission shall take such appraisals into account where appropriate in making its recommendations in relation to appointment, revocation of appointment and suspension of Departmental Heads (other than Departmental Heads who are members of the Central Agencies Co-ordination Committee).

(3) The Chief Secretary to Government, after consultation with the respective Ministers, shall, through the Departmental Head of the Department of Personnel Management, provide to the Commission, in the prescribed manner, regular appraisals of the performance and discipline of Departmental Heads (other than himself) who are members of the Central Agencies Co-ordination Committee and the Commission shall take such appraisals into account in making its recommendations in relation to the appointment of such Departmental Heads.

(4) The Commission shall consult with the Prime Minister on an appraisal of the performance and discipline of the Chief Secretary to Government and shall take such appraisal into account in making its recommendations in relation to the appointment of a Chief Secretary to Government.

**25. FILLING OF VACANCIES IN CERTAIN OFFICES OF DEPARTMENTAL HEAD.**

<sup>25</sup>In accordance with and subject to Section 193 (Appointments to certain offices) of the *Constitution*, a vacancy in the office of Departmental Head may be filled by the Head of State acting on advice –

- (a) by the promotion or transfer of an officer; or
- (b) by an appointment made in accordance with a merit-based appointment process specified in Section 25A.

**25A. MERIT-BASED APPOINTMENT PROCESS.**

<sup>26</sup>Regulations may prescribe a merit-based appointment process for the filling of a vacancy under Section 25 which –

<sup>24</sup> Section 24A Inserted by No. 24 of 2002, s. 8.

<sup>25</sup> Section 25 Amended by No. 2 of 2003, s. 5; Substituted by No. 2 of 2004, s. 2.

<sup>26</sup> Section 25A Inserted by No. 2 of 2004, s. 2.

- (a) shall involve a recommendation of the Public Services Commission to be made solely on the basis of an assessment of a candidate's suitability compared to the minimum person specification as advertised for the vacancy; and
- (b) shall be based on the following administrative processes: –
  - (i) the advertisement of the vacancy in an office in the prescribed format, together with the minimum person specification for applicants to the position;
  - (ii) the assessment of each applicant's curriculum vitae, submitted in a prescribed format, and their competency to perform the prescribed duties as measured against the prescribed minimum person specification for the position;
  - (iii) a ranked ordered assessment of all applicants for the advertised position in terms of their relative competency to perform the prescribed duties;
  - (iv) the merit-based assessment described in this section shall be the primary consideration of the Public Services Commission in making a recommendation to the National Executive Council; and
  - (v) all other considerations not related to the processes described in this section shall have no bearing in the recommendation of the Public Services Commission and of the National Executive Council in making a final decision on an appointment.

### ***Division 2.***

#### ***Contracts of Employment.***

#### **26. APPLICATION.**

The Head of State, acting on advice, may, by notice in the National Gazette, specify the Departmental Heads to whom the provisions of this Division apply.

#### **27. APPOINTMENTS TO OFFICES OF DEPARTMENTAL HEAD.**

<sup>27A</sup>A Departmental Head shall be appointed in accordance with Section 193 (appointments to certain offices) of the Constitution.

#### **28. 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.

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<sup>27</sup> Section 27 Substituted by No. 2 of 2003, s. 6.

(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 by the Departmental Head.

**29. EMPLOYMENT UNDER CONTRACT TO CONSTITUTE SERVICE.**

Employment under contract under this Division shall constitute service in the National Public Service for all purposes.

**30. 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 or employee of the Public Service.

***Division 3.***

***Acting Appointment of Departmental Heads.***

**31. ACTING APPOINTMENTS OF DEPARTMENTAL HEADS.**

(1)<sup>28</sup> <sup>29</sup>Where a Departmental Head is absent from his office or unable to perform the duties of his office, or when there is a vacancy in an office of a Departmental Head, another officer may be appointed, in accordance with Section 193 (appointment to certain offices) of the Constitution, to act in the place of the officer during his absence or inability, or to fill the vacancy temporarily.

(2) A person appointed in an acting or temporary capacity under Subsection (1) shall not be employed in that capacity on a contract of employment under Section 28.

***Division 3A.***

***Procedures relating to appointments, revocation of appointments and suspension from office of Departmental Heads.***

**31A. PROCEDURES RELATING TO SUBSTANTIVE APPOINTMENTS OF DEPARTMENTAL HEADS.**

<sup>30</sup>(1) The procedures relating to the substantive appointments of Departmental Heads referred to in Section 193(1A) (appointments to certain offices) of the Constitution are as follows: –

- (a) where an office of Departmental Head becomes vacant or is likely to become vacant, the Departmental Head of the Department of Personnel Management shall, subject to Subsection (2) and (3) –

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<sup>28</sup> Section 31 Subsection (1) substituted by No. 2 of 2003, s. 7.

<sup>29</sup> Section 31 Subsection (1) substituted by No. 2 of 2003, s. 7.

<sup>30</sup> Section 31A of Part VI Inserted by No. 2 of 2003, s. 8.

