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INTERIM GOVERNMENT OF THE REPUBLIC OF THE FIJI ISLANDS

EMPLOYMENT RELATIONS PROMULGATION 2007
(PROMULGATION No. 36 OF 2007)

ARRANGEMENT OF SECTIONS

PART 1 — PRELIMINARY

1. Short title
2. Commencement
3. Application
4. Interpretation

PART 2 — FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

5. Object of this Part
6. Fundamental principles and rights

PART 3 — EMPLOYMENT RELATIONS ADVISORY BOARD

7. Object of this Part
8. Employment Relations Advisory Board
9. Functions and powers of the Board
10. Allowances
11. Term of office, leave, resignation and dismissal of members
12. Meetings of the Board
13. Annual report of the Board

PART 4 — APPOINTMENTS, POWERS AND DUTIES OF OFFICERS

14. Object of this Part
15. Administration of this Promulgation
16. Delegation by Permanent Secretary
17. Permanent Secretary may call for information
18. Institution of proceedings
19. Powers and functions of officers
20. Interests and confidentiality

PART 5 — CONTRACTS OF SERVICE

21. Object of this Part

Division 1 — General

22. Employment to be in accordance with this Promulgation
23. Contracts of service, oral or written
24. Duty of employer to provide work
25. Death of worker
26. No wages on detention or imprisonment

27. Presumption as to period of contract and termination of contract
28. Presumption as to new contract
29. Provisions as to notice
30. Further provisions as to termination of contracts
31. Piecework or task
32. Wages when due
33. Summary dismissal
34. Right to wages on dismissal for lawful cause
35. Presumption as to oral contracts

Division 2 – Written Contracts

36. Application and interpretation
37. Certain contracts to be in writing
38. Form and content of contract
39. Transfer to other employer
40. Termination of contract by expiry of the term of service or by death
41. Termination of contract in other circumstances

PART 6 – PROTECTION OF WAGES

42. Objects of this Part

Division 1 – General

43. Payment of wages
44. Wages statement
45. Wages and time record
46. Payment to worker's family
47. Authorised deductions from wages
48. Remuneration other than wages
49. Interest on advances

Division 2 – Wages Council

50. Power of Minister to establish wages council
51. Making of wages council order
52. Variation and revocation of wages council order
53. General provisions as to wages councils
54. Power to fix remuneration
55. Effect and enforcement of wages regulation orders
56. Notices

PART 7 – HOLIDAYS AND LEAVE

57. Object of this Part
58. Employer to give paid annual holidays
59. Paid annual holidays
60. Holiday pay on termination of employment
61. Continuity of employment
62. Paid annual holiday to be given within certain period
63. Wages in respect of annual holiday to be paid in advance
64. Declared public holidays
65. Days to be celebrated as public holidays
66. Special public holidays
67. Payment for public holidays
68. Sick leave
69. Bereavement leave
70. Record of leave and entitlement

PART 8 — HOURS OF WORK

- 71. Object of this Part
- 72. Hours of work
- 73. Non-application to certain contracts of service

PART 9 — EQUAL EMPLOYMENT OPPORTUNITIES

- 74. Object of this Part
- 75. Prohibited grounds of discrimination
- 76. Sexual harassment
- 77. Discrimination in employment matters
- 78. Unlawful discrimination in rates of remuneration
- 79. Criteria to be applied
- 80. Determination of equal pay
- 81. Recovery of remuneration based on equal pay
- 82. Exceptions in relation to authenticity and privacy
- 83. Exceptions for purposes of religion
- 84. Exceptions in relation to disability
- 85. Exceptions in relation to age
- 86. Exceptions in relation to employment of a political nature
- 87. Exceptions in relation to family status
- 88. Exceptions in relation to underground work for females
- 89. General qualification on exceptions

PART 10 — CHILDREN

- 90. Objects of this Part
- 91. Prohibition of worst forms of child labour
- 92. Minimum age for employment
- 93. Employment of children under 15 years
- 94. Trade union rights
- 95. Certain restrictions on employment of children
- 96. Children not to be employed against the wishes of parent or guardian
- 97. Hours of work for children
- 98. Conditions on night employment
- 99. Employers of children to keep register

PART 11 — MATERNITY LEAVE

- 100. Object of this Part
- 101. Rights of women on maternity leave
- 102. Payment of wages on death of woman
- 103. Payment of wages to nominee
- 104. Restriction on termination
- 105. Conditions contrary to this Part void

PART 12 — REDUNDANCY FOR ECONOMIC, TECHNOLOGICAL OR STRUCTURAL REASONS

- 106. Object of this Part
- 107. Provision of information
- 108. Redundancy pay

PART 13 — EMPLOYMENT GRIEVANCES

- 109. Object of this Part
- 110. Inclusion of procedures in employment contracts
- 111. Right to use procedures

1734

- 112. Nature of grievance
- 113. Statements privileged
- 114. Statement of reasons for dismissal

PART 14 — REGISTRATION OF TRADE UNIONS

- 115. Objects of this Part
- 116. Registrar and other officers
- 117. Protection of officers
- 118. Register of trade unions
- 119. Application for registration
- 120. Registration
- 121. Power of Registrar to call for further particulars
- 122. Alteration or change of name of trade unions
- 123. Amalgamation of trade unions
- 124. Affiliation to federation of trade union
- 125. Refusal of registration
- 126. Certificate of registration
- 127. Officers of a trade union
- 128. Inspection of accounts
- 129. Annual returns
- 130. Constitution and rules
- 131. Right of member to access constitution and rules
- 132. Registered office and postal address
- 133. Cancellation or suspension of registration
- 134. Consequence of suspension of registration
- 135. Effect of cancellation of registration
- 136. Powers of liquidator and Registrar in winding up
- 137. Closure of original liquidation on appointment of liquidator
- 138. Notification in *Gazette*
- 139. Appeal against decisions of Registrar
- 140. Certain Acts do not apply

PART 15 — RIGHTS AND LIABILITIES OF TRADE UNIONS

- 141. Object of this Part
- 142. Trade unions not unlawful
- 143. Immunity from civil suit
- 144. Registered trade union as corporate body
- 145. Access to workplaces
- 146. Liability in contract
- 147. Proceedings by and against trade unions

PART 16 — COLLECTIVE BARGAINING

- 148. Objects of this Part

Division 1 — Good Faith

- 149. Good faith in bargaining for collective agreement
- 150. Duty of good faith does not require concluded collective agreement
- 151. Providing information in bargaining for collective agreement
- 152. Code of Good Faith

Division 2 — Bargaining

- 153. Who may initiate bargaining
- 154. Bargaining where there is no collective agreement

- 155. Bargaining for variation of collective agreements
- 156. Bargaining for collective agreements with expiry dates
- 157. How bargaining initiated
- 158. Multiplicity of parties
- 159. Consolidation of bargaining

Division 3 – Collective Agreements

- 160. When a collective agreement comes into force and expires
- 161. Continuation of collective agreement after specified expiry date
- 162. Form and content
- 163. Deduction of union fees
- 164. Application of collective agreement
- 165. Resignation as union member but does not resign as worker
- 166. Copy to be delivered to Registrar

PART 17 — EMPLOYMENT DISPUTES

- 167. Object of this Part
- 168. Procedure for settling disputes
- 169. Reporting of disputes
- 170. Decisions by the Permanent Secretary
- 171. Decision by the Tribunal to be made without delay
- 172. Decision may be retrospective
- 173. Right of appeal

PART 18 — STRIKES AND LOCKOUTS

- 174. Objects of this Part
- 175. Secret ballot a prerequisite to strike
- 176. Notice prerequisite for lockout
- 177. Unlawful strikes or lockouts
- 178. Lawful strikes or lockouts on grounds of safety or health
- 179. Effect of lawful strikes or lockouts
- 180. Power of the Minister to declare strike or lockout unlawful
- 181. Court may order discontinuance of strike or lockout
- 182. Employers not liable for wages
- 183. Record of strikes and lockouts
- 184. Prohibition of expulsion of members

PART 19 — PROTECTION OF ESSENTIAL SERVICES, LIFE AND PROPERTY

- 185. Object of this Part
- 186. Strikes in essential services
- 187. Lockouts in essential services
- 188. Notices
- 189. Offences for breaches of service affecting essential services
- 190. Requirements for Mediation Services
- 191. Minister to refer strike or lockout in essential services to the Court

PART 20 — INSTITUTIONS

- 192. Objects of this Part

Division 1 – Mediation Services

- 193. Mediation Services
- 194. Procedures for Mediation Services

- 195. Confidentiality
- 196. Settlements
- 197. Mediation not to be challenged
- 198. Independence of mediation personnel
- 199. Code of Ethics
- 200. Reference to Mediation Services
- 201. Notice to attend mediation

Division 2 – Employment Relations Tribunal

- 202. Establishment of Employment Relations Tribunal
- 203. Membership
- 204. Appointments
- 205. Qualifications
- 206. Term of office
- 207. Vacation and resignation
- 208. Remuneration
- 209. Protection of members
- 210. Functions of Tribunal
- 211. Jurisdiction of Tribunal
- 212. Power to order compliance
- 213. Further powers of Tribunal
- 214. Recovery of wages and other money
- 215. Failure to keep or produce records
- 216. Procedures
- 217. Referral of question of law
- 218. Transfer of proceedings to Employment Relations Court

Division 3 – Employment Relations Court

- 219. Establishment and constitution of Employment Relations Court
- 220. Jurisdiction of the Employment Relations Court
- 221. Power of Employment Relations Court to order compliance
- 222. Sittings
- 223. Prompting of wages
- 224. Case stated
- 225. Proceedings not to abate by reason of death

Division 4 – Other General Provisions

- 226. Registrar and staff of Court and the Tribunal
- 227. Seals
- 228. Contempt
- 229. Appearance of parties
- 230. Employment grievance remedies
- 231. Evidence
- 232. Power to summons and produce documents
- 233. Power to proceed if parties fail to attend
- 234. Validation of informal proceedings, etc
- 235. Powers to join as parties, etc
- 236. Costs
- 237. Power to prohibit publication
- 238. Rules of the Tribunal and Employment Relations Court

Division 5 – Appeals

- 239. Appeals from Permanent Secretary
- 240. Appeals from Registrar of Trade Unions
- 241. Appeals from the Minister
- 242. Appeals from Tribunal to Employment Relations Court
- 243. Appeal on interlocutory order of Tribunal
- 244. Appeal on interlocutory order of the Court
- 245. Appeals to Court of Appeal

PART 21 — OFFENCES

- 246. Offence to delay or obstruct officer
- 247. Payment of wages
- 248. Offence by employer relating to worker's property
- 249. Offence by worker relating to money owed to employer
- 250. Offences where strikes or lockouts are unlawful
- 251. Misuse of money or property of a trade union
- 252. Failure to give notice or produce document
- 253. Offences by company or corporation
- 254. Intimidation or annoyance
- 255. Peaceful picketing and prevention of intimidation
- 256. General penalty
- 257. Exemption of employer on conviction of actual offender

PART 22 — MISCELLANEOUS

- 258. Removal of liability for interfering with a person's business
- 259. Prohibition of action of tort
- 260. Protection against civil and criminal proceedings
- 261. Conspiracy in employment disputes
- 262. Time for instituting proceedings for offences
- 263. Fixed penalties
- 264. Regulations
- 265. Repeals, consequential amendments and savings

- Schedule 1 – Guidelines for Labour-Management Consultation and Cooperation
- Schedule 2 – Particulars of Written Contract of Service for Individual Employment Contract
- Schedule 3 – Constitution and Procedures of Wages Councils
- Schedule 4 – Standard Clauses on Procedures for Settlement of Employment Grievances
- Schedule 5 – Provisions which must be made in the Rules of a Registered Trade Union
- Schedule 6 – Standard Clauses on Procedures for Settlement of Disputes
- Schedule 7 – List of Essential Services
- Schedule 8 – Fixed Penalty Offences

INTERIM GOVERNMENT OF THE REPUBLIC OF THE FIJI ISLANDS

EMPLOYMENT RELATIONS PROMULGATION 2007
(PROMULGATION NO. 36 OF 2007)

IN EXERCISE of the powers conferred upon the Interim Government, and upon the exercise of my own deliberate judgement as President of the Republic of Fiji as to what is best and good for the people of the Republic of the Fiji Islands, and by the exercise of the executive authority of the State in accordance with section 85 of the Constitution, and such other powers as may appertain, and with approval of Cabinet, I, Josefa Iloilovatu Uluivuda, hereby make this Promulgation—

TO PROVIDE A STATUTORY FRAMEWORK WHICH PROMOTES THE WELFARE AND PROSPERITY OF ALL FIJI'S PEOPLE BY—

- (A) CREATING MINIMUM LABOUR STANDARDS THAT ARE FAIR TO WORKERS AND EMPLOYERS ALIKE, AND TO BUILD PRODUCTIVE EMPLOYMENT RELATIONSHIPS;
- (B) HELPING TO PREVENT AND ELIMINATE DIRECT AND INDIRECT DISCRIMINATION IN EMPLOYMENT ON THE BASIS OF RACE, COLOUR, GENDER, SEXUAL ORIENTATION, AGE, PHYSICAL OR MENTAL DISABILITY, HIV/AIDS STATUS, MARITAL STATUS, FAMILY RESPONSIBILITIES, PREGNANCY, RELIGION, POLITICAL OPINION, NATIONAL EXTRACTION OR SOCIAL ORIGIN;
- (C) PROVIDING A STRUCTURE OF RIGHTS AND RESPONSIBILITIES FOR PARTIES ENGAGED IN EMPLOYMENT RELATIONS TO REGULATE THE RELATIONSHIP AND ENCOURAGE BARGAINING IN GOOD FAITH AND CLOSE OBSERVANCE OF AGREEMENTS AS WELL AS EFFECTIVE PREVENTION AND EFFICIENT SETTLEMENT OF EMPLOYMENT RELATED DISPUTES;
- (D) ESTABLISHING THE MEDIATION SERVICES, THE EMPLOYMENT RELATIONS TRIBUNAL AND THE EMPLOYMENT RELATIONS COURT TO CARRY OUT THEIR POWERS, FUNCTIONS AND DUTIES;
- (E) ENCOURAGING CONSULTATION BETWEEN LABOUR AND MANAGEMENT IN THE WORKPLACE FOR BETTER EMPLOYMENT RELATIONS AND PRODUCTIVITY IMPROVEMENT;
- (F) COMPLYING WITH INTERNATIONAL OBLIGATIONS AND GIVING EFFECT TO THE CONSTITUTION; AND
- (G) FOR RELATED MATTERS.

PART 1 — PRELIMINARY

Short title

1. This Promulgation may be cited as the Employment Relations Promulgation 2007.

Commencement

2.—(1) This Promulgation commences on a date or dates appointed by the Minister by notice in the *Gazette*.

(2) The Minister may appoint different dates for the commencement of different provisions of this Promulgation.

Application

3.—(1) Subject to subsection (2), this Promulgation applies to all employers and workers in workplaces in Fiji, including the Government, other Government entities, local authorities, statutory authorities and the Sugar Industry.

(2) This Promulgation does not apply to members of the Republic of Fiji Military Forces, Fiji Police Force and Fiji Prisons and Correction Services.

Interpretation

4. In this Promulgation, unless the context otherwise requires—

“birth” means the issue of a child or children, whether alive or dead, and for the purposes of this Promulgation birth commences and ends on the actual day of birth, and when two or more children are born commences and ends on the day of the birth of the last born of such children;

“Board” means the Employment Relations Advisory Board constituted under section 8;

“casual worker” means a worker whose terms of engagement provide for the worker’s payment at the end of each day’s work and who is not re-engaged within the 24 hour period immediately following the payment;

“child” means a person who is under the age of 18 years;

“collective agreement” means an agreement made between a registered trade union of workers and an employer which—

- (a) prescribes (wholly or in part) the terms and conditions of employment of workers of one or more descriptions;
- (b) regulates the procedure to follow in negotiating terms and conditions of employment; or
- (c) combines paragraphs (a) and (b);

“collective bargaining” means treating and negotiating with a view to concluding a collective agreement or reviewing or renewing such agreement;

“contract of service” means a written or oral contract, whether expressed or implied, to employ or to serve as a worker whether for a fixed or indefinite period, and includes a task, piecework or contract for service determined by the Tribunal as a contract of service;

“contract period” means the period of time or the number of days or hours to be worked for which expressly or by implication a contract of service is made;

“day” means—

- (a) a period of 24 hours beginning and ending at midnight; and
- (b) in the case of a shift worker, a continuous period of 24 hours beginning at the time when a worker commences work;

“disabled person” means an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment;

“discrimination” means any distinction, exclusion or preference based on the grounds set out in sections 6(2) and 75;

“dismissal” means any termination of employment by an employer including those under section 33;

“dispute” means a dispute or difference between an employer and a registered trade union connected with the employment or non-employment, the terms of employment, or the conditions of labour of a worker;

“domestic worker” means a person employed in connection with the work of a private dwelling-house and not in connection with a trade, business or profession carried on by the employer in the dwelling-house such as a cook, house worker, child’s nurse, gardener, laundry worker, security officer, or a driver of a vehicle licensed for private use;

“duress” in a worker’s employment, means if that worker’s employer or a representative of that employer directly or indirectly—

- (a) makes membership of a union or a particular union a condition to be fulfilled if that worker wishes to retain his or her employment;

- (b) makes non-membership of a union or a particular union a condition to be fulfilled if that worker wishes to retain his or her employment; or
- (c) exerts undue influence on that worker, or offers, or threatens to withhold, or does withhold, a monetary incentive or advantage to or from that worker, or threatens to or does impose a monetary disadvantage on that worker, with intent to induce that worker—
 - (i) to become or remain a member of a union or a particular union;
 - (ii) to cease to be a member of a union or a particular union;
 - (iii) not to become a member of a union or a particular union;
 - (iv) in the case of a worker who is authorised to act on behalf of workers, not to act on their behalf or cease to act on their behalf;
 - (v) on account of the fact that the worker is, or, as the case may be, is not a member of a union or a particular union, to resign or leave from any employment;
 - (vi) to participate in the formation of a union; or
 - (vii) not to participate in the formation of a union;

“eligible for membership” means qualified by age and occupation and in all other respects to be a voting member of a registered trade union in accordance with the union constitution and rules;

“employ” in relation to an employer means to use the services of a person under a contract of service;

“employer” means a corporation, company, body of persons or individual by whom a worker is employed under a contract of service; and includes—

- (a) the Government;
- (b) other Government entities;
- (c) a local authority;
- (d) a statutory authority;
- (e) the agent or authorised representative of a local or foreign employer;

