

PUBLIC SERVICE ACT 13 OF 1995

[Government Gazette: 7 August 1995 No. 1121]
Commencement: 1 November 1995

[Date of

ACT

To provide for the establishment, management and efficiency of the Public Service, the regulation of the employment, conditions of service, discipline, retirement and discharge of staff members in the Public Service, and other incidental matters.

ARRANGEMENT OF SECTIONS

INTRODUCTORY PROVISIONS

Section

- 1 Definitions

PART I

ESTABLISHMENT AND MANAGEMENT OF PUBLIC SERVICE

- 2 Establishment of Public Service
- 3 Offices, ministries and agencies of Public Service
- 4 Composition of Public Service
- 5 Functions of Prime Minister
- 6 Power of Prime Minister to inquire into the efficient functioning of offices, ministries and agencies and the efficiency of staff members
- 7 Delegation of powers and assignment of duties of Prime Minister
- 8 Approval of matters by Prime Minister
- 9 Rejection or variation of Commission's recommendations or advice
- 10 Functions of Secretary to the Cabinet
- 11 Functions of permanent secretaries
- 12 Delegation of powers and assignment of duties of permanent secretaries

PART II

PERSONNEL ADMINISTRATION

- 13 Remuneration of staff members and members of the services
- 14 Reduction of salary prohibited
- 15 Additional remuneration

- 16 Unauthorised or wrongly granted remuneration and other benefits
- 17 Staff members and members of the services to place their time at disposal of Government
- 18 Conditions in regard to filling of posts
- 19 Appointment of permanent secretaries, Secretary to the Cabinet and Secretary to the President
- 20 Appointments on special conditions
- 21 Appointments in acting capacities
- 22 Appointments, promotions and transfers on probation
- 23 Transfer and secondment of staff members
- 24 Retirement and discharge of staff member.

PART III

MISCONDUCT

- 25 Definition of misconduct
- 26 Misconduct and suspension of staff members
- 27 Misconduct and suspension of permanent secretaries
- 28 Misconduct of Secretary to the Cabinet and Secretary to the President
- 29 Manner in which notices may be given or certain documents may be served

PART IV

GENERAL PROVISIONS

- 30 Political rights of staff members
- 31 Assignment of other functions to staff members
- 32 Labour relations
- 33 Limitation of legal proceedings
- 34 Regulations
- 35 Public Service Staff Rules
- 36 Application of Act
- 37 Transitional provisions
- 38 Construction of certain references in other laws
- 39 Amendment of laws
- 40 Repeal of laws
- 41 Short title and commencement

SCHEDULE 1

OFFICES AND PERMANENT SECRETARIES

SCHEDULE 2

MINISTRIES AND PERMANENT SECRETARIES

SCHEDULE 3

AGENCIES AND PERMANENT SECRETARIES

SCHEDULE 4

AMENDMENT OF LAWS

SCHEDULE 5

LAWS REPEALED

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

INTRODUCTORY PROVISIONS

1 Definitions

(1) In this Act, unless the context otherwise indicates-

"agency" means any agency mentioned in the first column of Schedule 3;

"benefit" includes any allowance, award, bonus, commission, fee, honorarium or reward;

"Commission" means the Public Service Commission established in terms of Article 112 (1) the Namibian Constitution;

"establishment" means the posts created for the normal and regular permanent requirements of any office, ministry or agency or any organisational component thereof;

"grade" means the hierarchical levels on which posts are created;

"member of the services" means any member-

- (a) of the Namibian Defence Force established in terms of section 5 of the Defence Act, 1957 (Act 44 of 1957), and includes any person appointed to or engaged in any auxiliary service or nursing service established in terms of that Act;
- (b) of the Namibian Police Force established by section 2 of the Police Act, 1990 (Act 19 of 1990); or
- (c) of the Prison Service established under section 2 (1) of the Prisons Act, 1959 (Act 8 of 1959);

"ministry" means any ministry mentioned in the first column of Schedule 2;

"office" means any office mentioned in the first column of Schedule 1;

"organisational component", in relation to any office, ministry or agency, means any department, directorate, division, subdivision, section or subsection thereof and any other related designation;

"permanent secretary" means the permanent secretary of any office, ministry or agency referred to in section 3 (3);

"prescribed" means prescribed by or under this Act;

"Prime Minister" means the Prime Minister appointed under Article 32 (3) (i) (aa) of the Namibian Constitution;

"rank" means any designation attached to a holder of a post on any grade on the establishment or to a person employed additional to the establishment and shall normally correspond with the designation of a post on a corresponding grade, and different ranks may be attached to persons on the same grade;

"revenue", in relation to any person, means the revenue fund or an account thereof from which his or her remuneration is derived;

"scale of salary" means a minimum and a maximum salary, with determined rates of progression in between, attached to a post or a rank and includes a salary at a fixed rate;

"staff member" means any person employed in a post on or additional to the establishment as contemplated in section 4 and includes the Secretary to the Cabinet and the Secretary to the President;

"this Act" includes the Public Service Regulations and the Public Service Staff Rules mentioned in section 35;

"Treasury" means the Treasury as defined in section 1 (1) of the State Finance Act, 1991 (Act 31 of 1991).

(2) A reference in this Act to a reduction in a salary or scale of salary shall, in so far as such reference relates to a staff member, be construed as including a reference to the application of a salary which is lower in comparison with a salary which would have applied at any time prior to that reduction, or to a scale of salary which is lower than the scale previously applied as regards the minimum or maximum, or both the minimum or maximum, of the scale of salary or the rate of progression in the scale of salary, as the case may be.

PART I

ESTABLISHMENT AND MANAGEMENT OF PUBLIC SERVICE

2 Establishment of Public Service

There shall be a Public Service for the Republic of Namibia which shall be impartial and professional in its effective and efficient service to the Government in policy formulation and evaluation and in the prompt execution of Government policy and directives so as to serve the people of the Republic of Namibia and promote their welfare and lawful interests.

3 Offices ministries and agencies of Public Service

(1) For the purposes of the administration of the Public Service there are-

- (a) offices;
- (b) ministries; and
- (c) agencies,

established in terms of the Namibian Constitution.

(2) The President-

- (a) shall determine the functions of offices, ministries and agencies;
- (b) may assign any of such functions from an organisational component of any office, ministry or agency to an organisational component of any other office, ministry or agency, or from any office, ministry or agency to any other body, or from any other body to any office, ministry or agency.

(3) Each office, ministry and agency shall have a permanent secretary designated by the name mentioned-

- (a) in the case of an office, in the second column of Schedule 1;
- (b) in the case of a ministry, in the second column of Schedule 2;
- (c) in the case of an agency, in the second column of Schedule 3,

opposite the designation of the office or ministry or agency concerned mentioned in the first column of Schedule 1 or 2 or 3, respectively, and who shall be the administrative head of that office or ministry or agency.

(4) The President may vary the designation of any office or ministry or agency or of the permanent secretary thereof by amending Schedule 1 or 2 or 3, respectively, by proclamation in the *Gazette* or may by such proclamation insert the designation of any office or ministry or agency, established in terms of the Namibian Constitution, and of the permanent secretary thereof or delete the designation of any such office or ministry or agency and of the permanent secretary thereof.

4 Composition of Public Service

The Public Service shall consist of all such persons as may be employed permanently or temporarily on a full-time or part-time basis or under a special contract or under any contract of employment contemplated in section 34 (1)

(a)-

- (a) in posts on the establishment;
- (b) additional to the establishment.

5 Functions of Prime Minister

(1) The appointment of any person to, or the promotion, transfer or discharge of any staff member in or to or from, the Public Service shall be made by the Prime Minister on the recommendation of the Commission in accordance with the provisions of this Act.

(2) The Prime Minister shall direct the Public Service and his or her functions shall in particular include the following:

- (a) Subject to the provisions of section 3 (1) and (2), the establishment, readjustment and reorganisation of organisational components of offices, ministries or agencies, the assignment of any function of any office, ministry or agency from one organisational component thereof to another organisational component of the same office, ministry or agency and the making of recommendations to the President relating to the assignment of functions from an organisational component of any office, ministry or agency to an organisational component of any other office, ministry or agency, or from any office, ministry or agency to any other body, or from any other body to any office, ministry or agency, or to the abolition of functions;
- (b) the determination of the number and the grading of posts on the establishment;
- (c) the determination of specified categories of employment in the Public Service and the designations attached to posts and ranks on different gradings on the establishment and the regrading and conversion of such posts and ranks;
- (d) the farming out of work in the Public Service to private consultants, private persons and contractors in the private sector to perform such work for or on behalf of the Public Service;
- (e) the determination of scales of salary attached to posts or ranks, including allowances of staff members;
- (f) the determination of the age, educational, language and other qualifications, including training and experience, to be possessed by a person for the purposes of any appointment, promotion or transfer to or in the Public Service, where such qualifications are not prescribed by or under this Act or any other law;
- (g) the determination of conditions for the performance of overtime;
- (h) the determination of levels of staffing of the Public Service;
- (i) the ensuring of personnel and career development;
- (j) the determination of conditions of service, including the establishment of a pension fund for the benefit of staff members and their dependants;
- (k) the provision of training, including the conducting of examinations or tests, in such subjects, including languages, as may be required for any appointment, promotion or transfer to or in the Public Service;
- (l) the co-ordinating of the performance of the functions of the Government by the Public Service;
- (m) the keeping of records of staff members employed in posts on or additional to the establishment; and