- (i) declare that a vacancy in the office of Departmental Head exists or is about to exist; and
- (ii) obtain from the Central Agencies Co-ordination Committee the minimum requisites for that office; and
- (iii) notify the Commission of the vacancy; and
- (iv) advertise for applications for the office –
  - (A) on the least two occasions in a newspaper circulated nationally; and
  - (B) in such other manner as it considers appropriate;
- (b) after consideration and assessment of the applicants and consultation with the Central Agencies Co-ordination Committee, the Departmental Head of the Department of Personnel Management shall –
  - (i) compile a list of not less than five candidates who have at least the minimum requisites for the office; and
  - (ii) submit to the Commission for its consideration –
    - (A) the list under Subsection (i); and
    - (B) all applications received in response to the advertisements under Paragraph (a)(iv);
- (c) an assessment of an applicant under Paragraph (b) shall be based on –
  - (i) the minimum requisites for the position; and
  - (ii) where available, any appraisal of performance and discipline under Section 24A; and
  - (iii) prescribed criteria;
- (d) the Commission shall consider the list submitted under Paragraph (b)(ii)(A) and all application received in response to the advertisement under Paragraph (a)(iv) and shall –
  - (i) compile there from a list of up to three candidates in order of preference; and
  - (ii) submit the list under Subparagraph (i) as a recommendation to the National Executive Council;
- (e) the National Executive Council may select one of the persons on the list submitted to it under Paragraph (d)(i) for appointment and shall advise the Head of State to make the appropriate substantive appointment as Departmental Head;
- (f) where the National Executive Council does not consider any of the persons on the list submitted to it under Paragraph (d)(ii) suitable for appointment –

- (i) it shall so advise the Commission and the Departmental Head of the Department of Personnel Management; and
- (ii) the procedure set out in Paragraph (a)(iv),(b),(c),(d) and (e) shall again be followed.

(2) Where –

- (a) an office of Departmental Head becomes vacant or is likely to become vacant; and
- (b) the person holding the office or who held the office immediately before it became vacant is willing and eligible to continue in that office,

the Departmental Head of the Department of Personnel Management shall obtain from the Central Agencies Co-ordination Committee a report under Section 24A on the performance and discipline of that person, and where such report justifies the re-appointment of that person shall notify the Commission accordingly and, subject to Subsection (3)(b), the procedure specified in Subsection (1) shall not be followed.

(3) On receipt of a notification under Subsection (2), the Commission shall recommend to the National Executive Council that person be re-appointed and –

- (a) where the National Executive Council is agreeable to the re-appointment it shall advise the Head of State to re-appoint the person as substantive Departmental Head; or
- (b) where the National Executive Council is not agreeable to the re-appointment –
  - (i) it shall so advise the Commission and the Departmental Head of the Department of Personnel Management; and
  - (ii) the procedure specified in Subsection (1)(a), (b),(c),(d) and (e) shall be followed.

### **31B. PROCEDURES RELATING TO TEMPORARY APPOINTMENTS OF DEPARTMENTAL HEADS.**

<sup>31</sup>The procedures relating to the temporary appointment of Departmental Heads referred to in Section 193(1B) (appointment to certain offices) of the Constitution are as follows: –

- (a) where the need to make a temporary appointment of a Departmental Head arises, the Departmental Head of the Department of Personnel Management shall notify the Commission accordingly;
- (b) the Commission shall –
  - (i) consult with the Central Agencies Co-ordination Committee and with the Minister responsible for the Department concerned; and

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<sup>31</sup> Section 31B of Part VI Inserted by No. 2 of 2003, s. 8.

- (ii) submit the name of person to the National Executive Council as recommendation for appointment as a Departmental Head;
- (c) the National Executive Council shall advise the Head of State to make the appropriate temporary appointment as Departmental Head of the person recommended under Paragraph (b)(ii).

### **31C. PROCEDURES RELATING TO REVOCATION OF APPOINTMENTS OF DEPARTMENTAL HEADS.**

<sup>32</sup>The procedures relating to the revocation of appointments of Departmental Heads referred to in Section 193(1C) (appointments to certain offices) of the Constitution are as follows: –

- (a) the Commission –
  - (i) may, on its own volition; or
  - (ii) shall, on receipt of a request from the National Executive Council for revocation of the appointment of a Departmental Head accompanied by a written statement by the Minister specifying the grounds for requesting the revocation (being grounds consistent with the grounds for revocation of appointment in a contract of employment entered into by that Departmental Head under Section 28),
    - refer the matter to the Departmental Head of Department of Personnel Management –
  - (iii) to investigate the allegations and circumstances; and
  - (iv) to report thereon to the Commission within 30 days from the date of reference;
- (b) the Departmental Head of the Department of Personnel Management shall –
  - (i) investigate the allegations and circumstances relating to any matter referred to him under Paragraph (a); and
  - (ii) report thereon to the Commission within 30 day period referred to in Paragraph (a)(iv);
- (c) the Commission shall –
  - (i) consider the report made to it under Paragraph (b)(ii); and
  - (ii) make, or cause to be made, and consider such further investigations (if any) as it considers necessary; and
  - (iii) on the basis of the report and the results of such further investigations (if any), recommend to the National Executive

<sup>32</sup> Section 31C of Part VI Inserted by No. 2 of 2003, s. 8.



Council whether or not the appointment of the Departmental Head should be revoked;

- (d) where the Commission recommends the revocation of appointment of a Departmental Head, the National Executive Council shall advise the Head of State to revoke the appointment.

**31D. PROCEDURES RELATING TO SUSPENSION FROM OFFICE OF DEPARTMENTAL HEADS.**

<sup>33</sup>The procedures relating to the suspension from office of Departmental Heads referred to in Section 193(1D) (appointments to certain offices) of the Constitution are as follows: –

- (a) the Commission –
- (i) may, on its own volition; or
  - (ii) shall, at the request of the Minister responsible for Public Service matters,  

investigate any activities, conduct or performance of a Departmental Head which would constitute grounds for revocation of appointment under a contract of employment entered into that Departmental Head under Section 28;
- (b) where, as a result of its investigation, the Commission is of the opinion that the Departmental Head should be suspended from office it shall so recommended to the National Executive Council;
- (c) on receipt of a recommendation under Paragraph (b), the National Executive Council shall advise the Head of State to suspend the Departmental Head from office.