“employment” means the performance by a worker of a contract of service;

“employment contract” means a collective agreement or apprenticeship contract specified under this Promulgation or any other written law or an oral or written contract of service between a worker and an employer;

“Employment Court” or “Court” means the Employment Relations Court constituted as a division of the High Court of Fiji under section 219;

“employment dispute” mean a dispute accepted by the Permanent Secretary under section 170;

“employment grievance” means a grievance that a worker, may have against the worker’s employer or former employer because of the worker’s claim that—

- (a) the worker has been dismissed;
- (b) the worker’s employment, or one or more conditions of it, is or are affected to the worker’s disadvantage by some unjustifiable action by the employer;
- (c) the worker has been discriminated within the terms of Part 9;
- (d) the worker has been sexually harassed in the worker’s employment within the terms of section 76; or
- (e) the worker has been subject to duress in the worker’s employment in relation to membership or non-membership of a union;

“Employment Tribunal” or “Tribunal” means the Employment Relations Tribunal constituted under section 202;

“essential service” means a service listed in Schedule 7;

“executive committee” means the body established under the constitution of a registered trade union to manage the affairs of the trade union;

“family” means the spouse or any child of the worker;

“forced labour” means all work or service that is extracted from any person under the threat of any penalty and is not offered voluntarily, but does not include—

- (a) any work or service exacted in accordance with compulsory military service laws for work of a purely military character;
- (b) any work or service which forms part of the normal civic, traditional or religious obligations;
- (c) any work or service exacted from any person as a consequence of a conviction in a court of law, or a court order, provided that the work or service is carried out under the supervision and control of a public authority and that the person is not hired or placed at the disposal of private individuals, companies or associations;
- (d) any work or service exacted in cases of emergency, such as war, calamity, threatened calamity, fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstances that would endanger the existence or well-being of the whole or part of the people of the Fiji Islands; or
- (e) communal services of a kind performed by members of the community in the direct interest of the community in accordance with their rules or customary practices;

“foreign contract of service” means a contract of service made within Fiji and to be performed wholly or partially outside Fiji and any contract of service with a foreign state;

“fortnight” means a period of 14 consecutive days;

“guardian” includes—

- (a) a person lawfully having charge of a child other than the parents; or
- (b) a person to whose care a child has been committed even temporarily, by a person having authority over the child;

“HIV/AIDS screening” includes measures whether direct (HIV testing), indirect (assessment of risk-taking behaviour) or asking questions about tests already taken or about medication to determine whether a worker has the condition;

“indirect discrimination” means any apparently neutral situation, regulation or practice which in fact results in unequal treatment of persons with certain characteristics that occurs when the same condition, treatment or criterion is applied to everyone, but results in a disproportionately harsh impact on some persons on the grounds set out in sections 6(2) and 75 and is not closely related to any inherent requirement of the job;

“industry” includes—

- (a) a business, trade, manufacture, workplace or calling of employers;
- (b) a calling, service, employment, handicraft, occupation or vocation of workers;
- (c) a branch of an industry; and
- (d) a group of industries;

“injure” for the purposes of section 254 includes injury to a person in respect of the person’s business, occupation, employment or other source of income, and includes any actionable wrong;

“intimidate” for the purposes of sections 254 and 255, means to cause in the mind of a person a reasonable apprehension of injury to the person or to a member of the person’s family or to any of the person’s dependants or violence or damage to a person or property;

“labour inspector” means a labour inspector designated for the purpose of this Promulgation;

“labour officer” means a labour officer designated for the purpose of this Promulgation;

“local authority” means a city council, town council or a rural authority;

“lockout” means the act of an employer—

- (a) in closing the employer’s place of business, or suspending or discontinuing the employer’s business;
- (b) in discontinuing the employment of workers employed by the employer in consequence of a dispute;
- (c) in breaking any of the employer’s employment contract; or
- (d) in refusing or failing to engage workers for any work for which the employer usually employs the worker,
with a view of compelling the workers to accept terms or conditions of or affecting employment;

“Mediator” means a Mediator appointed under section 193 and includes the Chief Mediator;

“Ministry” means the Ministry responsible for the administration of this Promulgation;

“month” means a calendar month, or a period commencing on a date in a calendar month and expiring on the day preceding the corresponding date in the succeeding calendar month;

“officer” when used with reference to a trade union, means a member of the executive committee or an officer of a branch of the trade union but does not include an auditor;

“oral contract” means a contract of service which is not required to be made in writing, but which may be subsequently evidenced in writing;

“outworker” means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired or adapted for sale in the person’s own home or on other premises not under the control or management of the person who gave out the materials or articles;

“part-time worker” means a person who is employed under a contract of service on a part-time basis for a specified number of hours a day or specified number of hours or days a week;

“party” with reference to an employment dispute, means—

- (a) a registered trade union; or
- (b) an employer;

“Permanent Secretary” means the Permanent Secretary for the Ministry;

“piecework” means any work the pay for which is estimated by the amount of work performed irrespective of the time occupied in its performance;

“public authority” includes a Ministry or a Department of Government or a local authority or a commercial statutory authority or a government commercial company or a government company;

“public holiday” means a public holiday listed under section 64 and includes a special public holiday declared under section 66;

“redundancy” means no longer being needed at work for reasons external to a worker’s performance or conduct pursuant to the reasons and processes set out in Part 12;

“register” means the register of trade unions kept under section 118;

“registered medical practitioner” means a person registered under the Medical and Dental Practitioners Act;

“registered office” means the office in the Fiji Islands of a registered trade union as the head office of the trade union;

“registered postal address” means the postal address in the Fiji Islands of a registered trade union;

“registered trade union” or “trade union” means a trade union registered as a trade union under section 120;

“Registrar” means the Registrar of Trade Unions appointed under section 116, or an assistant Registrar;

“remuneration” means the salary or wages actually and legally payable to a worker under the worker’s contract of service and any additional emoluments including—

- (a) time and piece wages, overtime, bonus or other special payments; or
- (b) allowances, fees, commission, or any other payment, whether in one sum or several sums, and whether paid in money or not;

“sexual harassment” means when a worker is sexually harassed in his or her workplace, or places where worker’s are gathered for work-related purposes including social activity, when an employer or its representative or a co-worker—

- (a) makes a request of a worker for sexual intercourse, sexual contact or any other form of sexual activity which contains an implied or overt—
 - (i) promise of preferential treatment in that worker’s employment;
 - (ii) threat of detrimental treatment in that worker’s employment; or
 - (iii) threat about the present or future employment status of that worker;
- (b) by the use of a word (whether written or spoken) of a sexual nature or materials of a sexual nature;
- (c) by physical behaviour or gestures of a sexual nature; or
- (d) creates an intimidating, hostile or humiliating work environment by conduct, word or both on the basis of gender,

that subjects the worker to behaviour which is unwelcome or offensive to that worker (whether or not that is conveyed to the employer, its representative or the perpetrator) and which is either repeated or of such a nature that it has a detrimental effect on the worker’s employment, job performance or job satisfaction; In this context, detrimental effect includes the creation of an environment which affects a worker’s physical, emotional or mental health and well-being;

“ship” includes a boat, vessel, hovercraft or craft of any kind;

“spouse” means a legally married wife or husband;

“strike” means the act of a number of workers who are or have been in the employment of the same employer or different employers—

- (a) in discontinuing their employment either wholly or partially, or in reducing the normal performance of it;
- (b) in breaching their employment contract which results in a reduction or discontinuance in the work of the employer;
- (c) in refusing or failing after such discontinuance to resume or return to their employment;
- (d) in refusing or failing to accept engagement for work in which the workers are usually employed; or
- (e) in reducing their normal output or their normal rate of work with the intention of disrupting the work,

if the act is due to a combination, agreement, common understanding or concerted action, expressed or implied, made or entered into by the workers; but does not include a union meeting agreed to between a trade union and the employer;

“strike benefit” means a financial or other benefit given by a trade union to a member of the trade union in consideration of a strike or lock-out;

“task” means an amount of work that is customarily performed or practised in an ordinary working day in a trade, industry, workplace or occupation;

“this Promulgation” includes the regulations;

“trade union” means the union of a group of not less than 7 workers the principal object of which is to regulate the relationship between—

- (a) workers and employers for the conduct of collective bargaining on terms and conditions and related matters; or
- (b) workers,

irrespective of whether such union would, if this Promulgation had not been enacted, have been deemed to have been an unlawful union by reason of some one or more of its objects being in restraint of trade;

“wage period” means the period in respect of which wages earned by a worker are payable;

“wages” means all payments made to a worker for work done in respect of the worker’s contract of service but does not include—

- (a) the value of a house, accommodation or the supply of food, fuel, light, water or medical attendance, or amenity or services;
- (b) a contribution paid by the employer on the employer’s own account to a pension fund or provident fund;
- (c) a travelling allowance or the value of a travelling concession;
- (d) a sum payable to the worker to defray special expenses incurred by the worker by the nature of the worker’s employment; or
- (e) a gratuity payable on discharge or retirement;

“wages council order” means a wages council order made under section 50;

“wages regulations order” means a wages regulation order made under section 54;

“week” means a period of 7 consecutive days;

“worker” means a person who is employed under a contract of service, and includes an apprentice, learner, domestic worker, part-time worker or casual worker;

“workplace” means any place, whether or not in a building or structure, including a ship, vehicle or aircraft, where workers are required to perform the contract of service;

“written contract” means a contract of service which, under this Promulgation, is required to be made in writing; and

“year” includes a period commencing on a date in a calendar year and expiring on the day preceding the corresponding date in the following calendar year.

PART 2 — FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

Object of this Part

5. The object of this Part is to state the entitlement to fair labour practices for all persons.

Fundamental principles and rights

- 6.—(1) No person shall be required to perform forced labour.

(2) No person shall discriminate against any worker or prospective worker on the grounds of ethnicity, colour, gender, religion, political opinion, national extraction, sexual orientation, age, social origin, marital status, pregnancy, family responsibilities, state of health including real or perceived HIV status, trade union membership or activity, or disability in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship.

(3) Subsection (2) does not preclude any provision, programme, activity or special measure that has as its object the improvement of conditions of disadvantaged individuals or groups, including those who are disadvantaged on the grounds enumerated in subsection (2).

(4) Every employer shall pay male and female workers equal remuneration for work of equal value.

(5) A worker is not obliged to join a trade union.

(6) No employer may make it a condition of employment that a worker must not be or become a member of a trade union, and no written law shall prohibit a worker from being or becoming a member of a trade union.

(7) Any condition specified in subsection (6) in an employment contract or in any written law is void.

PART 3 — EMPLOYMENT RELATIONS ADVISORY BOARD

Object of this Part

7. The object of this Part is to establish the Employment Relations Advisory Board to advise the Minister on all matters pertaining to employment relations.

Employment Relations Advisory Board

8.—(1) This section establishes the Employment Relations Advisory Board consisting of the following members—

- (a) public officers as representatives of the Government;
- (b) representatives of employers;
- (c) representatives of workers; and
- (d) other persons.

(2) The Minister appoints the members of the Employment Relations Advisory Board, and in appointing such members the Minister must appoint such persons who, in the opinion of the Minister, have experience and expertise in the areas covered by the functions of the Board or in employment relations, industrial, commercial, legal, business or administrative matters.

(3) In making appointments to the Board, the Minister may take into account the principles of equality set out in section 38 of the Constitution, necessary for the effective operation of the Board.

(4) The Minister must invite bodies representing employers or workers to make nominations and shall appoint such nominees as members under subsections (1)(b) and (1)(c).

(5) The Permanent Secretary is chairperson of the Board.

(6) The Permanent Secretary must appoint a Secretary to the Board.

(7) The Board may regulate its own procedure and must keep proper records of its proceedings.

Functions and powers of the Board

9.—(1) The functions of the Board are—

- (a) to consider and advise the Minister on employment related matters including issues of policy as well as matters provided for by this Promulgation and any other written law;
- (b) to inquire into and report to the Minister on employment related matters referred to it by the Minister;
- (c) in liaison with the Ministry, to facilitate the making of regulations, codes of practice and guides relating to matters covered by this Promulgation for the Minister's consideration;
- (d) to advise the Minister on consultation and cooperation between labour and management and how this process may be promoted and strengthened;
- (e) to advise the Minister on International Labour Organisation instruments; and

(f) to perform other functions under this Promulgation or any other written law.

(2) The Board may invite any person it considers appropriate to act in an advisory capacity to the Board in its deliberations.

(3) To facilitate and implement the process under subsection (1)(d), any employer employing more than 20 workers must establish a Labour- Management Consultation and Cooperation committee to practise the principles set out in Schedule 1 and any other principles as prescribed, provided that if any such committee is in existence such committee may continue to practise such principles and perform such functions.

(4) The Board may appoint a subcommittee comprising Government, employer, union and community representatives to oversee and monitor the establishment of Labour-Management Consultation and Cooperation committees under subsection (3).

(5) The Board may appoint an advisory committee comprising wholly or partly of persons who are not members of the Board to advise the Board on any employment related matters.

(6) The Board has powers necessary to carry out its functions as conferred on it by this Promulgation or any other written law.

Allowances

10. A member of the Board or an advisory committee or any person appointed under sections 8 and 9 is entitled to allowances to be fixed by the Minister.

Term of office, leave, resignation and dismissal of members

11.—(1) Subject to this Part, a member of the Board holds office for the period, not exceeding 2 years, as is specified in the instrument of the members appointment, but is eligible for re-appointment.

(2) A member may resign from the Board in writing signed by the member of the Board, which takes effect upon delivery to the Minister.

(3) A member's office becomes vacant if the member fails to attend two consecutive meetings of the Board without the prior approval of the Chairperson.

(4) The Minister may terminate the appointment of a member for misbehaviour, bankruptcy or for other good reasons.

Meetings of the Board

12.—(1) The Chairperson must call at least one meeting of the Board every 6 months for the performance of its functions and the exercise of its powers.

(2) At a meeting of the Board—

(a) the Chairperson and at least half of number of other members constitute a quorum; and

(b) questions arising must be determined by a majority vote of the members present and voting and in the event of an equality of votes the Chairperson has a casting vote.

Annual report of the Board

13.—(1) The Board must prepare and submit to the Minister a report of its operations annually.

(2) The Board's annual report must be included in the Ministry's annual report.

PART 4 — APPOINTMENTS, POWERS AND DUTIES OF OFFICERS

Object of this Part

14. The object of this Part is to establish the personnel necessary for implementing the administrative aspects of this Promulgation, including the staffing of the Mediation Services, Employment Relations Tribunal and the Employment Relations Court.

Administration of this Promulgation

15.—(1) The Permanent Secretary, and other public officers are responsible for the administration of this Promulgation.

(2) The Permanent Secretary must provide a certificate of designation to an officer appointed for the purposes of this Promulgation.

(3) When exercising any function under this Promulgation, an officer designated under subsection (2) must, if required by a person affected by the exercise of such function, produce the certificate of identity to that person.

Delegation by Permanent Secretary

16. The Permanent Secretary may delegate in writing to a public officer the exercise of any powers and the performance of any duties in relation to a matter or thing provided for by this Promulgation other than in relation to the Employment Relations Court.

Permanent Secretary may call for information

17.—(1) The Permanent Secretary may, in writing, require an employer to provide prescribed information necessary for the effective administration of this Promulgation.

(2) An employer who contravenes this section commits an offence.

Institution of proceedings

18. The Permanent Secretary, or a labour officer or labour inspector authorised in writing by the Permanent Secretary, may—

- (a) subject to any directions by the Director of Public Prosecutions, institute proceedings in the Tribunal in respect of prescribed offences, and may prosecute such proceedings; or
- (b) appear in the Tribunal on behalf of a worker or institute civil proceedings on behalf of a worker against the worker's employer in respect of a matter or thing or cause of action arising out of or in the course of the employment of the worker.

Powers and functions of officers

19.—(1) The Permanent Secretary, a labour officer or labour inspector may at all reasonable times—

- (a) enter, inspect and examine a workplace where or about which a worker is employed or where there is reason to believe that a worker is employed;
- (b) require an employer to produce any worker employed by the employer and any documents or records which the employer is required to keep under this Promulgation or any other documents or records relating to the employment of the worker;
- (c) interview the employer or a worker on a matter connected with employment or this Promulgation, and may seek information from any other person whose evidence is considered to be necessary; or
- (d) inquire from an employer or a person acting on the employer's behalf regarding matters connected with the carrying out of this Promulgation.

(2) The Permanent Secretary, labour officer or labour inspector,

- (a) must not enter a private dwelling house without the consent of the occupier; or
- (b) on the occasion of a visit or inspection, must notify the employer or the employer's representatives of his or her presence, unless there are reasonable grounds for believing that such notification may be prejudicial to the performance of his or her duties.

(3) In the exercise of powers and functions under this Promulgation for the purpose of ensuring compliance with a provision of this Promulgation, the Permanent Secretary, a labour officer or labour inspector may copy or make extracts from a document or records in the possession of an employer which relate to a worker.

(4) In the exercise of powers and functions under this Promulgation for the purpose of ensuring compliance with a provision of this Promulgation, a labour officer or labour inspector may, in the prescribed form, issue a demand notice or fixed penalty notice requiring compliance with the provision.

- (5) The Permanent Secretary, a labour officer or a labour inspector may—
- (a) advise and assist employers and workers on particular or general employment relations matters under this Promulgation;
 - (b) provide information, advice, awareness or training to employers and workers or their organizations on matters under this Promulgation; or
 - (c) formulate enterprise or national policies, codes and strategies on employment relations matters.

Interests and confidentiality

- 20.— (1) The Permanent Secretary, labour officer or labour inspector-
- (a) must not have any direct or indirect interest in a workplace under his or her supervision;
 - (b) must not make use of or reveal, including after leaving Government service, any manufacturing or commercial secrets, working processes or confidential information which may come to his or her knowledge in the course of his or her duties; or
 - (c) must treat as confidential the source of a complaint bringing to his or her notice a defect or breach of legal provisions relating to conditions of work and the protection of workers, while engaged in his or her work, and must give no intimation to the employer or the employer's representative whether a visit or inspection was made in consequence of the receipt of a complaint from within the organisation or workplace.
- (2) A person who contravenes subsection (1) commits an offence.

PART 5 — CONTRACTS OF SERVICE

Object of this Part

21. The object of this Part is to describe contracts of service and to specify the circumstances in which such contracts may be oral or written, how they subsist and are terminated.

Division I — General

Employment to be in accordance with this Promulgation

22.—(1) No person may employ a worker and no worker may be employed under a contract of service except in accordance with this Promulgation.

(2) Nothing in this Promulgation prevents the application by agreement between the parties of terms and conditions, which are more favourable to the worker than those contained in this Promulgation.