- (n) the promotion of efficiency in the administration of offices, ministries and agencies by-
 - (i) improved procedures or methods;
 - (ii) improved supervision or control;
 - (iii) simplification of work or the elimination of unnecessary work;
 - (iv) co-ordination of work;
 - (v) limitation of the number of staff members and the utilisation of the services of staff members to the best advantage of the Public Service;
 - (vi) procurement and effective utilisation of labour-saving aids, devices, machinery and computers;
 - (vii) proper control over the cost effective utilisation of facilities and properties of the State.
- (3) Notwithstanding anything to the contrary contained in this Act, the Prime Minister shall perform the functions entrusted to him or her in terms of subsection (2) on the recommendation of the Commission, except those functions entrusted to him or her in terms of paragraphs (k), (l), (m) and (n) of that subsection.
- (4) Except as otherwise provided in this Act, any approval other than an approval relating to a particular person granted by the Prime Minister in terms of this Act shall, if it involves expenditure from revenue, not be carried out unless prior approval for such expenditure has been obtained from the Treasury.
- (5) The performance of any function referred to in subsection (1) shall not be to the detriment of any erstwhile staff member and any approval by the Prime Minister relating to such staff member may only be granted within two years after the expiry of the employment of such staff member.

6 Power of Prime Minister to inquire into the efficient functioning of offices ministries and agencies and the efficiency of staff members

- (1) The Prime Minister may, after consultation with the President or the Minister concerned, as the case may be, inquire into-
 - (a) the efficient functioning of any office, ministry or agency;
 - (b) the efficiency of any staff member.
- (2) For the purposes of performing his or her functions in terms of this Act or any other law, the Prime Minister-
 - (a) shall have access to such official documents;
 - (b) may obtain such information from any staff member,as he or she may deem relevant or may require.
- (3) The Prime Minister may designate any staff member to conduct an inquiry referred to in subsection (1), and the designated staff member may-

- (a) summons, after he or she has notified the permanent secretary concerned, any staff member who in the opinion of the designated staff member may be able to give material information concerning the subject of any inquiry conducted by him or her, or who he or she suspects or believes has in his or her possession or custody or under his or her control any book, document, writing, object or any other matter which has any bearing upon the subject of the inquiry, to appear before him or her at the time and place specified in the summons, to be questioned or to produce that book, document, writing, object or any other matter, and the designated staff member may keep any book, document, writing, object or any other matter so produced for the duration of the inquiry;
 - (b) call and administer an oath to or accept an affirmation from any staff member present at the inquiry who was or might have been summonsed under paragraph (a), and may question such staff member and require him or her to produce any book, document, writing, object or any other matter in his or her possession or custody or under his or her control which the designated staff member suspects or believes to have a bearing upon the subject of the inquiry.
- (4) A summons of a staff member to appear before the designated staff member or to produce a book, document, writing, object or any other matter shall be in the prescribed form, and shall be signed by the designated staff member and be served in any manner contemplated in section 29 (b).
- (5) Any staff member who, having been duly summonsed under subsection (3) (a), fails to attend an inquiry, or who, having been called under subsection (3) (b), refuses to be sworn or to affirm as a witness, or who without just cause fails to answer fully and satisfactorily to the best of his or her knowledge any question lawfully put to him or her or to produce any book, document, writing, object or any other matter in his or her possession or custody or under his or her control which he or she has been required to produce, shall be guilty of misconduct.
- (6) Any staff member who, after having been sworn or after having affirmed as a witness, gives a false answer to any question lawfully put to him or her by the designated staff member, or who makes a false statement on any matter, knowing that answer or statement to be false, shall be guilty of an offence and liable on conviction to the penalty prescribed by law for the crime of perjury.

7 Delegation of powers and assignment of duties of Prime Minister

- (1) The Prime Minister may, subject to such conditions as he or she may determine, delegate any power, excluding the power to make regulations under section 34, or assign any duty entrusted to him or her by or under this Act to any staff member or staff members in any office, ministry or agency.

- (2) (a) A delegation or assignment under subsection (1) shall not divest the Prime Minister of any power delegated or duty assigned, and he or she may at any time vary or set aside any decision made thereunder.
- (b) If a decision so varied or set aside relates to any person, that person may, within 14 days after the variation or setting aside of the decision, make written representations to the Prime Minister in connection with such variation or setting aside.

8 Approval of matters by Prime Minister

(1) An approval granted by the Prime Minister in terms of this Act shall be deemed-

- (a) to have been granted on the date of the written approval;
 - (b) if it relates to a particular person, to have been carried out by the permanent secretary concerned on the date of such written approval.
- (2) Where the Prime Minister has to determine a date for the commencement of an approval referred to in subsection (1) (a), it shall be a date within three calendar months from the date referred to in that subsection.
- (3) If an approval referred to in subsection (1) (a) has not been carried out or varied or withdrawn by the Prime Minister within three calendar months from the date referred to in that subsection, the permanent secretary concerned shall forthwith carry out such approval as granted or varied.

9 Rejection or variation of Commission's recommendations or advice

After consultation with the Commission-

- (a) the President may vary or reject any recommendation relating to the Public Service made by the Commission in terms of this Act or any other law;
- (b) the Prime Minister may vary or reject any advice relating to the Public Service given by the Commission in terms of this Act or any other law.

10 Functions of Secretary to the Cabinet

The Secretary to the Cabinet shall-

- (a) be the head of the Public Service and shall, subject to the control and directions of the Prime Minister, exercise the powers and perform the duties conferred or imposed upon him or her by or under this Act or any other law;
- (b) assist the Prime Minister in providing the President with such support as the President may require;
- (c) provide supportive services to Cabinet committees;

- (d) co-ordinate permanent secretaries in the performance of their functions;
- (e) be responsible to the Prime Minister for the efficiency and effectiveness of the Public Service; and
- (f) ensure that technical and administrative support is provided to the Commission to enable it to perform the functions entrusted to it by or under this Act or any other law.

11 Functions of permanent secretaries

Notwithstanding any other powers conferred or duties imposed upon a permanent secretary by or under this Act or any other law, he or she shall, subject to the control and directions of the President, the Prime Minister or the Minister concerned, as the case may be,-

- (a) advise the President, the Prime Minister or the Minister concerned, as the case may be, on policy formulation and the implementation thereof, and shall brief the President, the Prime Minister or the Minister concerned, as the case may be, on all major issues affecting the functioning of his or her office, ministry or agency; and
- (b) be accountable for-
 - (i) the efficient management and administration of his or her office, ministry or agency;
 - (ii) the proper functional training and utilisation of staff members in his or her office, ministry or agency;
 - (iii) the maintenance of discipline in his or her office, ministry or agency; and
 - (iv) the proper use and care of all property under the control of his or her office, ministry or agency.

12 Delegation of powers and assignment of duties of permanent secretaries

(1) A permanent secretary may subject to such condition as he or she may determine, delegate any power or assign any duty entrusted to him or her by or under this Act to any staff member or staff members in his or her office, ministry or agency, as the case may be.

- (2) (a) A delegation or assignment under subsection (1) shall not divest the permanent secretary concerned of any power delegated or duty assigned, and he or she may at any time vary or set aside any decision made thereunder.
- (b) If a decision so varied or set aside relates to any person, that person may, within 14 days after the variation or setting aside of the decision, make written representations to the permanent secretary concerned in connection with such variation or setting aside.

PART II

PERSONNEL ADMINISTRATION

13 Remuneration of staff members and members of the services

(1) Subject to the provisions of section 5 (3), staff members and members of the services shall be paid salaries and allowances in accordance with such scales of salary and allowances, and shall be entitled to such conditions of service, as may be determined by the Prime Minister for posts and ranks on different gradings on the establishment.

(2) With the approval of the Prime Minister, granted on the recommendation of the Commission-

- (a) staff members or members of the services may on appointment, promotion or transfer be paid salaries at higher scales than the minimum of the appropriate scales of salary;
- (b) staff members or members of the services may be specially advanced within the scales of salary applicable to them; and
- (c) any staff member or member of the services of exceptional ability or possessing special qualifications or who has rendered meritorious service, or, if it is in the interest of the Public Service, any staff member or member of the services may-
 - (i) be specially advanced within the scale of salary applicable to him or her;
 - (ii) be paid a salary in accordance with a higher scale of salary than his or her current scale of salary; or
 - (iii) be granted any other fitting reward.

(3) No staff member or member of the services shall be paid in respect of his or her employment any remuneration, allowance, award, bonus or honorarium of whatever nature other than such remuneration, allowance, honorarium, award or bonus as may be determined by the Prime Minister on the recommendation of the Commission.

14 Reduction of salary prohibited

The salary or scale of salary of a staff member shall not be reduced without his or her consent except in accordance with the provisions of Part III.

15 Additional remuneration

No staff member may claim as of right any additional remuneration in respect of any official duty or work which is performed or is required by a competent authority to be performed by him or her during normal working hours in addition to his or her ordinary official duties or work.