***Division 4.***

***Reports.***

**32. REPORTS.**

- (1) Each Departmental Head shall–
- (a) by 31 March in each year, prepare a report on the attainment of the planned objectives of his Department for the year ending 31 December preceding; and
  - (b) twice yearly, at such times as are specified in the General Orders, produce or cause to be produced an assessment of the ability and conduct of each officer in his Department; and
  - (c) produce or cause to be produced such further reports as may be required by–

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<sup>33</sup> Section 31D of Part VI Inserted by No. 2 of 2003, s. 8.

- (i) the Departmental head of the Department of Personnel Management; or
- (ii) the National Executive Council.

(2)<sup>34</sup> <sup>35</sup>Reports prepared –

- (a) under Subsection (1)(a) – shall be forwarded to the Chief Secretary to Government and to the Central Agencies Co-ordination Committee; and
- (b) under Subsection (1)(b) or (c) – shall be forwarded to the Departmental Head of the Department of Personnel Management.

(3)<sup>36</sup> <sup>37</sup>The reports prepared under Subsection (1)(a) shall be forwarded by the Chief Secretary to Government to the Minister for presentation to the National Executive Council.

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<sup>34</sup> Section 32 Subsection (2) substituted by No. 24 of 2002, s. 9.

<sup>35</sup> Section 32 Subsection (2) substituted by No. 24 of 2002, s. 9.

<sup>36</sup> Section 32 Subsection (3) substituted by No. 24 of 2002, s. 9.

<sup>37</sup> Section 32 Subsection (3) substituted by No. 24 of 2002, s. 9.

**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—

- (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-organized, all offices in the Department are deemed to be vacant and shall be advertized in accordance with this Act.

(4) Where—

- (a) a Department is re-organized; and
- (b) the re-organization affects numbers of offices and/or designations of offices or of a class of offices,

the Departmental Head of the Department of Personnel Management may, by notice in the National Gazette, deem those offices or classes of offices not to be affected by the re-organization.

(5) Substantive occupants of offices or classes of offices the subject of a National Gazette notice under Subsection (4) shall retain their offices and such offices shall not be advertized.

**34. TEMPORARY OFFICES.**

The Departmental Head of the Department of Personnel Management may, in his discretion—

- (a) create or abolish an office and/or upgrade or downgrade the classification of an office; or
- (b) appoint, transfer or redeploy a person from one office to another,

for the purpose of project implementation and other such purposes.

**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) he provides evidence to the satisfaction of the Department of Personnel Management, of–
  - (i) his health and physical fitness; and
  - (ii) his possession of qualifications that will enable him to perform the duties of the office to which he is to be appointed; and
  - (iii) his good character; and
- (b) he makes and subscribes the oath or affirmation in Schedule 1.

**PART IX. – RECRUITMENT.**

**36. RECRUITMENT.**

(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 of which he is the Departmental Head.

(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 or any of them 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 by virtue of those qualifications; 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 advertize and/or make an acting appointment against an office in his Department which has a substantive occupant.

(4) Where the substantive occupant of an office vacates the office for leave and/or study purposes, a Departmental Head may make an acting appointment to the office for the duration of the absence of the substantive occupant.

**37. 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 not 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.

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

(3) Notwithstanding the provisions of Subsection (1)(b), a person may be employed on contract under this section for a period in excess of six months where the Departmental Head of the Department of Personnel Management so authorizes.

(4) A National contract to which this section applies shall provide for a salary and for duty-related allowances, and discretionary allowance may be applied for by the National contract employee to the Departmental Head of the Department of Personnel Management and approved by that Departmental Head if he considers it warranted.

**PART X. – APPOINTMENTS AND PROMOTIONS.****38. EFFECT OF CONSTITUTION, SECTION 193.**

With regard to officers and offices to whom or to which Section 193 (*Appointment to Certain Offices*) of the *Constitution* applies, this Part shall be read subject to that section.

**39. ACTING APPOINTMENTS.**

Where an officer other than a Departmental Head is absent from his office or unable to perform the duties of his 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, if he thinks fit, appoint another officer to act in the place of the officer during his absence for inability, or may appoint an officer to fill the vacancy temporarily.

**39A. PROCEDURES RELATING TO APPOINTMENTS, REVOCATION OF APPOINTMENTS AND SUSPENSION FROM OFFICE OF THE SECRETARY TO THE NATIONAL EXECUTIVE COUNCIL AND CERTAIN OTHER OFFICERS AND POSITIONS TO AND IN RESPECT OF WHICH SECTION 193 OF THE CONSTITUTION APPLIES.**

<sup>38</sup>(1) The procedures relating to the substantive appointment of –

- (a) the Secretary to the National Executive Council; and
- (b) offices and positions referred to in Section 193(1)(h) (appointments of certain offices) of the Constitution,

referred to in Section 193(1A)(appointments to certain offices) of the Constitution are those set out in Section 31A relating to Departmental Heads and in applying these procedures references to a Departmental Head (other than references to the Departmental Head of the Department of Personnel Management) shall be read as references to the Secretary to the National Executive Council or to the office or position referred to in Paragraph (b) of this Subsection, as the case may be.