Contracts of service, oral or written

23.—(1) Any contract of service, other than a contract which by this Promulgation or any other law is required to be made in writing, may be an oral or written contract.

(2) This Part, unless the contrary intention appears, applies to both an oral and written contract of service.

(3) Subject to subsection (4), the terms of a contract must be such terms as are agreed between the parties or which apply by virtue of custom or practice or which are implied by law.

(4) If a worker falls within the description of worker to whom an employment contract applies, the workers terms and conditions of employment must include terms and conditions of employment contained in the employment contract while it is in force except where the terms and conditions of employment in that employment contract are less beneficial to the worker than those applicable under subsection (3).

Duty of employer to provide work

24. An employer must—

- (a) unless the worker has broken his or her contract of service or the contract is frustrated or its performance prevented by an act of God, provide the worker with work in accordance with the contract during the period for which the contract is binding on a number of days equal to the number of working days expressly or impliedly provided for in the contract; and

- (b) if the employer fails to provide work to the worker the employer, pay to the worker, in respect of every day on which the employer so fails, wages at the same rate as if the worker had performed a days work.

Death of worker

25.—(1) Where a worker dies during the contract of service, the employer must, as soon as practicable, and in any event not more than 14 days after the notification of death of the worker by medical certificate or statutory declaration, pay or deliver—

- (a) to the spouse; or
- (b) if there is no spouse, to any of the dependants 18 years or over or to their legal guardians if the dependants are under the age of 18 years,

all wages, other remuneration due to the deceased worker and any personal belongings of the deceased worker.

(2) Where the deceased worker has no dependants, the employer must ascertain whether the deceased worker had nominated a person, whether a family member or not and all wages or other remuneration due to the deceased worker must be paid to the nominated person.

No wages on detention or imprisonment

26. An employer is not required to pay remuneration to a worker in respect of a period of lawful detention or imprisonment of the worker under any written law.

Presumption as to period of contract and termination of contract

27.—(1) In the absence of proof to the contrary and subject to subsection (2), a contract is deemed to be a contract for the period by reference to which wages are payable under the contract except that—

- (a) the period must not be extended for more than one month; and
- (b) the period in the case of a contract for the payment of wages at intervals of less than a day is deemed to be a daily contract.

(2) If a contract which would, under subsection (1), be deemed to be a monthly contract, is entered into after the first day of any calendar month, the following provisions, subject to any proof to the contrary, have effect—

- (a) the contract is, until the expiry of the calendar month during which it was entered into, deemed to be a contract for the period commencing on the day on which it was entered into and terminating on the last day of the calendar month during which it was entered into; or
- (b) if, after the termination of the contract under paragraph (a), a new contract is deemed or presumed to have been entered into under section 28 the period of the new contract is presumed or deemed, as the case may be, to be the full calendar month next ensuing after the termination.

Presumption as to new contract

28.—(1) Subject to subsection (2), each party to a contract is conclusively presumed to have entered into a contract for an indefinite duration.

(2) Subsection (1) does not apply:

- (a) to a contract for one fixed period which is expressed to be not renewable;
- (b) to a contract for a fixed task; or
- (c) to a daily contract where the wages are paid daily.

(3) If notice has been given in accordance with section 29 to terminate a contract for an indefinite period but the employer permits the worker to remain or the worker, without the express dissent of the employer, continues in employment, then unless the contrary is shown, the notice is deemed to be withdrawn with the consent of both parties.

(4) For the purpose of subsection (3), the parties are, subject to section 29, deemed to have entered into a new contract for the same period and upon the same terms and conditions as those of the contract previously concluded, and the worker is deemed to have maintained continuity of employment for the purpose of any rights either pursuant to this Promulgation, any other written law or pursuant to a collective agreement, which may be applicable.

Provisions as to notice

29.—(1) Subject to subsection (2), a contract for an indefinite period may, in the absence of a specific agreement between the parties to the contrary, be terminated by either party—

- (a) if the contract period is less than one week, at the close of a day without notice;
- (b) if the contract period is one week or more but less than a fortnight or where wages are paid weekly or at intervals of more than one week but less than a fortnight, by not less than 7 days notice before the employment expires;
- (c) if the contract period is a fortnight or more but less than a month or where wages are paid fortnightly or at intervals of more than a fortnight but less than a month, by not less than 14 days notice before the employment expires; or
- (d) if the contract period is one month, by not less than one month's notice before employment expires.

(2) The notice required under subsection (1) must be given in writing.

Further provisions as to termination of contracts

30.—(1) Upon the termination of a contract of service, the employer must pay to the worker all wages and benefits then due to the worker by end of the following working day.

(2) The wages and benefits due to a worker under subsection (1) must, in the case of a worker who is entitled to receive notice from the employer in accordance with this Promulgation or the worker's contract (the terms of which relating to notice are not less beneficial than this Promulgation), include wages and benefits payable in respect of services rendered during the period of notice or payable in lieu of the notice.

(3) If payment is made in lieu of notice the payment must include the wages and benefits that would have been payable to the worker if the worker had worked during the period of notice.

(4) Nothing in this Promulgation precludes either party from summarily terminating a contract of service for lawful cause.

(5) The termination of a contract of service under this Promulgation must be without prejudice to any accrued rights or liabilities of either party under the contract or section 28.

(6) Upon termination of a worker's contract or dismissal of a worker, the employer must provide a certificate to the worker stating the nature of employment and the period of service.

Piecework or task

31. A contract of service may be made under which a task or piecework is to be performed for an agreed remuneration, and the contract is terminated upon the execution of the task or piecework.

Wages when due

32. The times when wages are due and payable from an employer to a worker are, for a worker employed—

- (a) on a task or piecework, as provided for in section 31;
- (b) under a daily contract where, by agreement or custom, wages are not paid daily but are paid at intervals not exceeding one month, in accordance with the agreement or custom and where the contract is terminated and no new contract is entered into or presumed or deemed to have been entered into prior to the time at which wages are due and payable, at the time when such contract is terminated; or
- (c) under a contract not falling within paragraphs (a) and (b), at the end of the contract period as determined under section 27.

Summary dismissal

33.—(1) No employer may dismiss a worker without notice except in the following circumstances—

- (a) where a worker is guilty of gross misconduct;
- (b) for wilful disobedience to lawful orders given by the employer;
- (c) for lack of skill or qualification which the worker expressly or by implication warrants to possess;
- (d) for habitual or substantial neglect of the worker's duties; or

- (e) for continual or habitual absence from work without the permission of the employer and without other reasonable excuse.

(2) The employer must, provide the worker with reasons, in writing, for the summary dismissal at the time he or she is dismissed.

Right to wages on dismissal for lawful cause

34. If a worker is summarily dismissed for lawful cause, the worker must be paid on dismissal the wages due up to the time of the worker's dismissal.

Presumption as to oral contracts

35.—(1) In the absence of any proof to the contrary and subject to subsection (4), an oral contract is deemed to be a contract for the period by reference to which wages are payable under the contract but in any case shall not extend for longer than one month from when it was made.

(2) If wages are payable at intervals of less than a day, then in the absence of any proof to the contrary, an oral contract is deemed to be a daily contract.

(3) Subject to subsection (4) and any proof to the contrary, an oral contract terminates on the last day of the contract period, or in the case of a daily contract at the end of the day.

(4) Where an oral contract, deemed under subsection (1) to be a monthly contract, is entered into after the first day of any calendar month, the following provisions shall, subject to any proof to the contrary, have effect—

- (a) the contract is, until the expiry of the calendar month during which it was entered into deemed to be a contract for the period commencing on the day on which it was entered into and terminating on the last day of the calendar month during which it was entered into;
- (b) notwithstanding paragraph (a), if, after the termination of such contract under paragraph (a) a new contract is deemed or presumed to have been entered into under section 28, the period of the new contract is presumed or deemed, as the case may be, to be the full calendar month following the termination.

Division 2 – Written Contracts

Application and interpretation

36.—(1) This Part applies to contracts of service, which are required to be in writing.

(2) This Part does not apply to contracts of apprenticeship entered into under the Training and Productivity Authority of Fiji Act.

Certain contracts to be in writing

37.—(1) If a contract of service of a worker with an employer, or a person acting on the employer's behalf—

- (a) is made for a duration in excess of one month;
- (b) is a foreign contract of service or as specified in the Regulations; or
- (c) is a contract made between an employer within the Fiji Islands and a foreign worker to be performed within the Fiji Islands,

the contract must be in writing. For the purpose of this subsection, a collective agreement is deemed to be a written contract.

(2) Any foreign contract of service shall be submitted by the employer to the Permanent Secretary for attestation before it is signed by the worker.

(3) An employer who fails to submit for attestation any foreign contract of service commits an offence and is liable on conviction to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 4 years or both.

(4) No person shall enlist or recruit any person for employment under any foreign contract of service unless the person is authorised in writing by the Permanent Secretary.

(5) A person who contravenes subsection (4) commits an offence and is liable on conviction to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 4 years or both.

Form and content of contract

38.—(1) A written contract must be signed by the parties and, as a minimum, contain the particulars set out in Schedule 2.

(2) It is prohibited and constitutes an offence where a contract of service specifies that a medical examination is required in the course of a worker's employment, for the medical examination to comprise HIV/AIDS screening, or screening for sexually transmitted diseases or pregnancy.

Transfer to other employer

39. The transfer of a written contract from one employer to another must be done with the consent of the worker.

Termination of contract by expiry of the term of service or by death

40.—(1) Subject to section 41, a written contract is terminated—

- (a) by the expiry of the term for which the contract was made; or
- (b) by the death of the worker before the expiry of the term for which the contract was made.

(2) The termination of a contract by the death of the worker does not limit any legal claims of the worker's heirs or personal representatives.

(3) Repatriation of a deceased worker locally shall be the responsibility of the worker's employer.

Termination of contract in other circumstances

41. If—

- (a) the employer is unable to fulfil the contract; or
- (b) owing to any sickness or accident the worker is unable to fulfil the contract,

the contract may be determined, subject to conditions safeguarding the right of the worker to wages earned, compensation due to the worker in respect of accident or disease and the worker's right to repatriation.

PART 6- PROTECTION OF WAGES

Objects of this Part

42. The objects of this Part are—

- (a) to ensure the payment of wages at set intervals is safeguarded, that authorised deductions are effected and the relevant details required by law are provided; and
- (b) to establish Wages Councils covering certain industries to regulate remuneration and conditions of employment in those industries.

Division 1- General

Payment of wages

43. If the employer and the worker agree in writing—

- (a) the wages of a worker may be paid by cheque payable to the bearer on demand and drawn on a bank in the Fiji Islands; or
- (b) the whole or a part of the wages of a worker may be paid into a bank account or credit union account standing in the name of the worker or jointly with one or more persons.

Wages statement

44.—(1) Subject to subsection (2), an employer must, when paying a worker, provide the worker with a written or electronic statement containing the following particulars in respect of the relevant wage period—

- (a) the worker's name;
- (b) the nature of employment or job classification;
- (c) the days or hours worked at normal rates of pay;

- (d) the rate of wages;
- (e) the wage period;
- (f) the hours of overtime worked during a wage period and the rate of wages payable for the overtime;
- (g) the gross earnings of the worker;
- (h) allowances or other sundry payments due to the worker;
- (i) deductions made from the gross earnings of the worker;
- (j) the net amount due to the worker, after all deductions have been made in respect of each wage period;
- (k) employment number, Fiji National Provident Fund membership number, taxation identification number or any other form of identification; and
- (l) any other prescribed information.

(2) If a worker is engaged under an employment contract the terms of which provide that the worker's wages are to be on the basis of an annual amount payable in not less than 12 nor more than 26 equal instalments, the employer is required to provide the worker with the statement prescribed under subsection (1) only on the following occasions—

- (a) on the conclusion of the first full wage period after the commencement of service with the employer;
- (b) in the event of there occurring a change in the particulars set out in subsection (1) in respect of a worker; or
- (c) on termination of the contract of service.

(3) An employer that contravenes subsection (1) commits an offence.

Wages and time record

45.—(1) An employer who employs a worker whose wages or rates of wages are prescribed or paid under an employment contract or under this Promulgation must keep a record (called the wages and time record) showing, for each worker—

- (a) the name of the worker;
- (b) the date of birth;
- (c) the worker's address;
- (d) the kind of work on which the worker is usually employed;
- (e) the employment contract under which the worker is employed;
- (f) the classification or designation of the worker according to which the worker is paid;
- (g) a daily attendance register incorporating the hours between which the worker is employed on each day, and the days of the worker's employment during each week;
- (h) the wages paid to the worker each week and the method of calculation;
- (i) any payment made under Part 11; and
- (j) other prescribed particulars.

(2) An employer must, upon request made at any reasonable time by a labour officer or labour inspector, produce for inspection by that officer or inspector every wages and time record that is, or at any time during the preceding 6 years was, in use under this Promulgation in respect of a worker employed by that employer at any time in those 6 years.

(3) If an employer keeps a wages and time record in accordance with any other written law, the employer is not required to keep a wages and time record under this section in respect of the same matters.

(4) An employer that contravenes subsection (1) or (2) commits an offence.

Payment to worker's family

46.—(1) A worker may, in writing, authorise another person to receive, and the employer to pay to the authorised person, the wages due to the worker in respect of a current contract of service.

(2) Wages paid under subsection (1) must be paid only after deductions expressly permitted by this Promulgation or any other written law have been made.

(3) If an employer has reason to doubt the authenticity of the written authority referred to in subsection (1), the employer must immediately refer the matter to a labour officer or a labour inspector for investigation and the wages must be withheld pending the result of the investigation.

(4) If an employer fails to refer the matter to a labour officer or labour inspector as required by subsection (3) and pays wages due to a worker, to a person not entitled to receive them, the employer is liable to make good to the worker wages so paid by error or mistake.

Authorised deductions from wages

47.—(1) An employer may—

- (a) deduct from the wages of a worker an amount due by the worker in respect of any tax or deduction imposed by law or ordered by a court;
- (b) with the written consent of the worker, deduct an amount due by the worker as a contribution to a provident fund, school fund, pension fund, sports fund, superannuation scheme, life insurance or medical scheme, credit union, trade union, co-operative society or other funds or schemes of which the worker is a member and must on behalf of the worker pay the amount so deducted to the person empowered to collect amount or entrusted with the management of the fund, scheme, trade union or cooperative society;
- (c) make deductions from the wages of a worker to the extent of an over-payment made during the immediately preceding 3 months by the employer to the worker by the employer's mistake; or
- (d) make deductions at the request in writing of the worker—
 - (i) in respect of articles or provisions purchased on credit by the worker from the employer;
 - (ii) in respect of charges for the cost of accommodation, fuel or light supplied by the employer and used by the worker; or
 - (iii) in respect of food or victuals cooked, prepared and eaten on the employer's premises.

(2) The price or cost which the employer charges a worker for articles or provisions must not exceed the lowest price at which the employer would sell articles or provisions retail to a member of the public.

(3) The total deduction in respect of accommodation, boarding, fuel and light must not exceed 15% of the worker's wages in respect of one wage period, and 5% for accommodation or board.

(4) If—

- (a) an employer makes a loan to a worker;
- (b) the total amount of the loan has been paid by the employer to the worker in cash or by cheque; and
- (c) a memorandum of the transaction has been made and signed by or on behalf of both employer and worker providing for the repayment of the loan by one or more instalments,

the employer may deduct from the wages due to the worker the instalments at the times set out in the memorandum.

(5) Any deductions made under subsection (1) and other deductions permitted by this Promulgation must not be, in a wage period, more than 50% of the wages due to the worker in respect of the wage period except for housing purposes from an approved lender, where the deductions permitted may be up to 75%.

Remuneration other than wages

48. A worker may, by way of an agreement or contract, receive other benefits permitted under a law or collective agreement, in addition to wages for the worker's services.

Interest on advances

49.—(1) An employer must not make a deduction by way of discount, interest or similar charge on account of an advance of wages made to a worker in anticipation of the regular period of payment of the wages.

(2) An employer that contravenes subsection (1) commits an offence.

Division 2 — Wages Council

Power of Minister to establish wages council

50.—(1) If the Minister on the recommendation of the Board, is satisfied that no adequate machinery exists for setting effective remuneration of a class of workers, or that existing machinery is likely to cease to exist or is inadequate, the Minister may, by order in the *Gazette*, make a wages council order to establish a wages council to perform, in relation to the workers or class of workers described in the order and their employers, the functions specified in this Division.

(2) The powers and functions of a wages council may be exercised in relation to the workers, or any class of workers engaged in or working at any trade, industry or occupation, either for the whole or part of the Fiji Islands.

Making of wages council order

51.— (1) Before making a wages council order, the Minister shall publish in the *Gazette* a notice specifying—

- (a) the place and time where the copies of the proposed order may be obtained or inspected;
- (b) a period of not less than 30 days from the date of the publication, for objections to be made; and
- (c) the place where and to whom the objection is to be sent.

(2) An objection under subsection (1) must—

- (a) be in writing;
- (b) set out specific grounds of objection; and
- (c) any suggested amendments.

(3) The Minister must, upon receiving any objection, consider the objection received within 30 days but is not bound to consider any late objection received.

(4) The Minister, after having considered any objections received under subsection (2), may—

- (a) make an order based on the original proposal subject to minor amendments that do not effect the substance of the original proposed order; or
- (b) if the amendments are substantive, amend the proposed order which must be resubmitted to objection process under this section.

Variation and revocation of wages council order

52.— (1) The Minister may, on the recommendation of the Board, revoke or vary the class of workers of a wages council.

(2) If the Minister varies the class of workers of a wages council, the variation order must comply with the procedures set out in section 51.

(3) Where an order made under this section directs that a wages council shall cease to operate in relation to any workers and that another wages council shall operate in relation to them, the order may—

- (a) provide that anything done by or to give effect to any proposals made by the first mentioned wages council shall have effect in relation to those workers as if it had been done by or to give effect to proposals made by the second mentioned wages council; and
- (b) may make other necessary transitional provisions.

General provisions as to wages councils

53.— (1) Schedule 3 shall have effect with respect to the constitution and proceedings of wages councils.

(2) Subject to any other written law or Parts 13 and 17, a wages council shall, upon request by the Permanent Secretary or on its own motion, consider any matter affecting the general conditions of employment of workers, and shall make a report to the Permanent Secretary who shall, after receiving the report of the council, make a report to the Minister for his consideration.

Power to fix remuneration

54. — (1) Subject to subsection (2), a wages council may submit to the Minister a proposed wages regulation order.