16 Unauthorised or wrongly granted remuneration and other benefits

(1) (a) Where any remuneration or other benefit of whatever nature is received by any staff member or member of the services-

(i) in connection with the performance of his or her work in the Public Service otherwise than in accordance with the provisions of this Act; or

(ii) contrary to the provisions of section 17 (1) (b),

that staff member or member of the services shall pay into revenue an amount equal to the amount of such remuneration or other benefit, or, where it does not consist of money, the value thereof as determined by the permanent secretary of the office, ministry or agency in which that staff member or member of the services was employed at the time of receipt thereof or, in the case of any permanent secretary, as determined by the Secretary to the Cabinet or, in the case of the Secretary to the Cabinet or the Secretary to the President, as determined by the Prime Minister, and if the amount is not so paid, it shall, subject to the provisions of paragraphs (b) and (c), be recovered from that staff member or member of the services by way of legal proceedings or in such other manner as the Treasury may approve and be paid into revenue.

(b) Where the value of such remuneration or other benefit has been determined-

(i) by a permanent secretary, the staff member or member of the services concerned may appeal in writing against such determination to the Secretary to the Cabinet;

(ii) by the Secretary to the Cabinet, the permanent secretary concerned may appeal in writing against such determination to the Prime Minister;

(iii) by the Prime Minister, the Secretary to the Cabinet or the Secretary to the President, as the case may be, may appeal in writing against such determination to the President,

within 14 days after such determination.

(c) The Prime Minister may, on the advice of the Commission, approve that the staff member or member of the services concerned may retain the whole or any part of such remuneration or other benefit.

(2) If an incorrect salary or scale of salary or any other benefit on appointment, promotion or transfer, or an incorrect advancement of salary within the scale of salary applicable to his or her grading, or an incorrect salary or scale of salary at the time of a general or specific revision thereof, was awarded or granted to a staff member or member of the services, or was awarded or granted at the correct salary or scale of salary but at a time when or in circumstances under which it should not have been awarded or granted to him or her, the permanent secretary concerned shall, notwithstanding the provisions of section 14 and notwithstanding the fact

that the staff member or member of the services concerned was unaware that an error had been made in the case where the correction amounts to a reduction of his or her salary or scale of salary or other benefits, correct his or her salary or scale of salary or withdraw any other benefit with effect from the date on which the incorrect salary or scale of salary or salary advancement or other benefit commenced.

(3) If a staff member or member of the services has in respect of his or her salary, including any portion of any allowance or other remuneration, or any other benefit calculated on his or her basic salary or scale of salary or awarded to him or her by reason of his or her basic salary-

(a) been underpaid or not received any such other benefit due to him or her-

(i) an amount equal to the amount of the underpayment shall be paid to him or her;

(ii) such other benefit shall be awarded to him or her as from a current date; or

(b) been overpaid or received any such other benefit not due to him or her-

(i) an amount equal to the amount of the overpayment shall be recovered from him or her by deducting it from his or her salary in such instalments as the permanent secretary concerned may, after consultation with him or her and with the approval of the Treasury, determine if he or she is in the Public Service, or, if he or she is not so in service, by deducting it from any moneys owing to him or her by the State or by way of legal proceedings or partly in the former manner and partly in the latter manner;

(ii) such other benefit shall be discontinued or withdrawn as from a current date, but the staff member or member of the services concerned has the right to be compensated by the State for any patrimonial loss which he or she has suffered or will suffer as a result of that discontinuation or withdrawal.

(4) With the approval of the Treasury the amount of an overpayment to be recovered in terms of subsection (3) (b) may be remitted in whole or in part.

17 Staff members and members of the services to place their time at disposal of Government

(1) Unless it is otherwise provided for in his or her conditions of service-

(a) every staff member or member of the services shall place the whole of his or her time at the disposal of the Government; and

(b) no staff member or member of the services shall perform or engage himself or herself to perform remunerative work at any time outside his or her employment in the Public Service.

(2) Notwithstanding the provisions of subsection (1) (b), and on the advice of the Commission-

- (a) the permanent secretary concerned may grant permission to any staff member other than a staff member mentioned in paragraphs (b) and (c) or to any member of the services;
- (b) the Secretary to the Cabinet may grant permission to any permanent secretary;
- (c) the Prime Minister may grant permission to the Secretary to the Cabinet or the Secretary to the President, as the case may be,

to perform or engage himself or herself to perform remunerative work outside his or her employment in the Public Service: Provided that, if such work is in any way related to the official duties or work of the staff member or member of the services or will in any way hamper the performance of his or her official duties or work, such permission shall be granted only by the Prime Minister in consultation with the President or the Minister concerned, as the case may be.

(3) In this section "remunerative work" includes any scheme of self-employment or any connection with any private business operation, whether or not it is in any way related to the official duties or work of a staff member or member of the services.

18 Conditions in regard to filling of posts

(1) Subject to the provisions of sections 5 (1), 20 and 22, every appointment, promotion and transfer to or in the Public Service shall be effected on such contract of employment as may be approved by the Prime Minister on the advice of the Commission.

(2) No person shall be appointed permanently as a staff member, whether on probation or not, unless such person is-

- (a) a Namibian citizen; and
- (b) in all respects suitable for permanent appointment in a post and is free from any disease or physical or mental defect likely to materially interfere with the proper performance of his or her duties.

(3) In the filling of any post in the Public Service or the employment of any person additional to the establishment, only the qualifications, experience, level of training, relative merit, efficiency and suitability of the persons or staff members being considered for appointment, promotion or transfer shall be taken into account.

(4) For the filling of any post or the employment of any person additional to the establishment, the Prime Minister shall, subject to the provisions of subsection (3), approve either-

- (a) the promotion or transfer of a staff member; or
- (b) if, by any such promotion or transfer, the post cannot be filled or such employment cannot be effected to the advantage of the Public Service, the appointment of any person who is not a staff member.

- (5) The Prime Minister may, on the recommendation of the Commission, but subject to the provisions of section 14 and subsections (2) and (3) of this section, approve the employment of any person or staff member-
- (a) in any post on the establishment which is vacant or has been regraded or converted and which has not been permanently filled;
 - (b) additional to the establishment;
 - (c) in any post with a lower or higher salary or scale of salary or grade than the salary or scale of salary or grade attached to the post held by him or her and of which the incumbent is absent or ill;
 - (d) when such employment is necessary to provide personnel for the performance of any class of work for which personnel is not ordinarily employed on a permanent basis; or
 - (e) when such employment is for any other reason necessary to temporarily increase the personnel of any office, ministry or agency.
- (6) If it is necessary for achieving a balanced structuring of the Public Service, any person or staff member may, notwithstanding anything to the contrary contained in this section, but subject to the provisions of section 5 (1), be appointed or promoted to or in any post in the Public Service.

19 Appointment of permanent secretaries Secretary to the Cabinet and Secretary to the President

The appointment of any person to, or the promotion or transfer of any staff member in or to, the post-

- (a) of permanent secretary or of Secretary to the President shall subject to the provisions of section 5 (1), be made from a list of candidates submitted to the Prime Minister by the Secretary to the Cabinet;
- (b) of Secretary to the Cabinet shall, subject to the provisions of Article 43 (1) of the Namibian Constitution, be made from a list of candidates submitted to the President by the Prime Minister.

20 Appointments on special condition

Subject to the provisions of section 5 (1), any person employed elsewhere than in the Public Service may be appointed as a staff member on such special conditions as may be approved by the Prime Minister on the recommendation of the Commission, having regard to the seniority of such person, his or her accumulated vacation or sick leave and his or her employment benefits and obligations: Provided that prior approval has been obtained from the Treasury for the expenditure incurred by such appointment.

21 Appointments in acting capacities

- (1) (a) Any staff member may, if it is in the interest of the Public Service, be appointed on such general conditions as may be determined by

the Prime Minister in an acting capacity to any vacant post in any office, ministry or agency with retention of the rank, salary and scale of salary applicable to him or her.

- (b) If a higher salary or scale of salary than the salary or scale of salary applicable to the staff member is attached to the vacant post to which such acting appointment is made, such acting allowance as may be determined by the Prime Minister in terms of section 13 (1) shall be paid to the staff member: Provided that if the staff member has been acting under the circumstances contemplated in subsection (4) (b) or (c) for a period of at least three calendar months, the said acting allowance shall be paid to him or her with effect from the date on which he or she had been appointed in an acting capacity.
- (2) The period of an acting appointment contemplated in subsection (1) shall not exceed six calendar months, whereafter such acting appointment may be extended for a period or successive periods not exceeding three calendar months, but shall not exceed in the aggregate 12 calendar months.
- (3) Notwithstanding the provisions of section 5 (1), but subject to such general conditions as may be determined by the Prime Minister in terms of subsection (1) of this section, the appointment of any staff member in an acting capacity to a vacant post in the office, ministry or agency in which he or she is employed, may-
- (a) in the case of any staff member other than a staff member mentioned in paragraphs (b) and (c), be approved by the permanent secretary concerned;
 - (b) in the case of any permanent secretary, be approved by the Secretary to the Cabinet in consultation with the Prime Minister;
 - (c) in the case of the Secretary to the Cabinet or the Secretary to the President, be approved by the Prime Minister in consultation with the President.
- (4) In this section "vacant post" means-
- (a) a post which is not filled;
 - (b) a post of which the incumbent is on leave for a period of at least three calendar months; or
 - (c) a post of which the incumbent has been assigned other functions or has been seconded for a period of at least three calendar months.