(2) The procedures relating to temporary appointments of –

- (a) the Secretary to the National Executive Council; and
- (b) officers and positions referred to in Section 193(1)(h) (appointments of certain offices) of the Constitution,

referred to in Section 193(1B) (appointments of certain offices) of the Constitution are those set out in Section 31B relating to Departmental Head and in applying these procedures references to a Departmental Head (other than a reference to the Departmental Head of the Department of Personnel Management) shall be read as

<sup>38</sup> Section 39A Inserted by No. 2 of 2003, s. 9.

references to the Secretary to the National Executive Council or to the office or position referred to in Paragraph (b) of this Subsection, as the case requires.

(3) The procedures relating to the revocation of appointments of –

(a) the Secretary to the National Executive Council; and

(b) offices and positions referred to in Section 193(1)(h) (appointments of certain offices) of the Constitution,

referred to in Section 193(1A) (appointments of certain offices) of the Constitution are those set out in Section 31C relating to Departmental Heads and in applying these procedures references to a Departmental Head (other than references to the Departmental Head of the Department of Personnel Management) shall be read as reference to the Secretary to the National Executive Council or to the office or position referred to in Paragraph (b) of this Subsection, as the case may be.

(4) The procedures relating to the suspension from office of –

(a) the Secretary to the National Executive Council; and

(b) offices and positions referred to in Section 193(1)(h) (appointments of certain offices) of the Constitution,

referred to in Section 193(1A) (appointments of certain offices) of the Constitution are those set out in Section 31D relating to Departmental Heads and in applying the procedures references to a Department (other than references to the Departmental Head of the Departmental of Personnel Management) shall be read as references to the Secretary to the National Executive Council or to the office or position referred to in Paragraph (b) of this Subsection, as the case may be.



**PART XI. – CONTACT EMPLOYMENT.**

**40. DESIGNATION OF SENIOR MANAGEMENT OFFICES.**

(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 created under Section 22, as a senior management office and the provisions of this Part shall apply to an office so designated.

(2) A notice under Subsection (1) shall specify, in relation to each senior management office, 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,

and an appointment shall be made in accordance with this Act.

(3) A person to be appointed to a senior management office shall–

- (a) be an officer of the Public Service; or
- (b) subject to Subsection (4), by virtue of his appointment, become an officer of the Public Service.

(4) A person referred to in Subsection (3)(b) shall only be appointed if he is eligible for appointment to the Public Service as otherwise required by this Act.

**41. CONTRACTS OF EMPLOYMENT.**

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

(2) A contract of employment under Subsection (1) shall be executed 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,

and by the appointee.

(3) Notwithstanding the provisions of this Act relating to discipline of officers, a contract of employment under Subsection (1) shall make specific provision for discipline and an officer employed under a contract of employment under Subsection (1) is exempted from the provisions of Part XIV.

(4) Notwithstanding the provisions of this Act relating to promotion and appointment, where–

- (a) a contract of employment under Subsection (1) 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,

his employment in the Public Service is terminated.

(5) The provisions of this Act shall apply to an officer employed on a contract of employment under this section only in so far as they are not inconsistent with the terms and conditions of the contract of employment.

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

Employment under contract under this Part shall constitute service in the Public Service for all 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 be made to a contract of employment under this Part—

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

shall be authorized—

- (d) in respect of contracts of employment to which Section 40(2)(a) refers—by the Minister; or
- (e) in respect of contracts of employment to which Section 40(2)(b) refers—by the Departmental Head of the Department of Personnel Management.

**PART XII. – TRAINING.**

**44. TRAINING.**

(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 by 31 March of each year to the Departmental Head of the Department of Personnel Management plans produced under Paragraph (a).

(3) Any request for training, whether local or overseas, by or on behalf of an officer shall be consistent with the manpower, career and training plans of the Department of which he is an officer.

(4) An officer who is sent on study leave for promotion to a higher office shall, on successful completion of that study, be promoted to that higher office.

(5) An officer on a senior national contract who proceeds on study leave of more than three months shall forfeit all entitlements to the office for which he is contracted except–

- (a) the substantive salary; and
- (b) if he is not living in a State rent-free house, the housing allowance.

**PART XIII. – SALARIES AND ALLOWANCES.**

**45. SALARY CLASSIFICATIONS.**

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

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

(3) In fixing classifications under this section, the Departmental Head of the Department of Personnel Management shall comply with any general directions of the National Executive Council.

**46. ALLOWANCES.**

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

**47. 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 officer, or employee or class of employee for any service provided by the State or as a service to the officer or employee by the State.

**48. 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.

**49. PAY DURING SUSPENSION.**

Subject to Section 48, where an officer has been suspended in connection with a charge of an offence under this Act, he is entitled to receive his pay during the period of suspension, unless he absconds or the Departmental Head of the Department of Personnel Management, after receiving a report from the Departmental Head, orders otherwise.

**PART XIV. – DISCIPLINE.**

**50. DISCIPLINARY OFFENCES.**

An officer who—

- (a) commits a breach of this Act; or
- (b) except as authorized in the course of official duty, does or divulges, directly or indirectly, any confidential information concerning public business or any matters of which he has official knowledge; or
- (c) except with the consent of the Head of State, acting on advice, or of an officer authorized for the purpose by the Head of State, acting on advice, publicly comments on administrative action or the administration of a Department; 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 in connection with the discharge of his official duties (other than his official remuneration); 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 form in Schedule 1, 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 Head—under Part VI; and
- (n) in the case of an officer other than a Departmental Head—under this Part.