(2) Before submitting a proposed wages regulation order to the Minister, the wages council shall inquire into the proposal as it thinks fit and shall publish, in the prescribed manner, notice of the proposal, stating—

- (a) the place where copies of the proposal may be obtained;
- (b) the period within which written representations on the proposals may be made; and
- (c) the place where the representations may be sent.

(3) The council shall consider any written representations made to it within the period specified in the notice and may make any other inquiries and may submit the proposal to the Minister with or without amendment.

- (4) If, before publishing its proposal, the council resolves that—
- (a) no representation is made within the specified period of the notice; and
 - (b) no further inquiry is required,

the proposals must be submitted to the Minister.

(5) Where the Minister receives any proposed wages regulation order, the Minister shall make an order giving effect to the proposals as from such date as may be specified in the order.

(6) If the Minister has some concerns relating to or reservations about the proposed wages regulation order, the Minister may refer the proposals to the council for re-consideration.

(7) The council shall, upon reconsidering the proposed wages regulation order after taking into account the concerns or reservations made by the Minister, re-submit the proposals to the Minister with or without amendment after following the procedures set out in subsection (2).

(8) Remuneration (including leave and holiday remuneration) fixed by a wage regulation order is hereafter in this Division referred to as “statutory minimum remuneration”.

Effect and enforcement of wages regulation orders

55.—(1) If an employment contract provides for the payment of less remuneration than the statutory minimum remuneration, the new statutory minimum remuneration shall have effect.

(2) A person who fails to comply with a provision of a wages regulation order commits an offence.

(3) Where proceedings are brought under subsection (2) in respect of an offence consisting of payment of remuneration less than the statutory minimum remuneration—

- (a) if the employer or any other person charged is found guilty of the offence, evidence may be given of any like contravention on the part of the employer or such other person in respect of any period during the 3 years immediately preceding the date of the offence; and
- (b) on proof of such contravention,

the Tribunal or the Employment Court may order the employer to pay such sum as is found by the Tribunal or the Court to represent the difference between the amount which ought to have been paid during that period to the worker by way of remuneration, if the provisions of this Part had been complied with, and the amount actually so paid.

(4) No evidence shall be given under subsection (3)(a) unless notice of intention to give such evidence has been served upon the employer or the other person with the summons, warrant, information or complaint.

(5) The powers given by this section for the recovery of sums due from an employer to a worker shall be in addition to and not in derogation from any right to recover such sums from the Tribunal.

Notices

56.—(1) An employer shall display a written notice in the workplace for the purpose of informing the workers of any proposed wages regulation order or any wages regulation order affecting them.

(2) An employer that fails to comply with subsection (1) commits an offence.

PART 7 — HOLIDAYS AND LEAVE

Object of this Part

57. The object of this Part is to provide a statutory amount of annual holidays and leave.

Employer to give paid annual holidays

58.—(1) An employer must give to a worker paid annual holidays in accordance with this Promulgation.

(2) An employer may give to a worker paid annual holidays in excess of those required to be given by this Promulgation.

Paid annual holidays

59.—(1) After each year of employment with an employer, a worker must be given 10 working days holiday and must be paid in respect of such holiday the wages the worker would have been paid for the time the worker would normally have worked during that period.

(2) Notwithstanding subsection (1), a worker is not entitled to the paid annual holidays in respect of any year during which the worker attended work if the worker has been absent from work for more than 20 normal working days during that year, except where the absence has been due to sickness certified by a medical practitioner, or the worker is excused from work by the employer or is prevented from attending work by any other cause acceptable to the employer.

(3) If a worker is entitled to a paid annual holiday under this section, the employer must permit the worker to take the annual holiday in one unbroken period or, at the request of the worker, in two or more periods, one of which must be a continuous period of one week.

Holiday pay on termination of employment

60.—(1) If a worker's employment is terminated—

- (a) after a period exceeding one month and less than one year from the date of commencement of employment; or
- (b) after a period of employment following the completion of a year in respect of which the paid annual holiday has been taken,

the employer must, on or before the date of the termination, pay to the worker a sum equal to not less than five-sixths of a day's wages for each completed month of the period of employment.

(2) If a worker has completed one year's continuous service with an employer and the employment is subsequently terminated, the employer must, if the worker has not taken the paid annual holiday earned in respect of the year, on or before the date of such termination, pay to the worker the wages due in respect of the paid annual holiday, together with a sum equal to not less than five-sixths of a day's wages in respect of each completed month of employment following the completion of the last year in respect of which the worker has earned a paid annual holiday.

(3) If an employer or worker gives notice of termination of the employment of the worker, payment to the worker of all or any part of the wages on account of the paid annual holiday to which the worker is entitled must be deemed not to be payment of all or any part of the worker's wages in respect of the period during which the worker is, under this Promulgation or by custom or agreement or under the worker's employment contract, entitled to continue in the employment after giving notice.

Continuity of employment

61. For the purposes of this Part, employment is deemed to continue as long as the worker continues to be employed in the workplace by or on behalf of the owner of it for the time being, and is deemed not to be discontinued by the termination of an employment contract entered into by the worker if, within one month of the termination, the worker is re-engaged in the same workplace.

Paid annual holiday to be given within certain period

62.—(1) A worker is entitled to all annual holiday, but may be paid in lieu of the holiday with the consent of the employer.

(2) If an employer elects to close a section or sections of the employer's establishment for a fixed period in any year, all or part of the paid annual holiday may, by agreement between the parties, be taken before the completion of the year in respect of which the paid annual holiday may be due.

(3) Notwithstanding subsection (1), an employer may agree in writing with all or any of the workers that paid annual holidays may be deferred and accumulated over a period not exceeding 4 years, provided that one week's leave must be taken after the completion of each year of service.

Wages in respect of annual holiday to be paid in advance

63. Wages in respect of the paid annual holiday must be paid in advance of or on the payday immediately preceding the holiday.

Declared public holidays

64. The following days (referred to as public holidays) must be kept as public holidays in all workplaces—

- (a) New Years Day;
- (b) Good Friday;
- (c) Easter Saturday;
- (d) Easter Monday;
- (e) Prophet Mohammed's Birthday;
- (f) Ratu Sir Lala Sukuna Day;
- (g) Queen's Birthday;
- (h) Youth Day;
- (i) Fiji Day;
- (j) Diwali;
- (k) Christmas Day; and
- (l) Boxing Day.

Days to be celebrated as public holidays

65.— (1) If Christmas Day, Diwali or Prophet Mohammed's Birthday falls on a Saturday or Sunday, the following Monday must be a public holiday.

(2) If Boxing Day falls on a Saturday, the following Monday must be a public holiday.

(3) If Boxing Day falls on a Sunday or Monday, the following Tuesday must be a public holiday.

(4) If Boxing Day falls on a Monday, which by virtue of subsection (1) is a public holiday, the following Tuesday must be a public holiday.

(5) If New Years Day falls on a Saturday or Sunday, the following Monday must be a public holiday.

(6) If the date set for a public holiday set out in Section 64 falls on another day other than a Monday, the Minister may, by notice in the *Gazette*, approve that such public holiday be celebrated on another day.

Special public holidays

66. The Minister may, by notice in the *Gazette*, appoint a special day or any part of a day to be kept as a public holiday in all workplaces.

Payment for public holidays

67.—(1) Subject to subsection (2), a worker must be paid in respect of each public holiday for the number of hours (exclusive of overtime) which the worker would normally have worked on that day had it not been a public holiday.

(2) If a worker, works on a public holiday the worker must be paid the single rate in addition to the entitlement under subsection (1).

(3) Subsection (1) does not apply to a worker unless—

- (a) the worker worked for the employer during the last working day preceding the public holiday; and
- (b) the worker presents himself or herself for work on the first working day after the public holiday.

(4) Subsection (3) is deemed to have been complied with if the worker is excused from work by the employer or is prevented from attending work by sickness or injury verified by a medical certificate or is prevented from attending work by any other cause acceptable to the employer.

Sick leave

68.—(1) Where a worker who has completed more than 3 months continuous service with the same employer and who is incapable of work because of sickness or injury, the worker is entitled to paid sick leave of not less than 10 working days during each year of service.

(2) Sick leave entitlement must not be accumulated and unused sick leave for each year automatically lapses in the next year.

(3) For a worker to be entitled to sick leave, the worker must—

- (a) as soon as reasonably practicable notify the employer of his or her absence and the reason for it; and
- (b) produce, if requested by the employer, a written certificate signed by a registered medical practitioner, certifying the worker's incapacity for work.

(4) A registered medical practitioner who knowingly issues a medical certificate to a worker whom the registered medical practitioner knows is capable of work commits an offence as does the worker who sought the medical certificate.

Bereavement leave

69. A worker who has completed more than 3 months continuous service with the same employer is entitled to 3 days paid bereavement leave in a year, in addition to any other leave entitlement.

Record of leave and entitlement

70.—(1) An employer employing any worker must, at all times, keep a record showing in the case of each worker—

- (a) the name of the worker;
- (b) the dates of the commencement and termination of the worker's employment;
- (c) all leave entitlements;
- (d) the dates on which annual and public holidays are taken; and
- (e) the amount paid to the worker in respect of the paid holidays to which the worker is entitled.

(2) The record of paid holidays may be incorporated in the wages and time record that the employer is required to keep under this or any other Promulgation.

(3) An employer that does not observe any provision of this Part commits an offence.

PART 8 — HOURS OF WORK

Object of this Part

71. The object of this Part is to regulate the weekly and daily hours of work.

Hours of work

72.—(1) Subject to subsections (2) and (3), an employment contract must fix at not more than 48 the maximum number of hours (exclusive of overtime) to be worked in a week by a worker bound by that contract.

(2) If the number of hours (exclusive of overtime) fixed by an employment contract to be worked by a worker in a week is as prescribed by subsection (1), the parties must fix the daily working hours so that those hours are worked on not more than 6 days of the week.

(3) If the maximum number of hours (exclusive of overtime) fixed by an employment contract to be worked by a worker in a week is not more than 45, the parties to the contract must fix the daily working hours so that those hours are worked on not more than 5 days of the week.

Non-application to certain contracts of service

73.—(1) This Part does not apply to workers employed in managerial or executive positions.

(2) This Part does not apply to a contract of service made between an individual worker and an individual employer which fixes a rate of remuneration that is special to that worker by reason of special qualifications, experience, or other qualities possessed by that worker and does not involve discrimination in relation to that worker or any other worker.

PART 9 — EQUAL EMPLOYMENT OPPORTUNITIES

Object of this Part

74. The object of this Part is to provide equal opportunities in employment by—

- (a) prohibiting discrimination on particular grounds of actual or supposed personal characteristics or circumstances;
- (b) ensuring equal rates of remuneration for work of equal value for all workers; and
- (c) specifying lawful discrimination.

Prohibited grounds of discrimination

75. For the purposes of this Part, the prohibited grounds for discrimination whether direct or indirect are actual or supposed personal characteristics or circumstances, including: ethnic origin, colour, place of origin, gender, sexual orientation, birth, primary language, economic status, age, disability, HIV/AIDS status, social class, marital status (including living in a relationship in the nature of a marriage), employment status, family status, opinion, religion or belief.

Sexual harassment

76.—(1) An employer is liable under this section, together with a worker who sexually harasses another worker if the employer fails to take the reasonable steps necessary to prevent sexual harassment of the employer's worker.

(2) An employer must develop and maintain a policy to prevent sexual harassment in his or her workplace, consistent with any national policy guidelines under subsection (3).

(3) The Minister may direct the Board to develop a national policy guideline for preventing sexual harassment in workplaces.

(4) Where a complaint of sexual harassment has been made by a worker under this section, the worker's previous sexual experience or reputation must not be taken into account by the employer or a court or tribunal.

Discrimination in employment matters

77.—(1) If an applicant for employment or a worker is qualified for work of any description, an employer or a person acting or purporting to act on behalf of an employer must not—

- (a) refuse or omit to employ the applicant on work of that description which is available;
- (b) offer or afford the applicant or the worker less favourable terms of employment, conditions of work, or other fringe benefits, and opportunities for training, promotion, and transfer that are made available to applicants or workers of the same or substantially similar capabilities employed in the same or substantially similar circumstances on work of that description;
- (c) terminate the employment of the worker, or subject the worker to any detriment, in circumstances in which the employment of other workers employed on work of that description would not be terminated, or in which other workers employed on work of that description would not be subjected to such detriment; or
- (d) retire the worker, or to require or cause the worker to retire or resign, subject to any written law or employment contract imposing a retirement age,

by reason of any of the prohibited grounds of discrimination set out in section 75 or by reason of the worker's involvement in the activities of a union.

(2) For the purposes of subsection (1), a worker is deemed to be involved in the activities of a union if, at any time within 12 months before the action complained of, that worker —

- (a) was an officer of a union or branch of it, or was a member of the committee of management of a union or branch, or was otherwise an official or representative of an organisation or branch;
- (b) had acted as a negotiator in collective bargaining;
- (c) had represented a union or branch of it in negotiations between employers and workers;
- (d) was involved in the formation or proposed formation of a union;
- (e) had made or caused to be made a claim for some benefit of a collective agreement or individual contract of service either for that worker or any other worker or had supported the claim, whether by giving evidence or otherwise;
- (f) had submitted another employment grievance to that worker's employer; or
- (g) had participated in a strike.

(3) If a worker has been involved in the activities of a union within 12 months before the action complained of, the employer must prove that any action falling within subsection (1)(a) or (1)(b) was not occasioned by reason of the worker's involvement in those activities.

(4) For the purposes of this section, a representative of a union includes a person authorised or recognised, either expressly or impliedly, to represent the union or some of the members of a union, whether as a worker or otherwise.

Unlawful discrimination in rates of remuneration

78. An employer must not refuse or omit to offer or afford a person the same rates of remuneration as are made available for persons of the same or substantially similar qualifications employed in the same or substantially similar circumstances on work of that description for any reason including the gender of that person.

Criteria to be applied

79.—(1) Subject to subsection (2) in determining whether an element of differentiation exists, based on the gender of workers, in the rates of remuneration for any work or class of work payable under any instrument, and for the purpose of making the determinations specified in section 80(1), the following criteria must apply —

- (a) the extent to which the work or class of work calls for the same, or substantially similar, degrees of skill, effort, and responsibility;
- (b) the extent to which the conditions under which the work is to be performed are the same or substantially similar; or
- (c) the rate of remuneration that would be paid to workers with the same, or substantially similar, skills, responsibility, and service performing the work under the same, or substantially similar, conditions and with the same, or substantially similar, degrees of effort.

(2) An instrument made after the commencement of this Part must not contain classifications of work or rates of remuneration that differentiate on the basis of the gender of workers in the work which male workers or female workers may perform.

(3) An instrument made after the commencement of this Part that contains classifications of work or rates of remuneration that differentiate on the basis of the gender of workers in the work which male workers or female workers may perform is void and of no effect.

Determination of equal pay

80.—(1) If an instrument in force at the commencement of this Promulgation —

- (a) provides separate provisions for the remuneration of workers based on the gender of workers; or
- (b) provides for the remuneration of female workers only,

the parties must, within 12 months of the coming into force of this Promulgation, review the instrument to implement equal pay, by determining —

- (i) the classifications of the work performed by the female workers in relation to work performed by male workers, those classifications being determined in accordance with the criteria set out in section 79; and
- (ii) the rates of remuneration that would represent equal pay for each such classification, those rates being determined in accordance with the criteria set out in section 79.

(2) If subsection (1) is not complied with within 12 months of the commencement of this Promulgation, a party may apply to the Tribunal to make the determination.

(3) A party to an instrument, the party's representative, a labour officer or a labour inspector may apply to the Tribunal, to make necessary amendment to the document.

Recovery of remuneration based on equal pay

81.—(1) A claim to recover remuneration in excess of the amount fixed by an instrument and made on the ground that it is payable due to a determination under section 80 may be made to the Tribunal as if it were a claim for the recovery of wages.

(2) No proceedings for the recovery of remuneration in excess of the amount payable under an instrument, being an amount claimed on the ground that, that excess is payable under section 80, may be commenced in the Tribunal for the recovery of remuneration that became payable more than 3 years before the date of the commencement of the proceedings.

Exceptions in relation to authenticity and privacy

82.—(1) This Promulgation does not prevent different treatment based on gender or age where, being of a particular gender or age is a genuine occupational qualification for the position or employment.

(2) Section 77 does not prevent different treatment based on gender where—

- (a) the position needs to be held by one gender to preserve reasonable standards of privacy; or
- (b) the nature or location of the employment makes it impracticable for the worker to live elsewhere than in premises provided by the employer; and—
 - (i) the only premises available (being premises in which more than one worker is required to sleep) are not equipped with separate sleeping accommodation for each gender; and
 - (ii) it is not reasonable to expect the employer to equip those premises with separate accommodation, or to provide separate premises, for each gender.

(3) This Promulgation does not prevent different treatment based on gender, race, ethnic or national origins, or sexual orientation in relation to an occupational or employment position where the position is that of a counsellor on highly personal matters such as sexual matters or the prevention of violence.

(4) If, as a term or condition of employment, a position ordinarily obliges or qualifies the holder of the position to live in any premises provided by the employer, the employer does not commit an offence against this Promulgation by omitting to apply that term or condition in respect of workers of a particular gender or marital status if in all the circumstances it is not reasonably practicable for the employer to do so.

Exceptions for purposes of religion

83.—(1) Section 77 does not prevent different treatment based on gender where the position is for the purposes of an organised religion and is limited to one gender so as to comply with the doctrines or rules or established customs of the religion.

(2) Section 77 does not prevent different treatment based on religious or ethical belief where the sole or principal duties of the position—

- (a) are the same or substantially the same as, those of a clergyman, priest, pastor, official, or teacher among adherents of that belief or otherwise involve the propagation of that belief; or
- (b) consist of acting as a social worker on behalf of an organisation whose members comprise solely or principally adherents of that belief.

(3) If a religious or ethical belief requires its adherents to follow a particular practice, an employer must accommodate the practice so long as adjustments of the employer's activities required to accommodate the practice does not unreasonably disrupt the employer's activities.

Exceptions in relation to disability

84.—(1) Subject to subsection (4), section 77 does not prevent different treatment based on physical disability if—

- (a) the position is such that the person could perform the duties of the position satisfactorily only with the aid of special services or facilities and it is not reasonable to expect the employer to provide those services or facilities; or
- (b) the environment in which the duties of the position are to be performed or the nature of those duties, or of some of them, is such that the person could perform those duties only with a risk of infecting others with an illness, and it is not reasonable to take that risk.

(2) Subsection (1)(b) does not apply if the employer could, without unreasonable disruption, take reasonable measures to reduce the risk to a normal level.