22 Appointments promotions and transfers on probation

- (1) Except where the Prime Minister, on the recommendation of the Commission, otherwise approves, the appointment, promotion or transfer of every person or staff member shall be on probation.
- (2) The period of probation contemplated in subsection (1) shall not be less than 12 calendar months or than such lesser period as may be approved

by the Prime Minister on the recommendation of the Commission: Provided that if a staff member serving on probation is promoted in an exceptional case or transferred to any other post, a lesser period of service on probation in the new post may be approved by the Prime Minister on the recommendation of the Commission, which period, together with the period of probation served in the previous post, shall amount to not less than 12 calendar months or than such first-mentioned lesser period: Provided further that the probationary period of a staff member shall be extended by the number of days' leave taken by him or her during the period of probation or any extension thereof.

- (3) (a) If the permanent secretary of the office, ministry or agency in which a staff member is employed on probation certifies that during the period of probation or extended period of probation the staff member concerned has been diligent and his or her conduct has been consistently satisfactory and that he or she is suitable for the post held by him or her, the Prime Minister or the staff member to whom the Prime Minister has delegated the power conferred upon him or her under section 5 (1), in so far as it relates to appointments, promotions or transfers, shall, if the staff member has complied with all the conditions for his or her appointment, promotion or transfer, confirm the appointment, promotion or transfer of the staff member.
 - (b) If the appointment, promotion or transfer on probation is not confirmed as contemplated in paragraph (a), the permanent secretary concerned shall report the reasons for the non-confirmation to the Commission which may, subject to the provisions of subsection (5), make such recommendations to that permanent secretary in connection with the matter as it may deem fit, including a recommendation, for approval by the Prime Minister or the staff member to whom the Prime Minister has delegated the power conferred upon him or her under section 5 (1), in so far as it relates to appointments, promotions or transfers, that the period of probation be extended.
- (4) Notwithstanding anything to the contrary contained in subsection (2) or in Part III, but subject to the provisions of section 5 (1) and subsection (5) of this section, any staff member serving on probation may be discharged from the Public Service, either during or at or after the expiry of the period of probation-
- (a) by giving him or her one month's notice; or
 - (b) if his or her conduct is unsatisfactory, without any prior notice, but by paying him or her one month's salary in lieu of such notice.
- (5) With the approval of the Prime Minister, granted on the recommendation of the Commission, and notwithstanding anything to the contrary contained in section 14 or 24 or in subsection (3) or (4) of this section, any person who immediately prior to his or her-
- (a) appointment on probation was not a staff member, may, if his or her appointment on probation is not confirmed, be transferred to

any suitable post on the establishment, either with an equivalent or a lower salary or scale of salary or grade, or be employed additional to the establishment, either with an equivalent or a lower salary or scale of salary or grade and with an appropriate rank;

- (b) promotion or transfer on probation was a staff member, not being on probation, shall, if his or her promotion or transfer on probation is not confirmed, revert to the post or employment previously held by him or her, or to any other post or employment of an equivalent grade, and to the salary and scale of salary he or she would have attained in his or her previous post or employment and the equivalent benefits applicable to such previous post or employment, or be employed additional to the establishment on a suitable grade with an appropriate rank, salary and scale of salary.
- (6) For the purposes of the application of subsections (1) to (5), inclusive, to a staff member who holds the office of permanent secretary or of Secretary to the Cabinet or of Secretary to the President, any reference in those subsections to the permanent secretary shall be construed as a reference to the Prime Minister.

23 Transfer and secondment of staff members

- (1) Any staff member may, subject to the provisions of section 5(1), when the interest of the Public Service so requires, be transferred, with or without retention of rank, from the post or employment held by him or her to any other post or employment in the same or any other office, ministry or agency, whether or not such other post or employment is of a lower or higher grade, or whether such post or employment is in or outside the Republic of Namibia: Provided that-
- (a) subject to the provisions of section 22 (5), a staff member shall not upon such transfer suffer any reduction in his or her salary or scale of salary without his or her consent;
 - (b) a staff member who has been transferred to or employed in any post of a lower or higher grade than the grade applicable to him or her without any change in his or her salary and scale of salary shall, as soon as a suitable vacancy occurs, be transferred to a post to which his or her salary, scale of salary and grade will be appropriate: Provided further that, if such transfer is on the request of the staff member, his or her salary, scale of salary and grade shall only be retained on a personal to holder basis if approved by the Prime Minister on the recommendation of the Commission;
 - (c) subject to the provisions of section 21, a staff member who has been transferred to or employed in a post of a higher grade than the post held by him or her or which is regraded or converted to a post of a higher grade than the post held by him or her, shall not merely on account of such transfer or employment be entitled to the higher salary and scale of salary applicable to that post.
- (2) (a) Notwithstanding the provisions of section 5 (1), any staff member may be transferred from the post or employment held by him or her

to any other post or employment bearing the same designation in the same or any other office, ministry or agency-

- (i) in the case of any staff member other than a staff member mentioned in subparagraphs (ii) and (iii), by the permanent secretary or permanent secretaries concerned;
 - (ii) in the case of any permanent secretary, by the Prime Minister after consultation with the Minister or Ministers concerned;
 - (iii) in the case of the Secretary to the Cabinet or the Secretary to the President by the President.
- (b) For the purposes of paragraph (a) it shall be deemed that permanent secretaries hold the same designation and that the Secretary to the Cabinet and the Secretary to the President hold the same designation.
- (3) Any person outside the Public Service may with the approval of the Prime Minister, granted on the recommendation of the Commission, be employed by any office, ministry or agency, either for any particular service or for any period, on such conditions as may be approved by the Prime Minister on the recommendation of the Commission: Provided that prior approval has been obtained from the Treasury for the expenditure incurred by such employment.
- (4) (a) Any staff member may with his or her consent and on the recommendation of the Commission and on such conditions, in addition to those prescribed by or under any law, as may be approved by the Prime Minister on the recommendation of the Commission, be seconded by the Prime Minister, either for any particular service or for any period, to the service of any other office, ministry or agency or any government, board, institution or body established by or under any law or any other body: Provided that prior approval has been obtained from the Treasury for expenditure incurred by such secondment.
- (b) Any staff member shall while so seconded, remain subject to the provisions of this Act, whether or not the secondment is to a place of employment outside the Public Service.
- (5) Any remuneration, allowance, award, bonus or honorarium payable in respect of the services of any staff member seconded under subsection (4) to a place of employment outside the Public Service shall, if not approved by the Prime Minister on the recommendation of the Commission, be paid into revenue: Provided that the Prime Minister may, on the recommendation of the Commission, approve that the staff member may retain the whole or any part of such remuneration, allowance, award, bonus or honorarium.

24 Retirement and discharge of staff members

- (1) Subject to the provisions of subsections (2) and (3), any staff member shall retire from the Public Service on attaining the age of 60 years and shall be so retired on reaching the said age.

- (2) If it is in the interest of the Public Service to retain any staff member in employment in the post held by him or her or additional to the establishment beyond the age at which he or she shall in terms of subsection (1) be retired, he or she may with his or her consent and with the approval of the Prime Minister, granted on the recommendation of the Commission, be so retained from time to time for any further period expiring not later than the last day of the month in which he or she attains the age of 67 years.
- (3) (a) Notwithstanding any other reason for retirement contained in this Act, any staff member may with the approval of the Prime Minister, granted on the recommendation of the Commission, be retired from the Public Service on attaining the age of 55 years.
- (b) Any staff member may with the approval of the Prime Minister, granted, subject to the provisions of paragraph (c), on the request of the staff member and on the recommendation of the Commission, retire from the Public Service on attaining the age of 55 years.
- (c) An approval referred to in paragraph (b) shall not be granted by the Prime Minister unless he or she is satisfied that-
- (i) sufficient reason exists for such retirement; and
 - (ii) the retirement will not be to the disadvantage of the Public Service.
- (4) Subject to the provisions of section 5 (1), any staff member may be discharged from the Public Service-
- (a) on account of continued ill-health;
 - (b) by reason of the abolition of the post held by him or her or of any reduction or reorganisation or readjustment of any office, ministry or agency or any organisational component thereof;
 - (c) if, for reasons other than his or her own unfitness or incapacity, his or her discharge will promote efficiency or economy in the office, ministry or agency in which he or she is employed;
 - (d) on account of unfitness for his or her duties or incapacity to carry them out efficiently;
 - (e) on account of misconduct;
 - (f) on account of inefficiency;
 - (g) if, in the case of a staff member appointed on probation, his or her appointment is not confirmed;
 - (h) if the President or the Cabinet appoints him or her in terms of a provision of any other law to any office to which the provisions of this Act do not apply.
- (5) (a) Any staff member who, without permission of the permanent secretary of the office, ministry or agency in which he or she is employed-

- (i) absents himself or herself from his or her office or official duties for any period exceeding 30 days; or
- (ii) absents himself or herself from his or her office or official duties and assumes duty in any other employment,

shall be deemed to have been discharged from the Public Service on account of misconduct with effect from the date immediately succeeding his or her last day of attendance at his or her place of employment.