**51. DEALING WITH MINOR DISCIPLINARY OFFENCES.**

(1) If the Departmental Head, or an officer authorized by the Departmental Head 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, he may call on the officer for an explanation as to the alleged offence, and if, on consideration of the explanation, he is

of the opinion that the offence has been committed, he may caution or reprimand the offending officer.

(2) A caution or reprimand by an officer other than the Departmental Head shall be immediately reported to the Departmental Head.

## **52. DEALING WITH SERIOUS DISCIPLINARY OFFENCES.**

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

(2) The officer may—

- (a) be charged by his Departmental Head or an officer authorized by the Departmental Head to lay charges under this Division; and
- (b) 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, be suspended by—
  - (i) his Departmental Head; or
  - (ii) in case of emergency—an officer authorized by the Departmental Head to lay charges under this Division.

(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 Head 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, he shall—

- (a) promptly be given a copy of the charge; and
- (b) be directed—
  - (i) to reply promptly in writing, stating whether he admits or denies the truth of the charge; and
  - (ii) to give any explanation that he desires to give in regard to it,
 

and if a reply is not given by the officer within seven days after his receipt of the charge he 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 Head concerned is of the opinion that the charge has been sustained, he 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 Paragraph (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 Head shall notify an officer of a punishment imposed or recommendation made by him under Subsection (5).

**53. OFFICER CHARGED WITH CRIMINAL OFFENCE.**

(1) Where an officer other than a Departmental Head is charged by Police with having committed a criminal offence he shall—

- (a) where the criminal offence relates to the duties of his office—be suspended without pay by his Departmental Head; or
- (b) where the offence does not relate to the duties of his office—be suspended on full pay by his Departmental Head.

(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 Head.

(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 shall be dismissed by the Departmental Head, unless the Departmental Head otherwise determines.

**54. STRIKES.**

(1) An officer who aids, abets, forments or takes part in a strike that—

- (a) interferes with or prevents; or
- (b) is intended or calculated to interfere with or prevent,

the carrying on of any part of the public services or utilities of the country, or who attempts to do so, is deemed to have committed an illegal action against the peace and good order of the country.

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

**PART XV. – RESIGNATION AND RETIREMENT.****55. PERSONS WHO HAVE RESIGNED FROM THE PUBLIC SERVICE TO BECOME CANDIDATES AT ELECTIONS.**

(1) An officer–

- (a) who resigned or retired from the Public Service in order to become a candidate for election to–
  - (i) the National Parliament; or
  - (ii) a Provincial Assembly; and
- (b) whose resignation or retiral was effected–
  - (i) in the case of a general election to be held at the expiry of the normal term specified for the Parliament or Provincial Assembly– at least six months before and not more than 12 months before the issue of writs for the election; or
  - (ii) in the case of a general election other than one referred to in Subparagraph (i)–within two weeks of the vote occasioning the election; or
  - (iii) in the case of a by-election–within two weeks or the event occasioning the by-election; and
- (c) who was a candidate at the election; and
- (d) who failed to be elected,

shall, upon application by him within two months after the declaration of the result of the election, and subject to the results of any medical examination under Subsection (3), be re-appointed to the Public Service in such office as the Departmental Head of the Department of Personnel Management directs.

(2) An officer–

- (a) who resigned from the Public Service in order to become a candidate for election to–
  - (i) the National Parliament; or
  - (ii) a Provincial Assembly; and
- (b) whose resignation or retiral was effected other than in accordance with Subsection (1)(b),

shall not be re-appointed to the Public Service.

(3) A person to be re-appointed under Subsection (1) may, at the discretion of the Departmental Head of the Department of Personnel Management, be required to undergo medical examination.

(4) A person re-appointed under Subsection (1) shall be deemed to have continued in the Public Service as if he had not resigned or retired but had been on



leave without pay during the period from the day on which his resignation became effective to and including the day immediately preceding the day on which he was re-appointed.

(5) The period referred to in Subsection (4) shall not be deemed to affect the continuity of the officer's service but, unless otherwise determined by the Departmental Head of the Department of Personnel Management, shall not, for any purpose, form part of any officer's service.

(6) The provisions of Part IX do not apply in respect of the re-appointment of a person under Subsection (1).

## **56. AGE OF RETIREMENT.**

(1) Subject to this section, an officer who has attained the age of 50 years is entitled to retire from the Public Service if he desires to do so, but such an officer may, subject to this Act, continue in the Public Service until he attains the age of 60 years.

(2) An officer who continues in the Public Service after he has attained the age at which he is entitled to retire—

- (a) may be retired from the Service at any time before attaining the age of 60 years; and
- (b) shall retire from the service on attaining the age of 60 years.

(3) A retirement under Subsection (2)(a) shall be affected by the Departmental Head of the Department of Personnel Management.

## **57. RETIREMENT ON ACCOUNT OF INFIRMITY OR INCAPACITY.**

(1) If a Departmental Head appears to the Head of State, acting on advice, after full investigation of the circumstances—

- (a) to be, by reason of mental or bodily infirmity or 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 his office, or to be or to have become legally disqualified from carrying out those duties or legally incompetent to carry them out,

the Head of State, acting on advice given after receiving a report from the Departmental Head of the Department of Personnel Management, may retire the officer from the Public Service or transfer him to some other position of equal or lower status and pay.

(2) If an officer, other than a Departmental Head, appears to the Departmental Head, after full investigation of the circumstances—

- (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 his office, or to be or to have become legally disqualified from carrying out those duties or legally incompetent to carry them out,

the Departmental Head of the Department of Personnel Management after receiving a report from the Departmental Head, may retire the officer from the Public Service or transfer him to some other position of equal or lower status and pay.