(3) Section 77 does not apply to terms of employment or conditions of work that are set or varied after taking into account—

- (a) any special limitations that the disability of a person imposes on that persons capacity to carry out the work; and
- (b) any special services or facilities that are provided to enable or facilitate the carrying out of the work.

(4) An employer who employs 50 or more workers may employ physically disabled person on a ratio of at least 2% of the total number of workers employed by the employer.

Exceptions in relation to age

85.—(1) Section 77(1)(a) or (b) does not apply in relation to a position or employment where being of a particular age or in a particular age group, is a genuine occupational qualification for that position or employment, whether for reasons of safety or for any other reason.

(2) Section 77(1)(b) does not prevent payment of a person at a lower rate than another person employed in the same or substantially similar circumstances where the lower rate is paid on the basis that the first mentioned person has not attained a particular age, not exceeding 18 years of age.

(3) Section 77(1)(a) does not prevent preferential treatment based on age accorded to persons who are paid in accordance with subsection (2).

Exceptions in relation to employment of a political nature

86. Section 77 does not prevent different treatment based on political opinion where the position is one of—

- (a) political adviser or secretary to a member of Parliament;
- (b) political adviser to a member of a local authority;
- (c) a political adviser to a candidate seeking election to the House of Representatives or a local authority or seeking nomination to the Senate; or
- (d) member of staff of a political party.

Exceptions in relation to family status

87. Section 77 does not prevent restrictions imposed by an employer—

- (a) on the employment of a person who is married to, or living in a relationship in the nature of marriage with, or who is a relative of, another worker if—
 - (i) there would be a reporting relationship between them; or
 - (ii) there is a risk of collusion between them to the detriment of the employer; or

- (b) on the employment of a person who is married to, or living in a relationship in the nature of marriage with, or is a relative of, a worker of another employer if there is a risk of collusion between them to the detriment of that person's employer.

Exceptions in relation to underground work for females

88. Section 77 does not prevent an employer from prohibiting employment of females on underground work in mines of all kinds except—

- (a) in management positions not requiring manual work;
 (b) in health and welfare services;
 (c) in education or training; or
 (d) for occasional non-manual work.

General qualification on exceptions

89. No employer is entitled, by virtue of any of the exceptions in this Part, to accord to a person in respect of a position different treatment based on a prohibited ground of discrimination even though some of the duties of that position would fall within those exceptions if, with some adjustment of the activities of the employer (not being an adjustment involving unreasonable disruption of the activities of the employer), some other worker could carry out the particular duties which fall within those exceptions.

PART 10 — CHILDREN

Objects of this Part

90. The objects of this Part are—

- (a) to prohibit work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children;
 (b) to establish the circumstances and ages at which children may work; and
 (c) to confer certain rights on children and provide protection in view of their vulnerability to exploitation.

Prohibition of worst forms of child labour

91. The following forms of child labour are prohibited—

- (a) all forms of labour slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and any form of forced or compulsory labour, including forced or compulsory recruitment of children in armed conflict;
 (b) the use, procuring or offering of a child for illicit activities in particular for the production and trafficking of drugs as defined in relevant international treaties; or
 (c) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances,

and a person who engages a child in such prohibited form of child labour commits an offence.

Minimum age for employment

92. The age of 15 years is the minimum age for employment of children.

Employment of children under 15 years

93.—(1) A child under the age of 15 years must not be employed in any capacity other than in accordance with subsection (2) and a person who contravenes this subsection commits an offence.

(2) Subsection (1) does not apply to a child of 13 to 15 years of age engaged in employment or light work or in a workplace in which members of the same family or of communal or religious group are employed provided that—

- (a) the employment is not likely to be harmful to the health or development of the child; and
 (b) the employment is not such as to prejudice the child's attendance at school, participation in vocational orientation or training programmes approved by a competent authority or capacity of the child to benefit from the instruction received.

Trade union rights

94. A child who is 15 years or over has the right to join a trade union and to vote in a trade union elections where the child is a member.

Certain restrictions on employment of children

95.—(1) A child must not be employed underground in a mine.

(2) The Minister may, after consulting the National Occupational Health and Safety Advisory Board established under the Health and Safety at Work Act 1996 and by order in the *Gazette*, declare any employment or workplace to be a prohibited or restricted employment or workplace for the purposes of this Part on the ground that it is injurious to health or is hazardous, dangerous or unsuitable, including attendance on machinery, working with hazardous substances, driving motor vehicles, heavy physical labour, the care of children or work within security services.

(3) An employer must not, after being served with a copy of an order made under subsection (2), continue to employ the child.

(4) If a child's employment is discontinued under subsection (2), the child must be paid any outstanding wages or any other entitlement the child may have earned up to the date of the discontinuance under the terms of the contract of service.

(5) An employer who—

- (a) employs a child underground in a mine or in an employment or workplace declared under subsection (2); or
- (b) contravenes subsection (3),

commits an offence.

Children not to be employed against the wishes of parent or guardian

96.—(1) An employer must not continue to employ a child after receiving notice, either orally or in writing, from the parent, guardian or Ministry, that the child is employed against the wishes of the parent or guardian.

(2) An employer who contravenes subsection (1) commits an offence.

Hours of work for children

97.—(1) A child must—

- (a) not be employed or permitted to be employed for more than 8 hours in a day; and
- (b) be given at least 30 minutes paid rest for every continuous 4 hours worked.

(2) A child must not be employed or permitted to be employed during a period when the child is required to attend school or for a period which prejudices the child's educational participation.

(3) Subsections (1) and (2) do not apply to a child employed under a contract of apprenticeship lawfully entered into under the provisions of any written law.

(4) An employer who contravenes subsections (1) or (2) commits an offence.

Conditions on night employment

98. The Minister may, after consultation with the Board, by order in the *Gazette*, prescribe conditions for the employment of children between 6 o'clock in the afternoon of any day and 6 o'clock in the forenoon of the following day in a workplace.

Employers of children to keep register

99.—(1) An employer of children in a workplace, or in an occupation which forms part of a workplace, must—

- (a) keep a register of all the children and the register must include particulars of their ages, the date of commencement and termination of their employment, the conditions and nature of their employment and any other prescribed particulars; and
- (b) must produce the register for inspection when required by a labour officer or labour inspector.

(2) The register must be maintained separately and apart from any other register.

(3) An employer who fails to keep a register as required by subsection (1) or who fails or refuses to produce a register when required to do so commits an offence.

PART 11—MATERNITY LEAVE

Object of this Part

100. The object of this Part is to protect women and to ensure that they are not disadvantaged when taking maternity leave.

Rights of women on maternity leave

101.—(1) A woman employed in a workplace who expects to give birth is entitled to maternity leave and abstain from work for a period of 84 consecutive days subject to providing her employer with a certificate from a registered medical practitioner or registered nurse specifying the possible date of birth.

(2) A woman is entitled to paid maternity leave as follows—

- (a) for the first 3 births, to the normal remuneration she would have received as if she had been at work; and
- (b) for the 4th and subsequent births, to half the normal remuneration she would have received as if she had been at work.

(3) The woman may proceed on maternity leave at any time before or after confinement provided that if she continues to work during the pre-confinement period she must produce a medical certificate certifying that she is fit to work during that period.

(4) If at any time during the 3 months immediately before the birth of her child, a woman was employed for a period of, or periods amounting in the aggregate to, not less than 150 days during the 9 months before the birth of her child, the woman is entitled to paid maternity leave as set out in subsection (2).

(5) If there is more than one employer from whom the woman would be entitled to claim wages under this section, the Permanent Secretary, labour officer or labour inspector must determine the amount of wages that must be paid by each employer.

(6) For the purposes of this section, if a woman is absent from work for a period of more than 84 consecutive days she is not entitled to wages in respect of the days in excess of 84 days.

(7) A woman who returns to her employment after maternity leave—

- (a) must be appointed to the same or equivalent position held prior to proceedings on maternity leave, without any loss of salary, wages, benefits and seniority; or
- (b) may be appointed to a higher position.

Payment of wages on death of woman

102. If a woman dies from any cause before the expected birth or after the day of the birth of her child and before any wages to which she is entitled have been paid to her, the employer or any of her employers is liable to pay wages.

Payment of wages to nominee

103. Subject to section 46, any outstanding wages may be paid on behalf of a woman—

- (a) to a person authorised in writing by the woman; or
- (b) for a deceased woman, to the Permanent Secretary if there is no authorised person.

Restriction on termination

104.—(1) No woman must be terminated from employment on the ground of pregnancy.

(2) Where a termination occurs while a woman is pregnant, the burden of disproving that the termination was related to that condition rests with the employer.

(3) If, after three months from the expiration of her maternity leave, a woman remains absent from work, as a result of illness (certified by a registered medical practitioner) arising out of her pregnancy or the birth of her child rendering her unfit for work, her employer may give her notice of termination.

(4) If a woman is terminated under subsection (3) she is deemed to have been employed up to and including her period of maternity leave for the purpose of computing her period of employment under this Part.

Conditions contrary to this Part void

105.—(1) A condition in a contract of service whereby a woman relinquishes a right under this Part is void.

(2) A person who contravenes a provision of this Part commits an offence.

PART 12 — REDUNDANCY FOR ECONOMIC, TECHNOLOGICAL OR STRUCTURAL REASONS

Object of this Part

106. The object of this Part is to provide workers facing redundancy with some degree of certainty about the problems faced by the employer and the assurance of compensation.

Provision of information

107.—(1) If an employer contemplates termination of the employment by redundancy of workers for reasons of an economic, technological, structural or similar nature, the employer must—

- (a) provide the workers, their representatives and the Permanent Secretary not less than 30 days before carrying out the terminations, with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out; and
- (b) give the workers or their representatives, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and on measures to mitigate the adverse effects of any terminations on the workers concerned, such as action to attempt to find alternative employment or retraining.

(2) In this Part—

“economic” means maintained for profit;

“structural” means in relation to a company, corporation, business enterprise or workplace the manner in which such entity is organised, managed or administered;

“technological” means a matter concerning, or use of, technology or information technology.

Redundancy pay

108.—(1) Subject to subsection (2), if an employer terminates a worker’s employment for reasons of an economic, technological, structural or similar nature, the employer must pay to the worker not less than one week’s wages as redundancy pay for each complete year of service in addition to the worker’s other entitlements.

(2) A worker is not entitled to the payment specified in subsection (1) unless the worker has completed one year of service with the employer.

(3) Nothing in this Promulgation prevents an employer giving to a worker a redundancy payment in excess of that required to be given by this Promulgation.

PART 13 — EMPLOYMENT GRIEVANCES

Object of this Part

109. The object of this Part is to provide for grievance procedures for workers to pursue employment grievances either personally or through the assistance of a representative.

Inclusion of procedures in employment contracts

110.—(1) An employment contract must—

- (a) contain procedures for settling an employment grievance, including confidentiality and natural justice; and
- (b) where possible, in the case of sexual harassment complaints, the need for women to be represented on the grievance panel.

- (2) The procedures required by subsection (1) must be—
- (a) agreed by the parties and consistent with the requirements of this Part; or
 - (b) if there are no agreed procedures, the procedures set out in Schedule 4.
- (3) All employment grievances must first be referred for mediation services set out in Division 1 of Part 20.

(4) Where an employment contract includes an internal appeal system it must not provide for appeal to the Tribunal or Employment Court, and the internal appeal system must first be exhausted before any grievance is referred for Mediation Services.

(5) Under these grievance procedures, where a grievance concerns discrimination or sexual harassment, a worker must elect whether he or she proceeds under this Promulgation or the Fiji Human Rights Commission Act 1999, but not both.

Right to use procedures

111.—(1) A worker who believes that he or she has an employment grievance may pursue the grievance procedure in person, and may be assisted by a representative.

(2) A worker who wishes to submit an employment grievance to that worker's employer in accordance with the applicable employment grievance must, subject to subsections (3) and (4), submit the grievance to that worker's employer within the period of 6 months from the date on which the action alleged occurred unless the employer consents to extend that period.

(3) If consent is not given under subsection (2), the Tribunal may, upon application extend the period, if it is satisfied that there are good reasons for the delay.

(4) Upon granting an application under subsection (3), the Tribunal may hear the grievance or refer the grievance to the Mediation Services.

Nature of grievance

112. If the worker brings an employment grievance in relation to one aspect of employment but during the determination of the grievance there is evidence of a grievance in relation to another aspect of employment, the decision may also cover that other aspect, provided that the employer is advised during the proceedings of such matter.

Statements privileged

113. Any statement made or information given during the mediation of an employment grievance is privileged.

Statement of reasons for dismissal

114. If a worker is dismissed, the employer must, when dismissing the worker provide to the worker with a written statement setting out the reasons for the dismissal.

PART 14 — REGISTRATION OF TRADE UNIONS

Objects of this Part

115. The objects of this Part are—
- (a) to provide for the registration of trade unions; and
 - (b) to stipulate minimum requirements to be observed by trade unions in their operations.

Registrar and other officers

116.—(1) Without prejudice to the powers of the Public Service Commission, the Minister may appoint a public officer as the Registrar of Trade Unions who will be responsible for the performance of the duties and functions assigned to the Registrar by or under this Promulgation.

(2) One or more Assistant Registrars of Trade Unions and such other officers may be appointed for the purposes of this Promulgation.

(3) The Registrar of Trade Unions and any Assistant Registrar of Trade Unions must each act independently and are not to be subject to any direction or control by any person or body in exercising the duties and powers under this Promulgation.

Protection of officers

117. An officer appointed under section 116 is not liable for anything done or omitted to be done, by the officer in good faith and without negligence in the exercise of any power or in the performance of any duty conferred or imposed by this Promulgation.

Register of trade unions

118.—(1) The Registrar must keep a register of trade unions in a prescribed form containing—

- (a) the prescribed particulars relating to every registered trade union;
- (b) any alteration or change in the name, constitution, officers, location or postal address of a registered trade union; and
- (c) any other matters required to be contained in the register by this Promulgation or the regulations.

(2) A copy of an entry in the register certified by the Registrar is, unless the contrary is shown, proof of the facts contained in the copy.

Application for registration

119.—(1) All trade unions must be registered.

(2) An application for registration as a trade union must be made to the Registrar in the prescribed form and signed by more than 6 members of the trade union applying for registration provided that no member shall belong to more than one trade union.

(3) An application under this section must be accompanied by 4 copies of the constitution and rules of the trade union or the proposed trade union, authenticated by its president and the secretary, and accompanied by a statement setting out the following particulars—

- (a) the names, occupations and addresses of the members making the application;
- (b) the name of the trade union or proposed trade union; and
- (c) the titles, names, ages, occupations and addresses of the officers of the trade union or proposed trade union.

Registration

120.—(1) The Registrar has the power to register a trade union for the purposes of this Promulgation.

(2) Subject to sections 121 and 122, upon the receipt of an application under section 119, the Registrar must, within 21 days of receipt of the application, decide on the application to register the trade union.

Power of Registrar to call for further particulars

121. Upon receipt of an application under section 119, the Registrar may call for further information for the purpose of confirming that the application complies with this Promulgation or that the trade union or proposed trade union is entitled to registration under this Promulgation.

Alteration or change of name of trade unions

122.—(1) If the name under which a trade union is proposed to be registered—

- (a) is identical with the name of an existing registered trade union or any other registered body;
- (b) in the opinion of the Registrar, so nearly resembles the registered name of a trade union or any other registered body as to be likely to deceive or mislead the public or the members of other trade unions or registered body; or
- (c) is, in the opinion of the Registrar, undesirable,

the Registrar must request the applicant to alter the name of the trade union stated in the application, and must not register the trade union until the alteration has been made.

(2) The Registrar may, upon application by a registered trade union, change the name of the registered trade union if the change is supported, in a secret ballot, by more than 50% of all members entitled to vote.

(3) A change of name under subsection (2) does not affect rights or obligations or legal proceedings in respect of the registered trade union and such rights or obligations or legal proceedings continue as if done in respect of the newly named trade union.

Amalgamation of trade unions

123.—(1) If 2 or more registered trade unions wish to amalgamate, the unions must apply to the Registrar for amalgamation.

(2) The amalgamation must be supported, in a secret ballot, by more than 50% of all members of each of the applicant trade union.

(3) The Registrar may refuse an application for amalgamation if—

- (a) the proposed rules of the trade union to be formed by the amalgamation will not make adequate provision for all the matters specified in Schedule 5; or
- (b) any of the purposes of the trade union would be unlawful.

(4) Upon amalgamation, a notice of dissolution must be signed by the Secretary of each dissolved trade union and more than 6 voting members at the date of dissolution, and sent to the Registrar for registration of the dissolution, and the trade union ceases to be a body corporate.

(5) Upon amalgamation, all deeds, bonds, agreements and instruments effective against or in favour of a registered trade union that is amalgamated with another registered trade union which are subsisting at that time will be effective against or in favour of the new amalgamated trade union, and any proceedings or cause of action which existed or was pending will be effective against or in favour of the new amalgamated trade union.

Affiliation to federation of trade union

124. If a registered trade union wishes to affiliate with any other trade union or trade union federation, the affiliation must be supported, in a secret ballot, by more than 50% of all members of that trade union.

Refusal of registration

125.—(1) The Registrar may refuse to register a trade union if the Registrar is satisfied that—

- (a) the principal objects of the persons seeking registration are not in accordance with those set out in the definition of trade union;
- (b) the trade union is used for unlawful purposes;
- (c) the trade union has not complied with requirements for the registration of trade unions;
- (d) any of the objects in the constitution or rules of the trade union are unlawful or conflict with this Promulgation;
- (e) the proposed rules of the trade union will not make adequate provision for the matters to be specified in Schedule 5; or
- (f) the trade union is under the domination of the employer, whether by financial or other means, with the purpose of placing the trade union under the control of the employer.

(2) If the Registrar refuses to register a trade union, the Registrar must notify the applicants in writing of the grounds of the refusal within 7 days from the date of the decision and the trade union is thereupon dissolved.

(3) A dissolution under subsection (2) takes effect at the end of the period specified in section 139 for bringing an appeal and—

- (a) if no appeal is brought under that section within that period, the dissolution takes effect at the commencement of the day following the day on which that period expired; and
- (b) if an appeal is brought within that period the dissolution, if confirmed on appeal, takes effect on the determination of the appeal.

(4) It is not an offence for a person to act on behalf of a dissolved trade union for the purpose of—

- (a) any proceedings brought by or against the union; or
- (b) dissolving the union and disposing of its funds and property in accordance with its constitution and rules.

Certificate of registration

126. The Registrar, on registering a trade union under section 120, must issue to the trade union a certificate of registration in the prescribed form and that certificate, unless proved to have been cancelled or withdrawn, is conclusive evidence that the trade union is a duly registered trade union.