- (b) The Prime Minister may, on the recommendation of the Commission, and notwithstanding anything to the contrary contained in any law, reinstate any staff member so deemed to have been discharged in the Public Service in the post or employment previously held by him or her, or in any other post or employment on such conditions as may be approved by the Prime Minister on the recommendation of the Commission, but with a salary or scale of salary or grade not higher than the salary or scale of salary or grade previously applicable to him or her, and in such a case the period of his or her absence from his or her office or official duties shall be deemed to have been absence on vacation leave without pay or leave on such other conditions as may be approved by the Prime Minister on the recommendation of the Commission.

PART III

MISCONDUCT

25 Definition of misconduct

(1) Any staff member shall be guilty of misconduct if he or she-

- (a) contravenes or fails to comply with any provision of this Act;
- (b) performs or causes or permits to be performed, or connives at, any act prejudicial to the administration, discipline or efficiency of any office, ministry or agency or any organisational component thereof;
- (c) disobeys, disregards or makes wilful default in carrying out any lawful order given to him or her by any person authorised to do so, or by word or conduct shows insubordination;
- (d) is negligent or indolent in the performance of his or her duties;
- (e) operates or undertakes, without the approval of the Prime Minister, any private agency or private work in regard to any matter directly or indirectly related to the performance of his or her official functions or any matter directly or indirectly related to the field of operations of the office, ministry or agency in which he or she is employed or fails to declare that any member of his or her household operates or undertakes any such private agency or private work;

- (f) uses his or her position in the Public Service or utilises any property of the State to promote or prejudice the interests of any political party;
- (g) uses his or her position in the Public Service or utilises any property of the State to promote or prejudice the interests of any private business or private agency, except in the performance of his or her official duties;
- (h) conducts himself or herself in a disgraceful, improper or unbecoming manner causing embarrassment to the Government or to the Public Service or, while on duty, is grossly discourteous to any person;
- (i) uses intoxicating liquor excessively or uses stupefying drugs without a prescription of a medical practitioner resulting in his or her incapacity to perform his or her duties efficiently;
- (j) uses or is under the influence of intoxicating liquor or stupefying drugs during the prescribed official hours of attendance without a prescription of a medical practitioner;
- (k) without first having obtained the permission of the permanent secretary concerned, discloses otherwise than in the performance of his or her official duties any information gained by or conveyed to him or her by virtue of his or her employment in the Public Service, or uses such information for any purpose other than the performance of his or her official duties, whether or not he or she discloses such information;
- (l) accepts or demands in respect of the performance of or the failure to perform his or her duties any commission, fee or reward, pecuniary or otherwise, to which he or she is not entitled by virtue of his or her office, or fails to report forthwith to the permanent secretary concerned the offer of any such commission, fee or reward;
- (m) misappropriates or improperly uses any property of the State without committing a criminal offence;
- (n) commits a criminal offence relating to the performance of his or her official duties or to the administration of any office, ministry or agency;
- (o) absents himself or herself from his or her office or official duties without leave or valid cause;
- (p) with a view to obtain any privilege or advantage in relation to his or her official position or his or her duties, or to cause prejudice or injury to the Government or any office, ministry or agency or any member of the Public Service, makes a false or incorrect statement, knowing it to be false or incorrect;
- (q) contravenes or fails to comply with any provision relating to his or her employment or conditions of service, or contravenes or fails to comply with any provision of a prescribed code of conduct.

(2) For the purposes of the application of subsection (1) to a staff member who holds the office-

- (a) of permanent secretary, any reference in that subsection to the permanent secretary shall be construed as a reference to the Secretary to the Cabinet;
- (b) of Secretary to the Cabinet or of Secretary to the President, any reference in that subsection to the permanent secretary shall be construed as a reference to the Prime Minister.

26 Misconduct and suspension of staff members

(1) If a permanent secretary has reason to believe that any staff member in his or her office, ministry or agency is guilty of misconduct, he or she may charge the staff member in writing under his or her hand with misconduct.

(2) (a) The permanent secretary concerned may, on the recommendation of the Commission, suspend any staff member at any time before or after he or she is charged under this section, if the permanent secretary has reason to believe that the staff member is guilty of misconduct: Provided that the staff member shall be suspended only where the nature of the misconduct dictates that the staff member be removed from his or her place of duty or if the possibility exists that the staff member may interfere or tamper with witnesses or evidence.

(b) Any staff member suspended in terms of paragraph (a) shall not be entitled to any remuneration for the period of his or her suspension, except to such an extent as may be approved by the Prime Minister on the recommendation of the Commission: Provided that the staff member may, within seven days after his or her suspension, appeal in writing to the Prime Minister against his or her non-entitlement to any remuneration or any part thereof.

(c) Any staff member who has been suspended shall forthwith be permitted by the permanent secretary concerned to reassume duty and shall be paid his or her full remuneration for the period of his or her suspension-

- (i) if no charge is brought against him or her under this section within 14 days after his or her suspension;
- (ii) if he or she is found not guilty on the charge brought against him or her;
- (iii) if his or her appeal is allowed against the finding that he or she is guilty on the charge brought against him or her;
- (iv) if he or she is dealt with in a manner contemplated in subsection (12) (a) (i), (ii), (iii) or (iv).

(d) The suspension of any staff member may at any time be abrogated-

- (i) by the permanent secretary who has suspended the staff member under subsection (2) (a), if in his or her opinion all the reasons for the suspension have lapsed; or
- (ii) by the Prime Minister-
 - (aa) if in his or her opinion no valid cause exists for the suspension; or
 - (bb) if the Commission has recommended to the Prime Minister the abrogation thereof,

but the abrogation of the suspension shall not affect any proceedings in connection with the charge of misconduct.

- (3) (a) The permanent secretary who has signed the charge shall cause the charge to be served on the staff member charged, together with any statement of particulars of the alleged misconduct.
 - (b) The charge shall contain or be accompanied by a direction calling upon the staff member charged to transmit or deliver, within 14 days from the date of the charge, to a person mentioned in the direction a written admission or denial of the charge and, if he or she so desires, a written explanation of the misconduct with which he or she is charged.
- (4) If the staff member charged admits the charge or fails to comply with the direction referred to in subsection (3) (b), he or she shall be deemed to have been found guilty in terms of this section of misconduct as charged-
- (a) in the case of an admission of the charge, on the date of admitting the charge and not to have noted an appeal against the finding;
 - (b) in the case of a failure to comply with the direction referred to in subsection (3) (b), on the date of the expiry of the period mentioned in that subsection.
- (5) If the staff member charged denies the charge, the permanent secretary concerned shall, within seven days from the date of receipt of the written denial, establish a disciplinary committee consisting of-
- (a) a member of the management cadre of the office, ministry or agency in which the staff member charged is employed, who shall be the chairperson; and
 - (b) the head of the organisational component responsible for personnel administration or his or her representative; and
 - (c) any other staff member who in the opinion of the permanent secretary concerned possesses expertise of the subject on which the charge of misconduct is based, but who shall not be the head of the organisational component in which the staff member charged is employed or the supervisor of that staff member; and
 - (d) if the staff member charged so desires, a representative of a recognised trade union, who shall serve on the disciplinary committee merely as an observer without partaking in any proceedings thereof,

to inquire into the charge.

- (6) The chairperson shall, in consultation with the other members of the disciplinary committee, fix the time and place of the inquiry and shall give the staff member charged reasonable notice in writing of the said time and place: Provided that such inquiry shall be conducted within 21 days after the establishment of the disciplinary committee.
- (7) The chairperson may authorise any staff member, except a person referred to in subsection (5) (d), to adduce evidence and arguments in support of the charge and to cross-examine any person who has given evidence in rebuttal of the charge.
- (8)
 - (a) At the inquiry the staff member charged shall have the right to be present and to be heard, either personally or through a representative, to cross-examine any person called as a witness in support of the charge, to examine any documents produced in evidence, to give evidence himself or herself and to call other persons as witnesses.
 - (b) The chairperson shall keep or cause to be kept by any staff member designated by him or her a record of the proceedings at the inquiry and of all evidence given.
 - (c) The failure of the staff member charged to be present at the inquiry shall not invalidate the proceedings.
- (9) The acquittal or the conviction of any staff member by a court of law on a charge of any offence shall not be a bar to proceedings against him or her in terms of this Act on a charge of misconduct, notwithstanding the fact that the facts set forth in the charge of misconduct would, if proved, constitute the offence set forth in the charge on which he or she was so acquitted or convicted or any other offence on which he or she might have been convicted on his or her trial on the said first-mentioned charge.
- (10) If the misconduct with which a staff member is charged, constitutes an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court shall, upon the identification of the staff member as the person referred to in the record, be conclusive proof-
 - (a) of the commission by him or her of that offence;
 - (b) to the disciplinary committee that he or she is guilty of misconduct on account of the commission of that offence,unless the conviction has been set aside by a superior court.
- (11) At the conclusion of the inquiry the disciplinary committee shall find whether the staff member charged is guilty or not guilty of the misconduct with which he or she has been charged and shall inform him or her of the finding.
- (12)
 - (a) If the disciplinary committee finds the staff member charged guilty of the misconduct with which he or she has been charged, the chairperson shall forthwith submit to the Commission and the permanent secretary concerned a copy of the record of the

proceedings at the inquiry, including documentary evidence adduced at the inquiry, together with a written statement of the disciplinary committee's finding and its reasons therefor and its recommendation that-

- (i) the staff member charged be cautioned or reprimand; or
- (ii) a fine not exceeding N\$2 000 be imposed upon him or her; or
- (iii) he or she be transferred to any other post or that he or she be retained in employment additional to the establishment; or
- (iv) his or her salary or scale of salary or rank be reduced or decreased, or both, to such an extent as may be recommended; or
- (v) he or she be discharged or be called upon to resign from the Public Service.