(3) 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.**

**58. PROVINCIAL AND LOCAL-LEVEL ADMINISTRATIVE ORGANIZATION.**

The Head of State, acting on advice, given after receiving a report from the Departmental Head 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 and local-level administrative organization in a province.

**59. FUNCTIONS OF A PROVINCIAL AND LOCAL-LEVEL ADMINISTRATIVE ORGANIZATION.**

The functions of a provincial and local-level administrative organization 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.

**60. PROCEDURES RELATING TO SUBSTANTIVE APPOINTMENT OF PROVINCIAL ADMINISTRATOR.**

<sup>39</sup>(1) The procedures relating to the substantive appointments to offices of Provincial Administrators referred to in Section 73(2) of the Organic Law on Provincial Governments and Local-level Governments are as follows: –

- (a) where an office of Provincial Administrator becomes vacant or is likely to become vacant, the Departmental Head of the Department of Personnel Management shall, subject to Subsections (2) and (3) –
  - (i) declare that a vacancy in the office of Provincial Administrator exists or is about to exist; and
  - (ii) obtain from the Central Agencies Co-ordination Committee the minimum requisites for that office; and
  - (iii) notify the Commission and the Provincial Executive Council concerned of the vacancy; and
  - (iv) advertise for applications for the office –

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<sup>39</sup> Section 60 Substituted by No. 2 of 2003, s. 10.

- (A) on a least two occasions in a newspaper circulated nationally; and
  - (B) in such other manner as it considers appropriate;
- (b) after consideration an assessment of applicants and consultation with the Central Agencies Co-ordination Committee, the Departmental Head of the Department of Personnel Management shall –
- (i) compile a list of not less than five candidates who have at least the minimum requisites for the office; and
  - (ii) submit to the Commission for its consideration –
    - (A) the list under Subparagraph (i); and
    - (B) all applications received in response to the advertisements under Paragraph (a)(iv);
- (c) an assessment of an applicant under Paragraph (b) shall be based on –
- (i) the minimum requisites for the position; and
  - (ii) where available, any appraisal of performance and discipline under Section 24A; and
  - (iii) prescribed criteria;
- (d) the Commission shall consider the list submitted under Paragraph (b)(ii)(A) and all applications received in response to the advertisements under Paragraph (a)(iv) and shall –
- (i) compile therefrom a list of up to three candidates in order of preference; and
  - (ii) submit the list under Subparagraph (i) as a recommendation to the Provincial Executive Council concerned;
- (e) the Provincial Executive Council shall –
- (i) from the list submitted to it under Paragraph (d)(ii) submit to the National Executive Council a list in order of preference for appointments as Provincial Administrator and the National Executive Council shall make an appointment from the list; or
  - (ii) where it does not consider any of the persons on the list submitted to it under Paragraph (d)(ii) suitable for appointment, so advise the Commission and the Department of Personnel Management and the procedure set out in Paragraph (a)(iv),(b),(c),(d) and (e)(i) shall be followed.
- (2) Where –
- (a) an office of Provincial Administrator becomes vacant or is likely to become vacant; and
  - (b) the person holding the office or who held the office immediately before it became vacant is willing and eligible to continue in that office,

the Departmental Head of the Department of Personnel Management shall obtain from the Central Agencies Co-ordination Committee a report under Section 24A on the performance and discipline of that person, and where such report justifies the re-appointment of that person shall notify the Commission accordingly and, subject to Subsection (3)(b), the procedure specified in Subsection (1) shall not be followed.

(3) On receipt of a notification under Subsection (2), the Commission shall recommend to the Provincial Executive Council that the person be re-appointed and –

- (a) where the Provincial Executive Council is agreeable to the re-appointment, it shall advise the National Executive Council to re-appoint the person as substantive Provincial Administrator; or
- (b) where the Provincial Executive Council is not agreeable to the re-appointment –
  - (i) it shall so advise the Commission and the Departmental Head of the Department of Personnel Management; and
  - (ii) the procedure specified in Subsection (1)(a),(b),(c).(d) and (e) shall be followed.

#### **60A. PROCEDURES RELATING TO TEMPORARY APPOINTMENTS OF PROVINCIAL ADMINISTRATORS.**

<sup>40</sup>The procedures relating to temporary appointments to offices of Provincial Administrators referred to in Section 73(2A) of the Organic Law on Provincial Governments and Local-level Governments are as follows: –

- (a) where the need to make a temporary appointment of a Provincial Administrator arises, the Departmental Head of the Department of Personnel Management shall notify the Commission and the Provincial Executive Committee concerned accordingly;
- (b) the Commission shall –
  - (i) consult with the Provincial Executive Committee concerned and with the Minister responsible; and
  - (ii) submit the name of a person to the Provincial Executive Council as a recommendation for appointment as the Provincial Administrator;
- (c) the Provincial Executive Council shall advise the National Executive Council to make the appropriate temporary appointment as Provincial Administrator of the person recommended under Paragraph (b)(ii).

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<sup>40</sup> Section 60A Inserted by No. 2 of 2003, s. 10.