Officers of a trade union

127.—(1) Subject to subsections (2) and (3)—

- (a) an officer of a registered trade union must have been engaged or occupied for a period of not less than 6 months in an industry, trade or occupation with which the union is directly concerned;
- (b) no officer of a registered trade union may be an officer of any other trade union;
- (c) an undischarged bankrupt must not be an officer of a trade union; or
- (d) a person who is not a citizen of the Fiji Islands must not be an officer of a trade union.

(2) The offices of secretary and treasurer of a registered trade union may be filled by a person who has not been engaged or employed in an industry, trade or occupation with which the union is directly concerned.

(3) A person who has been convicted of an offence relating to dishonesty, moral turpitude or violence for which the penalty prescribed under a written law is 6 months imprisonment or more may not be an officer of a registered trade union for 3 years after the date of the conviction.

(4) If a trade union fails to comply with a provision of this section, the treasurer, in the case of books of account, or the secretary, in the case of minute books and other records, each commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to a term of imprisonment not exceeding 6 months or both.

Inspection of accounts

128.—(1) The account books, receipt books and receipts for expenditure of a registered trade union and a list of its members must be open to inspection by an officer or member of the trade union at times to be provided for in the rules of the trade union.

(2) The minutes relating to financial matters, the list of members and the account books and other documents relating to the accounts of a registered trade union must be open to inspection, during normal business hours, by the Registrar or by a person authorised in writing by the Registrar.

(3) The Registrar may in writing request from the treasurer, or any other officer of a registered trade union, detailed and certified accounts of the funds of the trade union or branch of it, in respect of a specified period, and any particular information the Registrar requires.

(4) If an inspection is made under subsection (2) an officer of the trade union is entitled to be present.

(5) A person who obstructs or impedes the Registrar, or a person authorised by the Registrar under subsection (2) in carrying out an inspection under that subsection commits an offence and is liable on conviction to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding 3 months or both.

Annual returns

129.—(1) The secretary of a registered trade union must provide to the Registrar on or before 30th September in each year a general audited statement of—

- (a) all receipts and expenditure during the 12 months ending on 31 December of the previous year; and
- (b) the assets and liabilities of the trade union as at 31 December of the previous year.

(2) A statement provided under subsection (1) must be accompanied by a copy of the auditor's report and be prepared in prescribed form.

(3) The secretary of a registered trade union must, on or before 30 April in each year, submit to the Registrar—

- (a) a list of officers of the trade union; and

- (b) a copy of any amendment to the constitution and rules and of any new rule made by the trade union during the previous year.

(4) The secretary of a registered trade union who fails to comply with subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding 3 months or both.

(5) A person who knowingly makes or orders or causes or procures to be made a false entry in or omission from a statement, copy or list provided to the Registrar under subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to a term of imprisonment not exceeding 6 months or both.

Constitution and rules

130—(1) The rules of a registered trade union must provide for all the matters set out in Schedule 5.

(2) Four copies of a new rule and of an alteration to the constitution or rules of a registered trade union must be sent to the Registrar within 14 days of the making of the rule or alteration and must be registered by the Registrar upon payment of the prescribed fee.

(3) No new rule or alteration to the constitution or rules of a registered trade union may be registered by the Registrar if the new rule or alteration is in conflict with this Promulgation.

(4) An alteration to the constitution or rules of a registered trade union takes effect from the date of registration by the Registrar unless some later date is specified in the rules.

Right of member to access constitution and rules

131. A member of a trade union has the right to access or obtain a copy of the constitution and other rules of the registered trade union of which he or she is a member.

Registered office and postal address

132.—(1) A registered trade union must have an office and a postal address.

(2) The notice of the location of the office and of the postal address of the trade union must be given to the Registrar upon registration of the trade union.

(3) The Registrar must be immediately informed of any change of the office or postal address of a registered trade union.

(4) A registered trade union which—

- (a) operates without having notified the Registrar of the location of its office and its postal address;
- (b) fails to give notice of a change to the Registrar; or
- (c) operates at a place to which its office has been removed without having given notice of the change to the Registrar,

commits an offence.

Cancellation or suspension of registration

133.—(1) The Registrar may, at the request of the trade union upon its dissolution, cancel the registration of a registered trade union.

(2) The Registrar must cancel the registration of a registered trade union if—

- (a) the registration was obtained by fraud or misrepresentation;
- (b) any of the objects of the trade union, have become unlawful and the union fails to rectify any such unlawfulness within the period specified by the Registrar;
- (c) the trade union has wilfully (after prior notice of contravention from the Registrar) contravened this Promulgation, or allowed a rule to continue in force which is inconsistent with this Promulgation, or has rescinded a rule providing for a matter for which provision must be made under section 130; or
- (d) the trade union has ceased to exist.

- (3) The Registrar may suspend or cancel the registration of a registered trade union if—
- (a) the accounts of the trade union are not being kept in accordance with this Promulgation;
 - (b) registration was obtained by mistake;
 - (c) the trade union has been or is being used for an unlawful purpose or for a purpose inconsistent with its constitution or rules; or
 - (d) officers of the trade union have persistently and wilfully failed to comply with the provisions of this Promulgation.

(4) If the registration of a trade union is suspended under this section the Registrar must, before the end of 4 months after the date of the suspension, either restore the registration or cancel the registration.

(5) Except in a case falling within subsection (1), the Registrar must give a trade union not less than 2 months notice in writing specifying the grounds on which the Registrar proposes to cancel or suspend its registration and inviting the trade union to show cause in writing within 2 months why the registration should not be cancelled or suspended.

(6) The notice to be served upon a trade union under subsection (5) must be served on any 2 officers from among the secretary, the president and the treasurer of the trade union and the Registrar must in addition advertise the intention to suspend or cancel the registration of the trade union in the *Gazette* and in at least one newspaper published and circulating in the Fiji Islands.

(7) The period of 2 months to show cause specified in subsection (5) commences from the date of publication in the *Gazette* under subsection (6).

(8) If cause is shown by the trade union under subsection (5), the Registrar may hold an inquiry as the Registrar considers necessary in the circumstances.

(9) Where the Registrar is satisfied that there is no cause why the registration should be suspended or cancelled the Registrar must make an order to the effect that the registration should not be suspended or cancelled.

(10) Where the Registrar is satisfied that the registration of the trade union should be suspended or cancelled, the Registrar must make the order and such order must—

- (a) be dated the date on which it was made;
- (b) specify briefly the grounds for suspension or cancellation; and
- (c) be forthwith served on the trade union.

Consequence of suspension of registration

134.—(1) If the registration of a registered trade union is suspended under section 133, during the period of such suspension—

- (a) the trade union ceases to enjoy the rights, immunities or privileges of a registered trade union;
- (b) its officers and members do not enjoy the rights or privileges accorded to the officers and members of a registered trade union; and
- (c) liabilities incurred by the trade union may be enforced against the trade union and its assets.

(2) If a trade union has lodged an appeal under section 139 against the decision to suspend its registration to the Court, the decision to suspend the trade union is deemed to have been stayed until the final determination of the appeal.

Effect of cancellation of registration

135.—(1) Subject to subsection (2), a trade union whose registration has been cancelled under this Promulgation, in addition to any other disability—

- (a) ceases to exist as a body corporate, and the Registrar may, notwithstanding its rules appoint one or more persons to be the liquidators of the trade union;
- (b) ceases to enjoy any of the rights, immunities or privileges of a registered trade union, but without prejudice to any liability incurred by the trade union which may be enforced against the trade union and its assets, whether the liability is incurred before, on or after the date of cancellation of registration; and

- (c) is dissolved, and no person may after such cancellation take part in its management or organisation or act or purport to act as an officer of the trade union except for the purpose of defending proceedings against the trade union or of dissolving it and disposing of its funds or property in accordance with its rules and this Promulgation.
- (2) The cancellation of registration of a trade union takes effect as follows—
- (a) if no appeal is brought within 30 days under section 139 on the day following the day the 30 days expire; or
 - (b) if an appeal is brought, takes effect on the date of determination of the appeal, if appeal is not upheld.

Powers of liquidator and Registrar in winding up

136.—(1) If a liquidator is appointed under section 135(1)(a) any property (including books and documents) belonging to the trade union vests in the liquidator by his or her official name from the date of the appointment of the liquidator.

- (2) After giving any indemnity, as the Registrar may direct, the liquidator may—
- (a) bring or defend an action or other legal proceeding that relates to the property of the union or that is necessary for the purpose of effectively winding up the trade union and recovering its property;
 - (b) take possession of any property (including books and documents) belonging to the trade union;
 - (c) sell the real and personal property and rights in action of the trade union by public auction or private contract;
 - (d) appoint a legal practitioner to assist in the duties of the liquidator;
 - (e) pay any creditors of the trade union in full or in part;
 - (f) satisfy any debts or liabilities of the trade union and any liabilities capable of resulting in debts, and any claims, present or future, on the terms as may be agreed, and take security for the discharge of a debt, liability or claim and give a complete discharge in respect of it;
 - (g) make a settlement with creditors of the trade union or persons claiming to be creditors of the trade union; and
 - (h) prepare a proposal for the distribution of the assets of the trade union and, subject to the approval of the Registrar, distribute the assets accordingly.

(3) The exercise by the liquidator of the powers conferred by this section is subject to the control of the Registrar, and a creditor or member of the trade union may apply to the Registrar with respect to an exercise or proposed exercise of those powers.

- (4) Without limiting subsection (2), the Registrar may—
- (a) rescind or vary an order made by a liquidator or substitute a new order for it;
 - (b) remove a liquidator from office;
 - (c) make an order upon the assets of the trade union for the remuneration of a liquidator;
 - (d) call for and inspect the books, documents or assets of a trade union;
 - (e) by order in writing limit or restrict the powers of a liquidator;
 - (f) at any time require accounts to be rendered to the Registrar by a liquidator;
 - (g) refer a subject of dispute between a liquidator and a third party to the Employment Relations Court, subject to the consent in writing of the third party; or
 - (h) summon meetings of the members of the trade union as may appear to the Registrar convenient for the purpose of winding up the affairs of the trade union.

(5) The Registrar, or a liquidator appointed under section 135(1)(a), may summon and enforce the attendance of parties and witnesses and compel the production of documents in the same manner as is provided in the rules of the Tribunal.

Closure of original liquidation on appointment of liquidator

137. Notwithstanding the rules of the trade union, if a liquidator has been appointed under section 135(1)(a)—

- (a) all of the funds and assets of the trade union must be realised and converted into money and applied first to the cost of the liquidation, then to the discharge of the liabilities of the trade union, then to the payment of share capital, if any, then in such manner as may be provided by the rules of the trade union or, failing such provision, in the manner as the Registrar directs;

- (b) when the liquidation of the trade union has been closed and a creditor has not claimed or received what is due to the creditor under the proposed distribution, notice of the closing of the liquidation must be published in the *Gazette* and any claims against the funds of the trade union will be disallowed when 2 years have elapsed from the date of the publication; and
- (c) any surplus remaining after the application of the funds to the purposes specified in paragraph (b) must be paid to the Consolidated Fund.

Notification in Gazette

138. The Registrar must give notice in the *Gazette* of any of the following matters within 28 days of its occurrence—

- (a) an application for registration by a trade union;
- (b) the registration or refusal of registration by a trade union;
- (c) the cancellation or suspension of registration of a trade union;
- (d) the registration of a change of name of a registered trade union;
- (e) the amalgamation of 2 or more registered trade unions; or
- (f) the dissolution of any registered trade union.

Appeal against decisions of Registrar

139. A person aggrieved by a decision of the Registrar under this Part may, within 30 days of the date of the decision, appeal the decision to the Tribunal.

Certain Acts do not apply

140. Subject to this Promulgation, the following Acts do not apply to any registered trade union—

- (a) the Co-operatives Act 1996;
- (b) the Companies Act (Cap. 247); or
- (c) the Industrial Associations Act (Cap. 95).

PART 15 — RIGHTS AND LIABILITIES OF TRADE UNIONS

Object of this Part

141. The object of this Part is to enable trade unions to function fully as social partners and as legal entities capable of incurring legal obligations.

Trade unions not unlawful

142. The purposes of a registered trade union are not, merely because they are in restraint of trade, unlawful so as to render—

- (a) a member or an officer of the trade union liable to criminal prosecution for conspiracy or otherwise;
- or
- (b) an agreement or trust void or voidable.

Immunity from civil suit

143. No suit or other legal proceedings may be instituted and maintained in a court of law against a registered trade union or an officer or member of the trade union in respect of an act done in contemplation or in furtherance of a dispute.

Registered trade union as corporate body

144. The registration of a trade union renders it a body corporate by the name under which it is registered, and, subject to this Promulgation, confers on it perpetual succession and may—

- (a) hold real or personal property;
- (b) enter into contracts;
- (c) sue and be sued;
- (d) do any other thing a person can legally do; and
- (e) do any other thing necessary for the purpose of its constitution.

Access to workplaces

145. A representative of a registered trade union, authorised in writing by the trade union and with the consent of the employer which shall not be withheld unreasonably, has the right to enter a workplace for the purpose related to the union's business without disrupting the work arrangement of the employer—

- (a) to discuss union business with union members;

- (b) to recruit workers as union members; or
- (c) to provide information on the union and union membership to any worker on the premises.

Liability in contract

146.—(1) A trade union is liable on a contract entered into by it or by an agent acting on its behalf, except a contract which is void or unenforceable at law.

(2) Nothing in this Promulgation enables a court of law to entertain legal proceedings instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements—

- (a) an agreement between members of a trade union concerning the conditions on which members of the trade union are or are not permitted to sell their goods, transact business, employ or be employed;
- (b) an agreement for the payment by a person of any subscription or penalty to a trade union;
- (c) an agreement for the application of the funds of a trade union-
 - (i) to provide benefits to members other than benefits under a contributory provident fund or pension scheme;
 - (ii) to provide contributions to an employer or worker who is not a member of the trade union, in consideration of the employer or worker acting in conformity with the rules or resolutions of the trade union;
- (d) an agreement made between one trade union and another; or
- (e) a bond to secure the performance of an agreement.

(3) Nothing in this section renders unlawful any agreement listed in subsection (2).

Proceedings by and against trade unions

147.—(1) Money ordered in civil proceedings to be paid by a trade union may be recovered by the sale of property belonging to the trade union, other than the property of benevolent or provident fund of a registered trade union.

(2) Subject to subsection (3), a fine ordered to be paid by a trade union may be recovered by distress and sale of property belonging to the trade union in accordance with the provisions of the Criminal Procedure Code (Cap. 21).

(3) No distress may be levied under subsection (2) on a benevolent or provident fund kept by the union unless the Court so orders.

(4) A notice or other document required to be served on a registered trade union under this Promulgation is duly served if it is—

- (a) sent by registered mail or courier to the registered office of the trade union; or
- (b) served personally on the president, treasurer or secretary of the trade union.

PART 16 — COLLECTIVE BARGAINING

Objects of this Part

148. The objects of this Part are—

- (a) to provide the core requirements of the duty of good faith in relation to collective bargaining;
- (b) to provide a Code of Good Faith to assist the parties to understand what good faith means in collective bargaining;
- (c) to recognise the view of parties to collective bargaining as to what constitutes good faith; and
- (d) to promote orderly collective bargaining.

Division 1- Good Faith

Good faith in bargaining for collective agreement

149.—(1) The duty of good faith requires a union and an employer bargaining for a collective agreement to do, at least, the following things—

- (a) the union and the employer must use their best endeavours to enter into an arrangement, as soon as possible after the initiation of bargaining, that sets out a process for conducting the bargaining in an effective and efficient manner;
- (b) the union and the employer must meet each other, from time to time, for the purposes of the bargaining;
- (c) the union and the employer must consider and respond to proposals made by each other;
- (d) the union and the employer—
 - (i) must recognise the role and authority of any person chosen by each to be its representative or advocate;
 - (ii) must not, directly or indirectly, bargain about matters relating to terms and conditions of employment with persons whom the representative or advocate are acting for, unless the union or the employer agree otherwise; and
 - (iii) must not undermine or do anything that is likely to undermine the bargaining or authority of the other in the bargaining; and
- (e) the union and the employer must provide to each other, on request and in accordance with section 151, information that is reasonably necessary to support or substantiate claims or responses to claims made for the purposes of the bargaining.

(2) Subsection (1)(b) does not require a union and an employer to continue to meet each other about proposals that have been considered and responded to.

(3) The matters about which a union and an employer may continue to meet each other in good faith include—

- (a) the provisions of a Code of Good Faith that are relevant to the circumstances of the union and the employer which is consistent with the Code of Good Faith developed under section 152;
- (b) the provisions of any agreement about good faith entered into by the union and the employer;
- (c) the proportion of the employer's workers who are the members of the union and to whom the bargaining relates; and
- (d) any other matter considered relevant, including background circumstances and the circumstances of the union and the employer.

(4) For the purposes of subsection (3)(d), "circumstances", in relation to a union and an employer, include—

- (a) the operational environment of the union and the employer; and
- (b) the resources available to the union and the employer.

(5) This section does not limit the application of the duty of good faith in relation to bargaining for a collective agreement.

Duty of good faith does not require concluded collective agreement

150. The duty of good faith does not require a union and an employer bargaining for a collective agreement—

- (a) to agree on any matter for inclusion in collective agreement; or
- (b) to enter into a collective agreement.

Providing information in bargaining for collective agreement

151.—(1) This section applies for the purpose of section 149(1)(e).

(2) A request by a union or an employer to the other for information must—

- (a) be in writing;
- (b) specify the nature of the information requested in sufficient detail to enable the information to be identified;
- (c) specify the claim or the response to a claim in respect of which information to support or substantiate the claim or the response is requested; and

(d) specify a reasonable time within which the information is to be provided.

(3) A union or an employer must provide the information requested—

(a) directly to the other; or

(b) to an independent reviewer, appointed by consent, if the union or the employer providing the information reasonably considers that it should be treated as confidential information.

(4) The independent reviewer must advise the parties of his or her opinions within a reasonable time, and if the independent reviewer determines the information is confidential, it must only be used for the bargaining concerned and not disclosed to a third party unless the parties decide otherwise.

Code of Good Faith

152.—(1) The Minister may direct the Board to develop a Code of Good Faith, the object of which is to provide guidance about the application of the duty of good faith under this Part in relation to collective bargaining.

(2) The Tribunal or the Court may, in determining whether or not the parties to a collective bargaining have dealt with each other in good faith in bargaining for a collective agreement, have regard to the Code.