(b) Except where the disciplinary committee makes a recommendation in terms of subparagraph (v) of paragraph (a), it may make a recommendation in terms of more than one of the other subparagraphs of that paragraph.

(13) The permanent secretary concerned shall, at the request of the staff member charged made within seven days from the date on which he or she has been informed of the finding of the disciplinary committee, furnish that staff member with a copy of the record, statement, reasons and recommendation referred to in subsection (12).

(14) (a) The staff member charged may, within 14 days from the date of receipt by him or her of the record, statement, reasons and recommendation referred to in subsection (13), appeal in writing to the Prime Minister against the finding of the disciplinary committee stating fully the grounds of appeal.

(b) The appeal-

- (i) shall be accompanied by the record, statement, reasons and recommendation referred to in subsection (13);
- (ii) may be accompanied by written representations made by that staff member in support of the appeal.

(c) Upon receipt of the appeal the Prime Minister shall cause a copy thereof to be transmitted to the Commission.

(15) (a) After consideration of all the documents submitted to him or her, the Prime Minister may, subject to the provisions of paragraph (b)-

- (i) allow the appeal in whole or in part and vary or set aside the finding;
- (ii) dismiss the appeal and confirm the finding in whole or in part;
- (iii) refer any matter in connection with the inquiry to the permanent secretary concerned, who shall thereupon remit the said matter to the disciplinary committee and direct it to

report thereon or to hold a further inquiry and to make a finding and recommendation thereon; or

(iv) inform the permanent secretary concerned that a staff member or staff members in the Prime Minister's office will inquire into the matter.

(b) Before arriving at a final decision on the appeal, the Prime Minister shall obtain the advice of the Commission.

(c) For the purposes of a remittal or an inquiry referred to in paragraphs (a) (iii) and (a) (iv), respectively, the provisions of subsections (6),(7), (8), (11) and (12) shall apply *mutatis mutandis*.

(16) If the Prime Minister has arrived at a final decision on the appeal, he or she shall convey that decision to the appellant and to the Commission and the permanent secretary concerned.

(17) If the staff member charged is deemed to have been found guilty or has been found guilty of misconduct in terms of subsection (4) or (11), respectively, and has not appealed against the finding within the period mentioned in subsection (14) (a), or has appealed against the finding and the appeal has been dismissed in whole or in part under subsection (15)-

(a) the permanent secretary concerned may approve the recommendation made by the disciplinary committee in terms of subsection (12) (a) (i) or (ii), or, if the staff member charged is deemed to have been found guilty, take any action which he or she could have taken if the disciplinary committee had recommended it in terms of that subsection;

(b) the Prime Minister may, on the recommendation of the Commission, approve the recommendation made by the disciplinary committee in terms of subsection (12) (a) (iii), (iv) or (v), or, if the staff member charged is deemed to have been found guilty, take any action, on the recommendation of the Commission, which he or she could have taken if the disciplinary committee had recommended it in terms of that subsection.

(18) If in terms of subsection (17)-

(a) a fine is imposed upon that staff member, the fine may be recovered by deducting it from his or her remuneration in such instalments as the Treasury may determine;

(b) that staff member is transferred to any other post or retained in employment additional to the establishment, he or she shall assume duty in that post or employment with effect from a date fixed by the Prime Minister;

(c) the salary or scale of salary or rank of that staff member is reduced or decreased, he or she shall assume duty at the reduced salary or scale of salary or in a lower rank and an appropriate grade, or both at the reduced salary or scale of salary and in a lower rank and an appropriate grade, with effect from a date fixed by the Prime Minister;

- (d) that staff member is discharged from the Public Service, the discharge shall take effect on a date fixed by the Prime Minister;
 - (e) that staff member who has been called upon to resign from the Public Service with effect from a date fixed by the Prime Minister, fails so to resign, he or she shall be deemed to have been discharged from the Public Service on account of misconduct with effect from that date.
- (19) Any staff member who, while suspended under subsection (2) (a) or while a charge brought against him or her under this section has not been finally dealt with in accordance with the provisions of this section, resigns from the Public Service or assumes duty in other employment, shall be deemed to have been discharged on account of misconduct with effect from the date on which he or she resigned or assumed duty in other employment.

27 Misconduct and suspension of permanent secretaries

- (1) If the Secretary to the Cabinet has reason to believe that any permanent secretary is guilty of misconduct he or she may, in consultation with the Prime Minister and the Minister of the permanent secretary concerned, charge the permanent secretary in writing under his or her hand with misconduct.
- (2) The Secretary to the Cabinet may, on the recommendation of the Commission, suspend any permanent secretary at any time before or after he or she is charged under this section, if the Secretary to the Cabinet has reason to believe that the permanent secretary is guilty of misconduct.
- (3) The provisions of subsection (2) of section 26 shall apply *mutatis mutandis* to a suspension contemplated in subsection (2) of this section, and for that purpose any reference in the first-mentioned subsection to the permanent secretary shall be construed as a reference to the Secretary to the Cabinet.
- (4) The Secretary to the Cabinet, in consultation with the Prime Minister and the Minister of the permanent secretary concerned, shall establish a disciplinary committee, consisting of himself or herself, as chairperson, and any other two persons or staff members, to inquire into the charge of misconduct.
- (5) The provisions of subsections (3), (6) to (12), inclusive, (17), (18) and (19) of section 26 shall apply *mutatis mutandis* to an inquiry contemplated in subsection (4) of this section, and for that purpose any reference in subsections (3), (6), (7), (8), (9), (10), (11), (18) and (19) of the first-mentioned section to the permanent secretary shall be construed as a reference to the Secretary to the Cabinet and any reference in subsections (12) and (17) of the first-mentioned section to the permanent secretary shall be construed as a reference to the Prime Minister.

28 Misconduct of Secretary to the Cabinet and Secretary to the President

- (1) If the Prime Minister has reason to believe that a staff member who holds the office of Secretary to the Cabinet or of Secretary to the President is guilty of misconduct, he or she may, in consultation with the President, charge such staff member in writing under his or her hand with misconduct.
- (2) The staff member charged shall have the right to adduce evidence to the Prime Minister in rebuttal of the charge within such period as may be determined by the Prime Minister.
- (3) (a) If the Prime Minister finds the staff member charged guilty of the misconduct with which he or she has been charged, the Prime Minister shall forthwith recommend to the President that-
 - (i) the staff member charged be cautioned or reprimanded; or
 - (ii) a fine not exceeding N\$2 000 be imposed upon him or her; or
 - (iii) he or she be transferred to any other post or that he or she be retained in employment additional to the establishment; or
 - (iv) his or her salary or scale of salary or rank be reduced or decreased to such an extent as may be recommended; or
 - (v) he or she be discharged or be called upon to resign from the Public Service.(b) Except where the Prime Minister makes a recommendation in terms of subparagraph (v) of paragraph (a), he or she may make a recommendation in terms of more than one of the other subparagraphs of that paragraph.
- (4) The President may, on the recommendation of the Commission, approve the recommendation made by the Prime Minister in terms of subsection (3).
- (5) For the purposes of subsection (4), the provisions of subsection (18) of section 26 shall apply *mutatis mutandis*.

29 Manner in which notices may be given or certain documents may be given or certain documents may be served

Where it is for the purposes of this Part required that-

- (a) a person be advised or informed of any decision or finding, he or she shall be advised or informed thereof in writing;
- (b) a notice, statement or other document be given or furnished or sent to or served upon any person or that a decision, finding or any other matter be conveyed to any person in writing, the notice, statement, document or writing may be sent to the person by registered post addressed to his or her last known address or be delivered to him or her personally or be left at his or her last known place of residence.

PART IV

GENERAL PROVISIONS

30 Political rights of staff members

(1) Subject to the provisions of section 25 (1) (f) and subsection (2) of this section, a staff member may-

- (a) be a member of a political party;
- (b) attend, preside at or speak at a public political meeting;
- (c) draw up or publish any writing to promote the interests of any political party;
- (d) be an office-bearer of whatever designation of a political party:

Provided that no staff member shall, at any time while he or she is required to discharge his or her official duties in the Public Service, perform any act in the exercise of any political right: Provided further that, to ensure the impartiality of the Public Service, a staff member who holds any post in the management cadre of the Public Service may not-

- (i) preside at a public political meeting or draw up or publish any writing or deliver a public speech or make a public statement with the intention to promote or prejudice the interest of any political party;
- (ii) be an office-bearer of whatever designation of a political party.