**60B. PROCEDURES RELATING TO REVOCATION OF APPOINTMENTS OF PROVINCIAL ADMINISTRATORS.**

<sup>41</sup>The procedures relating to the revocation of appointments of Provincial Administrators referred to in Section 73(2B) of the Organic Law on Provincial and Local-level Governments are as follows: –

- (a) the Commission –
  - (i) may, on its own volition; or
  - (ii) shall, on receipt of a request from the Provincial Executive Council for revocation of a Provincial Administrator accompanied by a written statement by the Provincial Executive Council specifying the grounds for requesting the revocation (being grounds consistent with the grounds for revocation of appointment in a contract of employment entered into by that Provincial Administrator),
    - refer the matter to the Departmental Head of the Department of Personnel Management –
  - (iii) to investigate the allegations and circumstances; and
  - (iv) to report thereon to the Commission within 30 days from the date of reference;
- (b) the Departmental Head of the Department of Personnel Management shall –
  - (i) investigate the allegations and circumstances relating to any matter referred to him under Paragraph (a); and
  - (ii) report thereon to the Commission within the 30 days period referred to in Paragraph (a)(iv);
- (c) the Commission shall –
  - (i) consider the report made to it under Paragraph (b)(ii); and
  - (ii) make, or cause to be made, and consider such further investigations (if any) as it considers necessary; and
  - (iii) on the basis of the report and the result of such further investigations (if any), recommend to the Provincial Executive Council whether or not the appointment of the Provincial Administrator should be revoked;
- (d) where the Commission recommends the revocation of appointment of a Provincial Administrator, the Provincial Executive Council shall recommend to the National Executive Council that the appointment of the Provincial Administrator be revoked and the National Executive Council shall revoke the appointment.

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<sup>41</sup> Section 60B Inserted by No. 2 of 2003, s. 10.

**60C. PROCEDURES RELATING TO SUSPENSION FROM OFFICE OF PROVINCIAL ADMINISTRATORS.**

<sup>42</sup>The procedures relating to the suspension from office of Provincial Administrators referred to in Section 73(2C) of the Organic Law on Provincial Governments and Local-level Governments are as follows: –

- (a) the Commission –
  - (i) may on its own volition; or
  - (ii) shall, at the request of the Minister responsible for Public Service matters,
    - investigate any activities, conduct or performance of a Provincial Administrator which would constitute grounds for revocation of his appointment under a contract of employment entered into by that Provincial Administrator;
- (b) where, as a result of its investigation, the Commission is of the opinion that the Provincial Administrator should be suspended from office it shall so recommend to the Provincial Executive Council;
- (c) on receipt of a recommendation under Paragraph (b), the Provincial Executive Council shall recommend to the National Executive Council that the Provincial Administrator be suspended from office and the National Executive Council shall suspend the Provincial Administrator from office.

**61. APPOINTMENT PROCEDURES IN RELATION TO DISTRICT ADMINISTRATOR.**

Where there is, or is likely to be, a vacancy in the office of a District Administrator, the Departmental Head of the Department of Personnel Management shall, in implementation of the consultation requirement in Section 73(3) of *the Organic Law on Provincial Governments and Local-level Governments*–

- (a) give written notification of the vacancy or likely vacancy to the Departmental Head of the Department responsible for provincial and local-level government matters; and
- (b) convene a selection hearing process as provided under General Orders in which process the relevant Provincial Administrator is to be involved; and
- (c) thereafter notify the Departmental Head of the Department responsible for provincial and local-level government matters of the name of the officer (or names of the officers) recommended.

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<sup>42</sup> Section 60C Inserted by No. 2 of 2003, s. 10.

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

(1) A–

- (a) Provincial Administrator; and
- (b) District Administrator,

shall be–

- (c) an officer of the Public Service; and
- (d) subject to the *Salaries and Conditions Monitoring Committee Act 1988*, employed on terms and conditions determined by the Departmental Head of the Department of Personnel Management after consultation with the Provincial Governor of the province concerned.

(2) In any submission which he may make relative to the consultation under Subsection (1), the Provincial Governor shall give due consideration to–

- (a) the equivalent job values in the National Public Service; and
- (b) any special hardship conditions relating to his province.

**63. ADDITIONAL FUNCTIONS OF PROVINCIAL ADMINISTRATOR.**

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
- (b) subject to relevant National laws is responsible to the Provincial Executive Council for strategic planning and financial and human resource management.

**64. ADDITIONAL FUNCTIONS OF DISTRICT ADMINISTRATOR.**

In addition to the functions specified in Section 74(2) of the *Organic Law on Provincial Governments and Local-level Governments*, a District Administrator–

- (a) is the chief adviser to Local-level Governments in the district; and
- (b) is responsible for planning at district level; and
- (c) is responsible for the supervision of officers in the district.

**65. ASSIGNMENT OF STAFF.**

(1) The Departmental Head of the Department of Personnel Management may assign an officer to a provincial and local-level administrative organization through procedures set out in this Act.



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

**66. SECONDMENT OF STAFF TO AND FROM OTHER BODIES.**

(1) Subject to Subsection (2), a Provincial Administrator may arrange for the secondment of—

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

for training or specialist service purposes.

(2) Before arranging a secondment under Subsection (1), a Provincial Administrator shall consult with—

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

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

(1) A Provincial Treasurer shall be an officer of the Public Service.

(2) The recruitment, appointment, promotion, transfer, discipline and termination of the Provincial Treasurer and other officers of the Provincial and District Treasury are those applicable to officers under this Act.

**68. 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 Head 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 Head of a Provincial Government and Local-level Government Secretariat.

(3) Subject to Subsection (4), the Provincial Administrator may, after consultation with the Departmental Head of the Department of Personnel Management—

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

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

(4) The size of the establishment for a Provincial Government and 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 and Local-level Government Secretariat is responsible to the Provincial Administrator for the efficient performance of the functions of the Secretariat.