Division 2- Bargaining

Who may initiate bargaining

153.—(1) Bargaining for a new collective agreement or variation of an existing collective agreement may be initiated by—

(a) one or more unions with one or more employers; or

(b) one or more employers with one or more unions.

(2) For the purpose of subsection (1)(b), bargaining for a new collective agreement may not be initiated by an employer (whether alone or with other employers) unless the coverage clause of the union constitution will cover work (whether in whole or in part) that is or was covered by another collective agreement to which the employer is or was a party.

Bargaining where there is no collective agreement

154. Subject to section 153(2), if there is no applicable collective agreement in force between a union and an employer, the union or the employer may initiate bargaining for a collective agreement at any time.

Bargaining for variation of collective agreements

155. If there is an existing collective agreement in force between a union and an employer, the union or the employer may initiate bargaining for variation of the collective agreement as follows—

(a) if there is only one applicable collective agreement in force, a union or employer must not initiate bargaining unless the party gives 30 days written notice to the other party; or

(b) if there is more than one applicable collective agreement in force that binds more than one union or more than one employer or both unless the party gives 60 days written notice to all the parties.

Bargaining for collective agreements with expiry dates

156.—(1) If there is only one applicable collective agreement in force a union or employer must not initiate bargaining for a new collective agreement earlier than 60 days before the date on which the collective agreement expires.

(2) If there is more than one applicable collective agreement in force that binds more than one union or more than one employer or both that are intended to be parties to the bargaining, the union or employer must not initiate bargaining—

(a) 120 days before the date on which the last applicable collective agreement expires; or

(b) 60 days before the date on which the first applicable collective agreement expires,

whichever is the later date.

(3) For the purposes of this section, an applicable collective agreement is in force between a union and an employer if the agreement binds workers whose work is intended to come within the coverage clause in the collective agreement being bargained for.

How bargaining initiated

157.—(1) A union or an employer initiates bargaining for a collective agreement by giving to the intended party or parties to the agreement a notice that complies with subsection (2).

- (2) A notice complies with this subsection if—
- (a) it is in writing and signed by the union or the employer giving the notice or its duly authorised representative;
 - (b) it identifies each of the intended parties to the collective agreement;
 - (c) it identifies the intended coverage of the collective agreement;
 - (d) only one notice is required, on the day it is given;
 - (e) if more than one notice, on the day the last notice is given; and
 - (f) where there is multiplicity of parties, the initiating party must give notice to all other parties.

Multiplicity of parties

158. Where there are a multiplicity of parties (employers and trade unions) seeking a single collective agreement, the employer's workers who are worker members of the trade unions involved must support the proposal by a simple majority in a separate secret ballot conducted by each of the respective trade unions if there was previously no collective agreement.

Consolidation of bargaining

159.—(1) This section applies if—

- (a) an employer received 2 or more notices under section 157 from different unions; and
- (b) the notices relate, in whole or in part, to the same type of work.

(2) The employer may, within 30 days after receiving the first notice, request each union concerned to consolidate the bargaining initiated by each notice into bargaining for a single collective agreement.

(3) Each union receiving a request under subsection (2) must, within 30 days after receiving the request, respond to the request.

(4) A union that does not comply with subsection (3) retains the right to initiate bargaining under section 157.

(5) In the case of those unions that agree to the request, the bargaining initiated by each notice must be consolidated into a single collective agreement.

(6) If a union agrees to the request under subsection (3), the notice under section 157 is treated as having lapsed.

*Division 3- Collective Agreements**When a collective agreement comes into force and expires*

160.—(1) Subject to section 162, a collective agreement comes into force on the date specified in the agreement as the date on which it comes into force or if no such date is specified, the date on which the last party to the agreement or its duly authorized representative, signs the agreement.

(2) A collective agreement may provide that one or more of its provisions come into effect on different dates.

(3) Where a collective agreement provides for an expiry date it expires on the date specified in the agreement.

Continuation of collective agreement after specified expiry date

161. A collective agreement that would otherwise expire as provided in section 160(3) continues in force for a period not exceeding 12 months if the union initiated collective bargaining before the collective agreement expired and for the purpose of replacing the collective agreement.

Form and content

- 162.—(1) A collective agreement has no effect unless—
- (a) it is in writing;
 - (b) it is signed by each union and employer that is a party to the agreement; and
 - (c) it is registered by the Registrar.
- (2) A collective agreement may contain such provisions as the parties to the agreement mutually agree on.
- (3) A collective agreement must contain—
- (a) coverage clause;
 - (b) clause relating to disciplinary procedures;
 - (c) procedures relating to settlement of disputes and employment grievances at appropriate levels within the undertaking;
 - (d) a clause dealing with the rights and obligations of the workers and employer if the work of any of the workers were to be contracted out or the business or part of the business of the employer concerned were to be transferred or sold for the purpose of protecting workers bound by the agreement from being disadvantaged;
 - (e) the services available for the resolution of grievances or disputes;
 - (f) a clause providing how the agreement can be varied; and
 - (g) a clause providing the expiry of the agreement, if applicable.

Deduction of union fees

163.—(1) A collective agreement is to be treated as if it contains a provision that requires an employer that is a party to the agreement to deduct, with the consent of a union member, the member's union fee from the member's salary or wages on a regular basis during the year.

(2) A collective agreement may vary the effect of subsection (1).

(3) Union fees deducted from a member's salary or wages must be paid to the union concerned in a manner agreed to by the union.

Application of collective agreement

- 164.—(1) A collective agreement that is in force binds and is enforceable by—
- (a) the union and the employer that are the parties to the agreement; and
 - (b) a worker—
 - (i) who is employed by an employer that is a party to the agreement; and
 - (ii) who is or becomes a member of a union that is a party to the agreement.

(2) If the registration of a union that is a party to a collective agreement is cancelled or suspended, the collective agreement continues to bind the employer or employers who are parties to the agreement, and the workers who are members of the union bound by the collective agreement.

(3) If the union's registration is cancelled as a result of the union's amalgamation with or more other unions, the collective agreement binds the amalgamated union.

Resignation as union member but does not resign as worker

165.—(1) A member of a union who is bound by a collective agreement and who resigns as a member of the union but does not resign from his or her employment, may not be subject to any other bargaining for a collective agreement or bound by any other collective agreement until the 60th day before the expiry date of the collective agreement binding on the member before the member resigned as a member of the union.

(2) For the purposes of subsection (1), the expiry date of a collective agreement is to be determined in accordance with section 160.

Copy to be delivered to Registrar

166.—(1) The parties to a collective agreement must, within 28 days after it is made, lodge a signed copy of the agreement with the Registrar for registration.

(2) The copy of the agreement delivered to the Registrar must include any document referred to, or incorporated by reference, in the collective agreement, unless the document is publicly available.

(3) A collective agreement in force at the commencement of this Promulgation is deemed to have been made and registered under this Promulgation.

(4) On receipt of the collective agreement the Registrar—

- (a) must notify the parties of any matter which the Registrar is satisfied is contrary to this Promulgation or of any other written law; or
- (b) subject to paragraph (a), may issue a certificate of registration in the prescribed form and must notify the parties that the agreement has been registered.

(5) The provisions of a collective agreement must be an implied condition of contract between a worker and an employer to whom the collective agreement applies.

(6) A party that contravenes subsection (1) commits an offence.

(7) A collective agreement is not required to be stamped under the Stamp Duties Act (Cap. 205) for the purpose of registration.

(8) A certificate of registration is proof of the fact that the collective agreement is binding and enforceable.

PART 17 — EMPLOYMENT DISPUTES

Object of this Part

167. The object of this Part is to set out procedures for the resolution of employment disputes.

Procedures for settling disputes

168.—(1) An employment contract must contain procedures for settling disputes.

(2) The procedures required by subsection (1) must be—

- (a) agreed procedures that are not inconsistent with the requirements of this Part; or
- (b) if there are no agreed procedures, the procedures set out in Schedule 6.

(3) The agreed procedures of the types referred to in subsection (2)(a) may confer jurisdiction on the Permanent Secretary to refer the employment dispute to the Mediation Services or to the Tribunal.

Reporting of disputes

169.—(1) A dispute may be reported to the Permanent Secretary by—

- (a) an employer who is a party to the dispute; or
- (b) a registered trade union that is a party to the dispute.

(2) A report of a dispute must be made in writing and in a prescribed manner.

(3) The party reporting a dispute must, within 3 days, provide a copy of the report of the dispute to each party to the dispute.

Decisions by the Permanent Secretary

170.—(1) The Permanent Secretary has the power to accept or reject a dispute reported to him or her under section 169 within 30 days from the date of receiving the report of dispute.

(2) The Permanent Secretary must:

- (a) inform the parties that he or she accepts or rejects the dispute; and
- (b) give reasons for rejecting a dispute;

(3) If a dispute is accepted by the Permanent Secretary, the dispute becomes an employment dispute for the purpose of this Promulgation.

(4) The Permanent Secretary must—

- (a) refer the employment dispute to the Tribunal if the dispute relates to interpretation, application or operation of an employment contract; or
- (b) in any other case, refer the employment dispute to Mediation Services.

(5) If an employment dispute is referred to Mediation Services, the mediation process must first be exhausted before the employment dispute is referred to the Tribunal by the Mediator.

(6) The Permanent Secretary must not accept a report of dispute after 6 months from the date on which the dispute arose except where the delay to report was caused by mistake or other good cause.

(7) The Permanent Secretary must, in writing, inform the parties or their representatives about his or her decision to accept or reject the dispute.

(8) The decision by the Permanent Secretary under subsection (7) must be delivered by hand, registered mail or courier.

(9) In this section, “date on which the dispute arose” means the date commencing from the date the final decision is made on the grievance after the grievance procedure under an employment contract relating to the grievance has been exhausted.

Decision by the Tribunal to be made without delay

171. The Tribunal must make its decision on a matter referred to it under this Promulgation without delay and, in any case, within 60 days from the date of the completion of the hearing.

Decision may be retrospective

172. A decision concerning an employment dispute, which is made or effected by the Tribunal, may be made so as to have retrospective effect.

Right of appeal

173.— (1) If the Permanent Secretary rejects a report under this Part, the aggrieved party may appeal to the Tribunal.

(2) Any party that is aggrieved by a decision of the Tribunal under this Part may appeal to the Court.

PART 18 — STRIKES AND LOCKOUTS

Objects of this Part

174. The objects of this Part are—

- (a) to recognise that the requirement that a union and employer must deal with each other in good faith does not preclude certain strikes and lockouts being lawful;
- (b) to define lawful and unlawful strikes and lockouts; and
- (c) to ensure that where a strike or lockout is threatened in an essential service that there is an opportunity for a mediated solution to the problem.

Secret ballot a prerequisite to strike

175.— (1) No strike shall take place without providing a notice of secret ballot to the Registrar.

(2) A notice under subsection (1) must—

- (a) be served on the Registrar 21 days prior to the nominated date to hold the ballot;
- (b) state the date, time and place to hold the ballot; and
- (c) state the issues for the strike.

(3) The procedures to be followed for a secret ballot under subsection (1) are—

- (a) the ballot paper must state all the issues on which a strike mandate is sought;

- (b) each issue must be supported by more than 50% of all the members entitled to vote;
- (c) the secret ballot must be supervised by the Registrar; and
- (d) the unions must, as soon as possible and in writing, notify the Registrar of the result of the ballot.

(4) A secret ballot for a strike mandate under this section is valid for 6 months from the date of the declaration of the results.

Notice prerequisite for lockout

176.—(1) No lockout shall take place unless the employer gives 28 days written notice to the Permanent Secretary and the respective trade unions.

(2) A notice under subsection (1) is valid for 6 months from the date of the notice.

Unlawful strikes or lockouts

177. Participation in a strike or lockout is unlawful if the strike or lockout—

- (a) occurs while a collective agreement binding the workers participating in the strike or affected by the lockout is in force, unless-
 - (i) it was an aspect of a collective agreement that a right to strike or lockout was provided; or
 - (ii) it relates to a matter which is not covered by the existing collective agreement or variation to the collective agreement;
- (b) occurs during bargaining for a collective agreement or variation of a collective agreement that will bind the workers participating in the strike or affected by the lockout, unless—
 - (i) at least 21 days have passed since the bargaining was initiated;
 - (ii) on the date bargaining was initiated, the workers were bound by the same collective agreement and that collective agreement has expired; or
 - (iii) on that date the workers were bound by different collective agreements and at least one of those collective agreements has expired;
- (c) relates to a dispute reported under section 169 and is being processed in accordance with this Promulgation;
- (d) takes place in contravention of section 175 or 176;
- (e) takes place in contravention of section 186, 187 or 191(2);
- (f) takes place in contravention of a settlement by a Mediator or a decision of a Tribunal or the Court;
- (g) where a strike or lockout continues after it has been declared unlawful under section 180; or
- (h) where a strike or lockout continues after a health and safety issue is resolved in accordance with the Health and Safety at Work Act 1996.

Lawful strikes or lockouts on grounds of safety or health

178. Participation in a strike or lockout is lawful on grounds of health and safety, only if the workers who strike have, or the employer who locks out has, exhausted the health and safety dispute resolution procedures set out under the Health and Safety at Work Act 1996.

Effect of lawful strikes or lockouts

179. Lawful participation in a strike or lockout does not give rise—

- (a) to an action founded on tort;
- (b) to an action for the grant of an injunction; or
- (c) to any action or proceedings-
 - (i) for the breach of an employment contract;
 - (ii) for a penalty under this Promulgation; or
 - (iii) for the grant of a compliance order.

Power of the Minister to declare strike or lockout unlawful

180.—(1) If a strike or lockout is unlawful by virtue of this Promulgation, the Minister may, by order, declare the strike or lockout unlawful.

(2) The declaration is effective on the date the order is served on the union or the employer.

Court may order discontinuance of strike or lockout

181. Where there is a strike or lockout—

- (a) a union, in the case of the lockout;
- (b) an employer, in the case of the strike; or
- (c) the Minister, in the case of strike or lockout, in the public interest or in an essential service,

may apply to the Court for an injunction to discontinue the strike or lockout.

Employers not liable for wages

182.— (1) The workers are not entitled to any remuneration in respect of the period of any lawful lockout except where the lockout is unlawful.

(2) On the resumption of work by the workers, their services must be treated as continuous, despite the period of the lockout, for the purpose of rights and benefits that are conditional on continuous service.

Record of strikes and lockouts

183. If a strike or lockout occurs, the employer of the workers participating in the strike or affected by the lockout must—

- (a) keep a record, in the prescribed form, of the strike or lockout; and
- (b) give a copy of the record to the Permanent Secretary, within one month after the end of the strike or lockout.

Prohibition of expulsion of members

184.—(1) A person refusing to take part or to continue to take part in a strike or lockout, which under this Promulgation is unlawful, must not under the constitution or rules of his or her organisation, be—

- (a) expelled from an organisation;
- (b) liable to a fine or penalty;
- (c) deprived of a right or benefit to which the person or his or her representatives was or is entitled; or
- (d) directly or indirectly disadvantaged.

(2) No provisions of a written law limiting the proceedings which may be entertained by the Court, and nothing in the constitution or rules or an organisation requiring the settlement of disputes in any manner shall apply to a proceeding for enforcing a right or exemption secured by this section.

(3) In the proceedings under subsection (2), the Court may, instead of ordering a person who has been expelled from membership of an organisation to be restored to membership, order that the person be paid compensation or damages out of funds of the organisation.

(4) In this Part “organisation” means a trade union or other association of persons which is representative of workers or employers.

PART 19 — PROTECTION OF ESSENTIAL SERVICES, LIFE AND PROPERTY

Object of this Part

185. The object of this Part is to prescribe the circumstances in which workers or employers engaged in essential services listed in Schedule 7 may undertake a strike or lockout.

Strikes in essential services

186.—(1) If a strike is contemplated by a trade union in respect of workers in or in control of, an essential service in pursuance of a dispute between the workers and their employer, the trade union must—

- (a) conduct a secret ballot in accordance with section 175; and

- (b) in writing, give at least 28 days notice of strike to the employer and serve a copy of the notice to the Permanent Secretary.
- (2) The notice of strike must—
- (a) be signed by the secretary of the trade union;
 - (b) state the date and time on which the strike is contemplated and the place or places where the contemplated strike will occur;
 - (c) state the category of workers who propose to go on strike;
 - (d) state the estimated duration of the strike; and
 - (e) be served by hand, registered mail or courier.
- (3) If—
- (a) the notice of strike does not comply with this section; or
 - (b) the strike does not take place as notified under subsection (2),

the notice is deemed not to have been made and any strike undertaken under the notice is unlawful.

Lockouts in essential services

187.—(1) No employer engaged in an essential service may lockout workers in that essential service unless—

- (a) the lockout is lawful under this Promulgation;
- (b) the employer gives 28 days notice to the Registrar and the trade union; and
- (c) the lockout notice in paragraph (b) is posted in a conspicuous place in all premises used for the purposes of that service where the notice may conveniently be read by persons employed in that essential service.

(2) The notice required by subsection (1)(b) must be signed by or on behalf of the employer and must specify—

- (a) the nature of the proposed lockout, including whether or not it will be continuous;
- (b) the place or places where the proposed lockout will occur;
- (c) the date and time on which the lockout will begin; and
- (d) the names of the workers who will be locked out.

Notices

188.—(1) An employer in an essential service must display in a conspicuous place in all premises used for the purposes of that service, copies of section 189 and Schedule 7 where such copies may conveniently be read by persons employed in that essential service.

(2) An employer who fails to comply with subsection (1) commits an offence.

(3) A person who, without lawful authority, damages, defaces, obliterates, destroys or removes a printed copy posted up as required under subsection (1) commits an offence.

Offences for breaches of service affecting essential services

189.—(1) A person who breaks his or her employment contract in respect of that person's performance of essential services knowing or having reasonable cause to believe that the probable consequences of breaking such employment contract, either alone or in combination with others, will be—

- (a) to deprive the public, or a section of the public wholly or to a great extent of an essential service, or substantially to diminish the enjoyment of that service by the public or by a section of the public; or
- (b) to endanger human life or cause serious bodily injury or to expose valuable property whether real or personal, to destruction, deterioration or serious damage,

commits an offence.

(2) A person who causes or procures or counsels or influences a worker to break the worker's employment contract or an employer causing a lockout to be declared in any of the circumstances referred to in subsection (1) commits an offence.

Requirements for Mediation Services

190. Where a notice of intention for a strike or lockout in an essential service is given, the Permanent Secretary must ensure that mediation services are provided as soon as possible to the parties to the proposed strike or lockout for the purpose of assisting the parties to avoid the need for the strike or lockout.