(2) The Prime Minister may, on the recommendation of the Commission, by notice in the *Gazette* designate any category of posts not in the management cadre of the Public Service, or any post of a particular nature falling within such category, the holders of which shall, by virtue of the potential of such holders to influence policy formulation or of their fiduciary relationship with any person who is in a position to influence policy formulation or of any other reason relating to the object of ensuring the impartiality of the Public Service, be subject to the limitations specified in subparagraphs (i) and (ii) of the second proviso to subsection (1).

(3) (a) Notwithstanding anything to the contrary contained in any law, but subject to the provisions of paragraph (b), a staff member eligible for candidature as President or as a member of the National Assembly referred to in Article 44 of the Namibian Constitution or of a regional council as defined in section 1 of the Regional Councils Act, 1992 (Act 22 of 1992), may accept nomination as candidate for election as President or as a member of the National Assembly or of a regional council, as the case may be, but shall, if he or she is elected as President or as any such member, be deemed to have resigned from the Public Service with effect from the date on which he or she is so elected.

(b) A staff member referred to in paragraph (a) who has been nominated as candidate for election as President or as a member

of the National Assembly or of a regional council, as the case may be, shall be on vacation leave from the date of his or her nomination until the date on which such election takes place.

- (c) A staff member who has been nominated as candidate for election as a member of a local authority council as defined in section 1 of the Local Authorities Act, 1992 (Act 23 of 1992), shall be on vacation leave from the date of his or her nomination until the date on which such election takes place and, notwithstanding anything to the contrary contained in section 17, if he or she is elected as such member, the permission contemplated in the said section shall be deemed to have been granted.

- (4) The provisions of subsections (1) and (2), in so far as they provide for a limitation on the fundamental rights contemplated in Article 17 (1) of the Namibian Constitution to participate in peaceful political activities, are enacted upon the authority conferred by the said Article.

31 Assignment of other functions to staff members

- (1) The permanent secretary of any office, ministry or agency may with due regard to the exigencies of the Public Service direct any staff member under his or her control to perform for such period as that permanent secretary may determine, duties or work other than his or her ordinary duties or work or duties or work appropriate to the grade or designation of the post or rank held by him or her, and he or she shall comply with that direction.

- (2) For the purposes of the application of subsection (1) to a staff member who holds the office-

- (a) of permanent secretary, any reference in that subsection to the permanent secretary shall be construed as a reference to the Secretary to the Cabinet;
- (b) of Secretary to the Cabinet or of Secretary to the President, any reference in that subsection to the permanent secretary shall be construed as a reference to the Prime Minister.

32 Labour relations

Where a matter is in terms of this Act to be approved or recommended on by the Prime Minister or the Commission, as the case may be, that matter shall not so be approved or recommended on unless it has been the subject of the prescribed process of negotiation and collective bargaining, except those matters relating to any particular person or staff member or those contemplated in section 5 (2) (a), (b), (c), (d), (f), (h), (k), (l), (m) and (n) and section 34 in so far as it relates to matters other than conditions of service.

33 Limitation of legal proceedings

- (1) No legal proceedings of whatever nature shall be brought in respect of anything done or omitted in terms of this Act unless such proceedings are brought within 12 calendar months from the date on which the claimant

had knowledge or might reasonably have been expected to have knowledge of that which is alleged to have been done or omitted, whichever is the earlier date.

- (2) No such legal proceedings shall be commenced before the expiry of 30 days after written notice of intention to bring such proceedings, containing full particulars as to that which is alleged to have been done or omitted, has been served on the defendant.

34 Regulations

(1) The Prime Minister may, on the recommendation of the Commission, make regulations relating to-

- (a) the manner and conditions, including contracts of employment, for the appointment, promotion and transfer of staff members;
- (b) the discipline, powers and duties, and hours of attendance of staff members;
- (c) conditions of service and entitlements, including the occupation of official quarters, of staff members and members of the services;
- (d) the establishment and management of and control over a medical aid scheme for the Public Service;
- (e) the circumstances under which medical examination shall be required for the purposes of this Act, and the form of medical reports and certificates so required;
- (f) the procedures to be observed in the process of negotiation and collective bargaining with recognised trade unions;
- (g) the procedures to be observed in investigating and dealing with grievances of staff members;
- (h) the procedures to be observed in investigating and dealing with allegations of inefficiency of or misconduct by staff members;
- (i) a code of conduct with which staff members shall comply;
- (j) any matter which in terms of this Act is required or permitted to be prescribed;
- (k) generally, any matter in respect of which the Prime Minister, on the recommendation of the Commission, considers it necessary or expedient to make regulations in order to achieve the objects of this Act.

(2) Different regulations may be made in respect of different categories of staff members, or to suit the different requirements of different offices, ministries or agencies or organisational components thereof, or of different kinds of employment in the Public Service.

(3) The regulations contemplated in subsection (1) (d) may also provide for membership of the medical aid scheme established thereunder for-

- (a) any person appointed under section 3 of the Water Act, 1956 (Act 54 of 1956);

- (b) members of the services;
- (c) the surviving spouse of a person who was a staff member or a member of the services or a person referred to in paragraph (a) on the date of his or her death;
- (d) a person who was a staff member or a member of the services or a person referred to in paragraph (a) on the date immediately before the date on which he or she in terms of the Rules of the Government Institutions Pension Fund became entitled to a pension;
- (e) the surviving spouse of a person who was a person referred to in paragraph (d) on the date of his or her death.

35 Public Services Staff Rules

(1) Any-

- (a) standing recommendation or advice of a general nature made or given by the Commission; and
- (b) directive by the Prime Minister to elucidate or supplement any regulation,

and which is not contrary to this Act, may be included in rules called the Public Service Staff Rules.

(2) The provisions of section 34 (2) shall apply *mutatis mutandis* in respect of the Public Service Staff Rules.

(3) The provisions of the Public Service Staff Rules are binding upon any office, ministry or agency or any staff member in so far as they apply to that office, ministry or agency or that staff member.

36 Application of Act

This Act shall apply to or in respect of-

- (a) all staff members, whether employed in or outside the Republic of Namibia; and
- (b) all members of the services, but only to the extent provided for in this Act.

37 Transitional provisions

(1) Anything done under the Public Service Act, 1980 (Act 2 of 1980), and which could have been done under a provision of this Act, shall be deemed to have been done under the corresponding provision of this Act.

(2) (a) The provisions of sections 10(A) and 14 of the Public Service Act, 1980, as they applied immediately before the commencement of this Act in relation to the term of office, extension of the term of office and rights on retirement of a chief executive officer, shall, in respect of an officer who on the date immediately before the date of commencement of this Act occupied the office of chief executive

officer, continue to apply to such officer as if such officer has retained such office and as if this Act had not come into operation: Provided that such officer shall be reclassified as a staff member and redesignated as a permanent secretary in terms of this Act and that, at the expiry of his or her term of office, such officer shall be afforded the opportunity to elect whether the provisions of the said sections 10(A) and 14 should further apply to him or her or whether the provisions of this Act should be applicable to him or her.

- (b) For the purposes of the application of paragraph (a) to a staff member who holds the office of Secretary to the Cabinet or of Secretary to the President, it shall be deemed that any such staff member occupied the office of chief executive officer.

(3) The provisions of section 24 of the Regional Councils Act, 1992 (Act 22 of 1992), as they applied immediately before the commencement of this Act, shall continue to apply as if this Act had not come into operation.

38 Construction of certain references in other laws

Any reference in any other law-

- (a) to a department shall be construed as a reference to the corresponding office, ministry or agency, as the case may be;
- (b) to the head of a department or to a secretary of a department shall be construed as a reference to the permanent secretary of the corresponding office, ministry or agency, as the case may be; and
- (c) to the government service shall be construed as a reference to the Public Service.

39 Amendment of laws

The laws mentioned in Schedule 4 are hereby amended to the extent indicated in the third column thereof.

40 Repeal laws

The laws mentioned in Schedule 5 are hereby repealed to the extent indicated in the third column thereof.

41 Short title and commencement

This Act shall be called the Public Service Act, 1995, and shall come into operation on a date to be fixed by the Prime Minister by notice in the *Gazette*.