## **69. APPOINTMENTS TO OFFICES IN PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS SECRETARIATS, ETC.**

(1) The Provincial Administrator shall, on the recommendation of a 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 and termination of staff of a Provincial Government and Local-level Government Secretariat are those applicable to officers of the Public Service and shall be administered by the Provincial Administrator.

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

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

**PART XVII. – GENERAL ORDERS AND CODES OF CONDUCT.****70. GENERAL ORDERS.**

(1) The Departmental Head 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 to be so provided for or that is necessary or desirable for the efficient management and control of the Public Service.

(2) In formulating General Orders under Subsection (1), the Departmental Head of the Department of Personnel Management shall give effect to any relevant decisions on policy made by the National Executive Council.

**70A. CODES OF CONDUCT.**

<sup>43</sup>(1) The Head of State, acting on advice, given after considering recommendations from the Departmental Head 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 specialized 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 Head 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 such 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 made under Section 28 or 41

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<sup>43</sup> Section 70A Inserted by No. 24 of 2002, s. 11.

PART XVIII. – MISCELLANEOUS.

71. INTERPRETATION OF PART XVIII.

In this Part—

“**designated position**” means an office declared under Section 72 to be a designated position for the purposes of this Division;

“**the Education Gazette**” means the publication known as the Papua New Guinea Education Gazette published under the authority of the Departmental Head of the Department responsible for education matters;

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

72. DESIGNATED POSITIONS.

The Departmental Head of the Department responsible for education matters may, by notice in the National 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 Division.

73. APPOINTMENT TO DESIGNATED POSITIONS.

(1) Subject to the *Teaching Service Act 1971* 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 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 Head of the Department of Personnel Management and specified in his instrument of appointment.

(5) In Subsection (5), “**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 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 1971*.

#### **74. 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 by virtue of Section 126 of the *Teaching Service Act 1971* is eligible to apply for promotion to any vacant office.

(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 such a member shall 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.

#### **75. POWERS OF COMMISSIONER GENERAL OF INTERNAL REVENUE AND AUDITOR-GENERAL AND PROVINCIAL ADMINISTRATORS.**

For the 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 or employees as are so specified by the Head of State, acting on advice,

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

#### **76. ENGAGEMENT IN OUTSIDE EMPLOYMENT AND ACQUISITION OF LAND.**

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

- (a) accept or continue to hold an office 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 office 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 such 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 Head of the Department of Personnel Management may, by notice in the National Gazette, list companies and societies or persons which are authorized companies and societies for the purposes of this section.

(4) Except with the written consent of the Departmental Head 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 authorized 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 of an officer shall be deemed to be the agent of her husband.

(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 Head of the Department of Personnel Management (which approval may at any time be withdrawn) act as a director of a co-operative company.

## **77. AIR INSURANCE COVER.**

(1) Subject to Subsection (9), where an officer travels by air on official duty and suffers death or permanent and total incapacity arising as a result, the State is liable in accordance with this section.

(2) The amount of the liability of the State under this section is an amount, not being less than K4,000.00 nor more than K30,000.00 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 the 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* or otherwise.

(9) This section does not apply to an officer travelling in his own aircraft.

## **78. 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.**

**79. 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.****80. TRANSFER OF DEPARTMENTS.**

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

**81. 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 shall, on that coming into operation, be deemed to be offices created under this Act with—

- (a) the same designation; and
- (b) the same duties; and
- (c) a requirement or the same qualifications; and
- (d) the same 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.

**82. TRANSFER OF OFFICERS.**

(1) A person who, immediately before the coming into operation of this Act, was a Departmental Head under the repealed Acts shall be 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, shall be 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 shall, on that coming into operation, be deemed to be an unattached officer under the equivalent provision of this Act.

(4) Where a person to whom Subsection (1), (2) or (3) applies was, immediately before the coming into operation of this Act, an officer on probation under the repealed Acts, he shall be 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 shall, on that coming into operation, be 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 so to act under this Act.

### **83. 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.

(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, shall be deemed to be a disciplinary offence under Section 50 of this Act.

### **84. PROCEDURE IN RESPECT OF APPOINTMENTS, ETC.**

Where, procedure required in respect of an appointment, promotion or transfer commenced under the repealed Acts prior to the coming into operation of this Act has not been finalized at that coming into operation, the Departmental Head of the Department of Personnel Management may order—

- (a) that the matter be finalized using the procedure under the repealed Acts; or
- (b) that the matter be finalized 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, as procedure provided for under this Act; or
- (c) that the procedure is so far as carried out under the repealed Acts be disregarded, and the matter proceed *ab initio* under the procedure provided for in this Act.

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

(1) All acts, matters and 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 shall be 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 Section 83 and 84, that Subsection applies to any act, matter or thing relating to appointment, promotion, transfer or discipline.

### **86. SERVICE.**

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

**87. PROVINCIAL ADMINISTRATION.**

Section 128 of the *Organic Law on Provincial Governments and Local-level Governments* in relation to administration shall apply for the purposes of this Act.

**SCHEDULE 1 – OATH AND AFFIRMATION OF OFFICE OF OFFICERS.**

Sec. 35.

*Oath.*

“I, \_\_\_\_\_, 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, \_\_\_\_\_, 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.”

**SCHEDULE 2 – REPEALED ACTS.**

Sec. 7.

*Public Services (Management) Act 1986.*

*Public Services (Management) (Amendment) Act 1987.*

*Public Services (Management) (Amendment) Act 1988.*

*Public Services (Management) (Amendment) Act 1993.*

Office of Legislative Counsel, PNG