SCHEDULE 1

OFFICES AND PERMANENT SECRETARIES

Designation of Office	Designation of Permanent Secretary
Office of the President	Deputy Secretary to the President
Office of the Prime Minister	Deputy Secretary to the Cabinet

SCHEDULE 2

MINISTRIES AND PERMANENT SECRETARIES

Designation of Ministry	Designation of Permanent Secretary
Ministry of Agriculture, Water and Rural Development	Permanent Secretary: Agriculture, Water and Rural Development
Ministry of Basic Education and Culture	Permanent Secretary: Basic Education and Culture
Ministry of Defence	Permanent Secretary: Defence
Ministry of Environment and Tourism	Permanent Secretary: Environment and Tourism
Ministry of Finance	Permanent Secretary: Finance
Ministry of Fisheries and Marine Resources	Permanent Secretary: Fisheries and Marine Resources
Ministry of Foreign Affairs	Permanent Secretary: Foreign Affairs
Ministry of Health and Social Services	Permanent Secretary: Health and Social Services
Ministry of Higher Education, Vocational Training, Science and Technology	Permanent Secretary: Higher Education, Vocational Training, Science and Technology
Ministry of Home Affairs	Permanent Secretary: Home Affairs
Ministry of Information and Broadcasting	Permanent Secretary: Information and Broadcasting
Ministry of Justice	Permanent Secretary: Justice
Ministry of Labour and Human Resources Development	Permanent Secretary: Labour and Human Resources Development
Ministry of Lands, Resettlement and Rehabilitation	Permanent Secretary: Lands, Resettlement and Rehabilitation
Ministry of Mines and Energy	Permanent Secretary: Mines and Energy
Ministry of Prisons and Correctional Services	Permanent Secretary: Prisons and Correctional Services
Ministry of Regional and Local Government and Housing	Permanent Secretary: Regional and Local Government and Housing
Ministry of Trade and Industry	Permanent Secretary: Trade and Industry
Ministry of Works, Transport and Communication	Permanent Secretary: Works, Transport and Communication
Designation of Ministry	Designation of Permanent Secretary

Ministry of Youth and Sport

Permanent Secretary: Youth and
Sport

SCHEDULE 3

AGENCIES AND PERMANENT SECRETARIES

Designation of Agency	Designation of Permanent Secretary
Namibia Security Intelligence Agency	Director: Namibia Security Intelligence Agency
National Planning Commission	Permanent Secretary: National Planning Commission
Office of the Attorney-General	Permanent Secretary: Justice
Office of the Auditor-General	Deputy Auditor-General
Office of the Parliament	Clerk: Parliament

SCHEDULE 4

AMENDMENT OF LAWS

and year of law	Short title	Extent of amendment
Act 2 of 1990	Public Service Commission Act, 1990	<p>1 The amendment of section 1-</p> <p style="padding-left: 40px;">(a) by the deletion of the definitions of "employee", "officer" and "Government Service Act"; and</p> <p style="padding-left: 40px;">(b) by the insertion after the definition of "Commission" of the following definitions:</p> <p>'Public Service Act means the Public Service Act, 1994;</p> <p>'staff member' means a staff member as defined in section 1 (1) of the Public Service Act, 1994."</p> <p>2 The amendment of section 4 by the substitution in subparagraph (ii) of paragraph (b) of subsection (2) for the expression "section 14 (4) (a) of the Government Service Act" of the expression "section 24 (3) (a) of the Public Service Act".</p> <p>3 The amendment of section 6 by the substitution in paragraph (b) of subsection (3) for the words "or the officer or officers in the office of the Commission designated by the Commission" of the words "or the staff member or staff members designated".</p> <p>4 The amendment of section 7 by the substitution</p>

for subsection (6) of the following subsection:

“(6)Any person who holds an inquiry in pursuance of a delegation under section 8(1) (a) or holds an inquiry in pursuance of a designation **[or an appointment]** under section 8 (2) of this Act, **[or section 15 (1), 16 (1) or 18 (5) of the Government Service Act]** shall, for the purpose of the inquiry, have all the powers conferred upon the Commission by this section, and in the application of the provisions of this section to any such an inquiry, every reference therein to the Commission shall be construed as including a reference to such person.”

5 The amendment of section 8 by the substitution for subsections (1) and (2) of the following subsections:

“(1)The Commission may, subject to the conditions determined by it, delegate any power conferred upon it or any function entrusted to it under this Act or the **[Government Service Act]** Public Service Act or any other law, except the powers conferred upon it by this subsection or section 6 (3) (a) or 10 (1) of this Act, or by section **[6 (2) (a), (g) or (i), 6 (3) (b), 14 (4), 5 (a) to (e), both inclusive, or (6), 15, 16, 17, 18 (4) or (10) to (14), both inclusive, 19 or 27 of the Government Service Act] 17 (2),18 (1) or 26 (15) (b)** of the Public Service Act, under a general or special delegation to-

(a) one or more of its members; or

(b) **[an officer]** a staff member or **[officers]** staff members.

(2) The Commission may designate one or more of its members or **[an officer or officers]** may request that a staff member or staff members be provided to conduct an inquiry into any matter in respect of which in terms of this Act or the **[Government Service Act]** Public Service Act or any other law it may make a recommendation or give **[a direction]** advice, and it may at any time withdraw or amend such designation or request."

6 The deletion of section 9.

7 The amendment of section 10 by the substitution in subsection (1) for the date "31 December" of the date "31 March".

8 The amendment of the Public Service Commission Act, 1990-

(a) by the substitution for the expressions "employee" and "officer" wherever they occur of the expression "staff member"; and

(b) by the substitution for the expression "Government Service Act" wherever it occurs of the expression "Public Service Act".

Act 31 of 1991

State Finance Act, 1991

1 The amendment of section-

- (a) by the insertion in subsection (1) after the definition of "accounting officer" of the following definition:

"'agency' means an agency as defined in section 1(1) of the Public Service Act, 1994;";

- (b) by the deletion in subsection (1) of the definition of "chief executive officer";

- (c) by the substitution in subsection (1) for the definition of "ministry" of the following definition:

"'ministry' means a ministry as defined in section 1 (1) of the Public Service Act, 1994;";

- (d) by the insertion in subsection (1) after the definition of "municipality" of the following definition:

"'office" means an office as defined in section 1 (1) of the Public Service Act, 1994;";

- (e) by the substitution in subsection (1) for the definition of "Permanent Secretary" of the following definition:

"'permanent secretary" means a permanent

secretary as defined in section 1 (1) of the Public Service Act, 1994;"

- (f) by the deletion in subsection (1) of the definition of "public office"; and
- (g) by the substitution in subsection (1) in paragraph (e) of the definition of "revenue" for the expression "Permanent Secretary" of the expression "Permanent Secretary: Finance".

2 The amendment of section 8 by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"Unless the Treasury determines otherwise, the **[chief executive officer]** permanent secretary of **[a ministry and of a public office]** an office, of a ministry and of an agency shall, subject to the provisions of subsection (4), be the accounting officer for the vote or votes of that **[ministry or public office]** office, ministry or agency, and he or she shall-".

3 The amendment of section 14 by the substitution for the words "ministries, public offices and statutory institutions" of the words "offices, ministries, agencies and statutory institutions".

4. The amendment of section 15 by the substitution in

subsection (1) for the words "a ministry, public office or statutory institution" of the words "any office, ministry, agency or statutory institution".

5. The amendment of sections 2 (3), 4, 10 (1), 12, 13, 16 (5), 23 (2), 24 (1) (h) (ii) and (i), 29 (3), (4) (b) and (5), 30 (1) and (2), 31, 33 and 37 (2) (a), (3) and (5) by the substitution for the expression "Permanent Secretary" wherever it occurs of the expression "Permanent Secretary: Finance".

6 The amendment of the State Finance Act, 1991-

(a) by the substitution for the words "ministry or public office" wherever they occur of the words "office, ministry or agency"; and

(b) by the substitution for the expression "chief executive officer" wherever it occurs of the expression "permanent secretary".

SCHEDULE 5

LAWS REPEALED

No. and year of law	Short title	Extent of repeal
Act 2 of 1980	Public Service Act, 1980	The whole
Proclamation AG. 18 of 1980	Amendment of Schedule to Government Service Act, 1980	The whole
Proclamation AG. 39 of 1980	Amendment of Schedule to Government Service Act, 1980	The whole
Proclamation AG. 40 of 1980	Amendment of Schedule to Government Service Act, 1980	The whole
Proclamation AG. 67 of 1980	Amendment of Schedule to Government Service Act, 1980	The whole
Proclamation AG. 68 of 1980	Amendment of Schedule to Government Service Act, 1980	The whole
Proclamation AG. 10 of 1981	Government Service Amendment Proclamation, 1981	The whole
Proclamation AG. 11 of 1981	Amendment of Schedule to Government Service Act, 1980	The whole
Act 13 of 1982	Medical Aid Scheme for the Government Service Extension Act, 1982	Section 3
Act 23 of 1982	Government Service Amendment Act, 1982	The whole
Proclamation AG. 2 of 1983	Amendment of Schedule to Government Service Act, 1980	The whole
Proclamation AG. 39 of 1984	Amendment of the Government Service Act, 1980, and provision for matters connected therewith	The whole
Act 8 of 1986	Government Service Amendment Act, 1986	The whole
Proclamation AG. 5 of 1987	Amendment of Schedule to Government Service Act, 1980	The whole
Act 17 of 1987	Government Service Amendment Act, 1987	The whole
Proclamation AG. 3 of 1990	Amendment of Schedule to Government Service Act, 1980	The whole
Act 6 of 1989	Government Service Amendment Act, 1989	The whole
Proclamation AG. 5 of 1990	Amendment of Schedule to Public Service Act, 1980	The whole
Act 24 of 1990	Public Service Amendment Act, 1990	The whole, except section 24

Proclamation 2 of 1994	Amendment of First Schedule of the Public Service Act, 1980	The whole
Proclamation 13 of 1994	Amendment of the First Schedule of the Public Service Act, 1980	The whole