Minister to refer strike or lockout in essential services to the Court

191.—(1) Where there is a lawful strike or lockout in an essential service and—

- (a) neither party is willing to settle the employment dispute; or
- (b) neither party reports the dispute under section 169; or
- (c) the Minister is satisfied that the continuance of the strike or lockout is not in the public interest or will jeopardise or is likely to jeopardise the life or livelihood of the nation, economy or public safety,

the Minister may, in accordance with rules of the Court, refer the employment dispute or employment grievance to the Court.

(2) If a dispute or grievance is referred to the Court under subsection (1), the Minister must order the discontinuance of the strike or lockout.

PART 20 — INSTITUTIONS

Objects of this Part

192. The objects of this Part are to establish institutions and procedures that—

- (a) support successful employment relationships and the obligations of good faith;
- (b) recognise that employment relationships are more likely to be successful if differences in those relationships are resolved promptly by the parties themselves;
- (c) recognise that if differences in employment relationships are to be resolved promptly, information and assistance need to be available at short notice to the parties to the employment relationships;
- (d) recognise that the procedures for problem solving need to be flexible;
- (e) recognise that there will always be some cases that require judicial intervention;
- (f) recognise that judicial intervention needs to be that of a decision making body that is not inhibited by strict procedural requirements; and
- (g) where the parties are unable to resolve differences, provide for mediation and adjudication to be invoked to resolve such matters in a timely manner.

*Division I—Mediation Services**Mediation Services*

193.—(1) The Ministry must have a Mediation Unit to provide mediation services in accordance with this Promulgation, consisting of the following suitably qualified public officers—

- (a) a Chief Mediator responsible for the daily management of the Mediation Services; and
- (b) other Mediators.

(2) The Permanent Secretary may, in special circumstances, appoint a suitably qualified person not being a public officer as a Mediator, subject to terms and conditions as he or she thinks fit.

(3) In this section, “suitably qualified” means a person who satisfies the requirements for relevant qualification, mediation training and experience.

(4) The mediation services may include—

- (a) the provision of general information about employment rights and obligations;
- (b) the provision of information about what services are available about disputes and employment grievances;
- (c) other services that assist the smooth conduct of employment relationships;
- (d) other services (of a type that can address a variety of circumstances) to, promptly and effectively, resolve disputes or employment grievances; and
- (e) services to resolve any problem relating to employment contracts associated with the fixing of new terms and conditions of employment.

- (5) For the purposes of subsection (4), mediation services may be provided as follows-
- (a) by a telephone, facsimile, internet, e-mail service, teleconferencing, or any other means (whether as a means of explaining where information can be found or as a means of actually providing the information or of otherwise seeking to resolve the employment relationship); or
 - (b) by publishing pamphlets, brochures, booklets, or codes;
 - (c) by providing awareness and training on ways and means of, promptly and effectively, resolving employment disputes or employment grievances; and
 - (d) by any other means the Permanent Secretary thinks fit.
- (6) Any of the mediation services may be provided-
- (a) by a combination of the ways described in subsection (5); or
 - (b) in such other ways as the Permanent Secretary thinks fit to best support the objects of this Promulgation.

Procedures for Mediation Services

194.—(1) Where mediation services are provided, the Mediator who provides the service may decide what services are appropriate to the particular case in accordance with any prescribed procedures.

- (2) The Mediator, in providing mediation services-
- (a) may, having regard to the object of this Promulgation and the needs of the parties, follow such procedures, whether structured or unstructured, or do such things the Mediator considers appropriate to resolve the employment dispute or employment grievance promptly and effectively; and
 - (b) may receive any information, statement, admission, document, or other material, in any way that the Mediator thinks fit, whether or not it would be admissible in judicial proceedings.
- (3) A party to proceedings before a Mediator may appear personally or be represented by a person whom the Mediator is satisfied has the authority to act in the mediation proceedings.
- (4) No legal practitioner shall be allowed to represent a party during mediation.
- (5) If a Mediator fails to resolve an employment grievance or an employment dispute, the Mediator shall refer the grievance or dispute to the Employment Tribunal.

Confidentiality

- 195.—(1) Except with the consent of the parties or the relevant party—
- (a) the Mediator who provides mediation;
 - (b) a person to whom mediation services are provided;
 - (c) a person employed or engaged by the Ministry; or
 - (d) a person who assists either the Mediator or a person whom mediation services are provided,

must keep confidential any statement, admission, or document created or made for the purposes of the mediation and any other information that, for the purposes of the mediation, is disclosed orally in the course of the mediation.

- (2) No Mediator may give evidence in any proceedings about—
- (a) the provision of the mediation; or
 - (b) anything, related to the provision of the mediation, which comes to his or her knowledge in the course of the provision of the mediation.
- (3) No evidence is admissible in any court, or before any person acting judicially, of any statement, admission, document, or information that, by subsection (1), is required to be kept confidential.
- (4) Where mediation is provided for the purpose of assisting persons to resolve any problem in determining or agreeing on new terms and conditions of employment, subsections (1) and (3) do not apply to any statement, admission, document, or information disclosed or made in the course of mediation.

(5) Nothing in this section—

- (a) prevents the discovery or affects the admissibility of any evidence merely because the evidence was presented in the course of the provision of mediation;
- (b) prevents the gathering of information by the Ministry for research or educational purposes as long as the parties and the specific matters in issue between them are not identifiable;
- (c) prevents the disclosure by any person employed or engaged by the Ministry or any other person employed or engaged by the Ministry of matters that need to be disclosed for the purposes of giving effect to this Promulgation; or
- (d) applies in relation to the functions performed, or powers exercised, by any person under subsection(2).

Settlements

196.—(1) Where an employment dispute or employment grievance is resolved through mediation, the Mediator must—

- (a) ensure that the parties to the settlement sign the terms of the settlement; and
- (b) endorse the terms of settlement.

(2) Where the terms of settlement are signed and endorsed under subsection (1), the settlement is deemed to be a final and binding decision.

(3) Except for enforcement purposes, no party may challenge the terms of settlement under this section before the Tribunal, the Employment Court or any other court or tribunal, whether by action, appeal, application for review, or otherwise.

Mediation not to be challenged

197. No mediation may be challenged or called in question in any proceedings on the grounds—

- (a) that the nature and content of the mediation was inappropriate; or
- (b) that the manner in which the mediation were provided was inappropriate.

Independence of mediation personnel

198.—(1) The Permanent Secretary must ensure that Mediators—

- (a) are able to act independently, in deciding how to handle or deal with any particular dispute or employment grievance or aspect of it; and
- (b) are independent of any of the parties to whom mediation services are being provided in a particular case.

(2) The Permanent Secretary, in managing the overall provision of mediation services, is not prevented by subsection (3) from giving general instructions about the manner in which, and the times and places at which, mediation services are to be provided.

(3) Any such general instructions may include general instructions about the manner in which mediation services are to be provided in relation to particular types of matters or particular types of situations or both.

(4) Where a worker employed in the Ministry is a party to an employment grievance or a dispute the fact that another officer of the Ministry is engaged as the Mediator is not a ground for challenging the independence of that officer.

(5) Where the Permanent Secretary is a party to any matter in respect of which a person employed or engaged by Permanent Secretary is providing mediation services, that fact is not a ground for challenging the independence of that person.

Code of Ethics

199. The Permanent Secretary shall, in consultation with the stakeholders, develop a Code of Ethics on standards to guide Mediators in performing their duties and functions under this Promulgation.

Reference to Mediation Services

200.—(1) The following matters may be referred to mediation services—

- (a) in relation to employment grievance, by a worker whether or not a union member; or

(b) in relation to an employment dispute, reported under section 170, by the Permanent Secretary.

(2) Procedures for mediation services are to be prescribed.

(3) If an employment grievance has been referred to mediation services or a dispute reported to the Permanent Secretary—

(a) the employment grievance cannot be subsequently reported as a dispute; or

(b) the dispute cannot be subsequently referred to mediation services as if it were an employment grievance.

Notice to attend mediation

201.—(1) Where a matter is referred to the mediation services, a notice shall be issued to all parties to appear before the Mediator at a place and time specified in the notice.

(2) A party that fails to appear before the Mediator as required, without reasonable excuse, under subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$2,000.

Division 2—Employment Relations Tribunal

Establishment of Employment Relations Tribunal

202.—(1) This section establishes the Employment Relations Tribunal.

(2) The Tribunal is deemed for all intents and purposes as a subordinate court to the Employment Relations Court.

(3) The Tribunal has the jurisdiction, powers and functions conferred on it by this Promulgation or any other written law.

Membership

203.—(1) The Employment Relations Tribunal consists of the following members—

(a) a legal practitioner with not less than 7 years practice, preferably in employment relations, as the Chief Tribunal; and

(b) other members of the Tribunal who may or may not be legally qualified persons.

(2) For the purposes of exercising its jurisdiction, the Tribunal consists of one member only, subject to subsection (3).

(3) The Chief Tribunal may, in writing, nominate up to 3 members, including the Chief Tribunal, to hear and determine a matter.

Appointments

204.— (1) The Judicial Service Commission appoints the Chief Tribunal.

(2) The Minister appoints the other members of the Tribunal.

(3) In appointing the other members of the Tribunal, the Minister must take into account diversity of gender and ethnic representation.

Qualifications

205. Persons to be appointed as members of the Tribunal must have relevant qualifications or significant experience in employment relations and any other criteria that may be specified by the Minister.

Term of office

206.—(1) The Chief Tribunal and other members of the Tribunal are appointed for a term not exceeding 3 years.

(2) A member of the Tribunal is eligible for reappointment.

(3) A member of the Tribunal may be appointed on part-time basis.

Vacation and resignation

207.—(1) The Judicial Service Commission may remove the Chief Tribunal and the Minister may remove other members of the Tribunal for bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Commission or the Minister, as the case may be.

(2) In the case of alleged misconduct, the Judicial Service Commission may, in the case of the Chief Tribunal and the Minister may in the case of other members, appoint a committee consisting of a legal practitioner qualified for appointment as a judge and 2 lay members to conduct the hearing of the misconduct and make recommendations to the Commission or Minister, as the case may be.

(3) A member of the Tribunal may, by notice in writing addressed to the Minister, resign from office.

Remuneration

208. The Chief Tribunal and other members of the Tribunal are entitled to remuneration and other allowances determined by the Higher Salaries Commission.

Protection of members

209.—(1) A member of the Tribunal, in the performance of the member's duties under this Promulgation, has the same protection as is given under section 65 of the Magistrates Courts Act (Cap. 14) to judicial officers.

(2) For the avoidance of doubt as to the privileges and immunities of members of the Tribunal, parties, representatives, and witnesses in the proceedings of the Tribunal, it is deemed that the proceedings are judicial proceedings.

Functions of Tribunal

210.—(1) The general function of the Tribunal is to assist employers and their representatives and workers and their representative trade unions to achieve and maintain effective employment relations, in particular, by adjudicating and determining any grievance or dispute between parties to employment contracts.

(2) The Tribunal may, in relation to any matter, assist parties to amicably settle the matter and the settlement must be signed by the parties and endorsed by the Tribunal as a binding decision.

(3) Nothing in this Promulgation requires the Tribunal to provide mediation assistance in a matter as a prerequisite to adjudication.

Jurisdiction of Tribunal

211.—(1) The Tribunal has jurisdiction—

- (a) to adjudicate on employment grievances;
- (b) to adjudicate on employment disputes;
- (c) to adjudicate on whether a contract for service is a contract of service;
- (d) to adjudicate on all actions under this Promulgation for the recovery of wages or other money;
- (e) to adjudicate on all actions involving entitlements and related matters provided for by this Promulgation;
- (f) to make a compliance order under section 212;
- (g) to adjudicate on actions for breach of an employment contract;
- (h) to adjudicate on a question connected with the construction of an employment contract, which arises in the course of proceedings properly brought before the Tribunal;
- (i) to adjudicate on a question connected with the construction of a provision of this Promulgation or any other written law, which arises in the course of proceedings properly brought before the Tribunal, notwithstanding that the question concerns the meaning of this Promulgation under which the Tribunal is constituted or under which the Tribunal operates in a particular case;
- (j) to adjudicate on matters referred to the Tribunal by the Permanent Secretary;
- (k) to adjudicate on matters referred to it by the Mediation Services or any party to the mediation;
- (l) to hear and determine any appeal referred to it under this Promulgation;
- (m) to adjudicate on matters relating to equal employment opportunities under Part 9;
- (n) to adjudicate on any matter relating to trade unions or their members, including whether the rules of a trade union comply with the provisions of this Promulgation;

- (o) to hear and determine any appeal against any notice issued by a labour officer or a labour inspector under section 19;
- (p) to hear and determine any matter under the Workmen's Compensation Act (Cap. 94);
- (q) to hear and determine any appeal against any notice issued by a Health and Safety Inspector under Part VIII of the Health and Safety at Work Act 1996; and
- (r) to exercise other powers and functions as are conferred on it by this Promulgation or any other written law.

(2) Subject to subsection (3), the Tribunal has power—

- (a) to adjudicate on matters within its jurisdiction relating to claims up to \$40,000; and
- (b) to hear and determine offences against this Promulgation, as are prescribed by regulations.

(3) The Tribunal has powers to impose fines not exceeding \$2,000 or a term of imprisonment not exceeding 2 years; otherwise, it may refer the matter to the Court for sentencing.

(4) The members of the Tribunal who are not legally qualified have powers to adjudicate on matters within its jurisdiction relating to claims up to \$10,000, however they do not have jurisdiction to hear and determine matters under subsection (2)(b).

Power to order compliance

212.—(1) If a person has not observed or complied with—

- (a) a provision of this Promulgation or an employment contract; or
- (b) an order, determination, direction, decision or requirement made or given under this Promulgation by the Tribunal or a member or officer of the Tribunal,

the Tribunal may, by order, require a party to a proceeding to do or cease to do a specified thing or activity, for the purpose of preventing further non-compliance with the provision, order, determination, direction, decision or requirement, and must specify a time within which that order is to be obeyed.

(2) The Tribunal may on the application of a party to the proceedings or on its own motion, exercise the power under subsection (1).

(3) The Tribunal may, on the application of the person who is required to obey the order, extend the time specified under subsection (1).

(4) If the Tribunal makes an order of the kind described in subsection (1), that order—

- (a) may be subject to any terms and conditions the Tribunal thinks fit, including conditions as to the actions of the applicant; and
- (b) may be expressed to continue in force until a specified time or the happening of a specified event.

(5) If the Tribunal makes an order of the kind described in subsection (1) in any proceedings, it may then adjourn the proceedings, without imposing a penalty or making a final determination in the proceedings, to enable the order of the Tribunal to be complied with while the proceedings are adjourned.

(6) If a person fails to comply with a compliance order made under this section, the person prejudicially affected may apply to the Court for the exercise of its powers under section 221(6).

Further powers of Tribunal

213. Without limiting any other power of the Tribunal whether under this Part or otherwise, the Tribunal may determine—

- (a) the classification of work and rate of remuneration that would represent equal pay;
- (b) questions relating to the implementation of equal pay that may be referred to it pursuant to this Part;
- (c) such questions, including the interpretation of this Part, in relation to an instrument that is referred to it by a party to an instrument or the representative of a party, or a labour officer or labour inspector; or
- (d) other questions and give rulings as may be necessary for the exercise of its jurisdiction under this Part.

Recovery of wages and other money

214.—(1) Without affecting other remedies for the recovery of wages or other money payable by an employer to a worker under an employment contract, if—

- (a) there has been default in payment to a worker of wages or other money; or
- (b) payment of wages or other money has been made at a lower rate than that legally payable under this Promulgation or an employment contract,

the whole or any part, as the case may require, of the wages or other money may be recovered under this Promulgation by the worker or by a labour officer or a labour inspector on behalf of the worker by action commenced in the prescribed manner in the Tribunal, notwithstanding any acceptance or express or implied agreement by the worker to payment at a lower rate.

(2) An action under this section may be commenced within 6 years after the day on which the money became due and payable.

Failure to keep or produce records

215. If a claim is brought before the Tribunal under section 214 to recover wages or other money payable to a worker, the worker or labour officer or labour inspector may produce evidence to show that the defendant employer failed to keep or produce a wages and time record in respect of that worker as required by this Promulgation and that the failure prejudiced the worker's ability to bring an accurate claim under this Promulgation.

Procedures

216.— (1) The procedure of the Tribunal is subject to this Promulgation.

- (2) In all proceedings, the Tribunal must act fairly.
- (3) Sittings of the Tribunal may be held at times and places fixed by a member of the Tribunal.
- (4) Sittings of the Tribunal may be adjourned from time to time and from place to place by a member of the Tribunal, whether at a sitting or at a time before the time fixed for the sitting.
- (5) An officer of the Tribunal must keep and maintain a record of all sittings of the Tribunal.
- (6) The applicant may not withdraw a matter before the Tribunal without the written consent of the other parties or prior leave of the Tribunal.

Referral of question of law

217.— (1) The Tribunal may, in proceedings before it for adjudication, refer a question of law to the Court for its opinion and may for that purpose defer adjudicating upon and adjourn the proceedings subject to receiving that opinion.

- (2) A reference under subsection (1) must be made in the prescribed manner.
- (3) If the Court makes a determination on the question of law, the Court may refer the matter to the Tribunal for a decision in accordance with the determination.

Transfer of proceedings to Employment Relations Court

218.—(1) A party to the proceedings may apply to the Tribunal to have the proceedings transferred to the Court for the hearing and determination of the matter.

- (2) The Tribunal may order the transfer of the proceedings to the Court if the Tribunal is of the opinion that—
 - (a) an important question of law is likely to arise; or
 - (b) the case is of such a nature and of such urgency that it is in the public interest that it be transferred to the Court.

(3) If the Tribunal declines to transfer proceedings to the Court, the party concerned may seek special leave of the Court for an order that the proceedings be transferred to the Court and the Court must apply the criteria that govern the Tribunal's decision under subsection (2).

(4) An order for transfer of proceedings to the Court under this section may be made subject to any conditions as the Tribunal or Court may impose.

(5) If an order for transfer is made under subsection (2), the Court may, if it considers that the proceedings were not properly transferred, order that the Tribunal adjudicate on the proceedings at the first instance.

Division 3—Employment Relations Court

Establishment and constitution of Employment Relations Court

219. This section establishes the Employment Relations Court, as a Division of the High Court, consisting of not more than 3 judges appointed under section 132(2) of the Constitution to exercise the jurisdiction of the Employment Court.

Jurisdiction of the Employment Relations Court

220.—(1) The Employment Relations Court has jurisdiction—

- (a) to hear and determine appeals conferred upon it under this Promulgation or any other written law;
- (b) to hear and determine offences against this Promulgation;
- (c) to hear and determine all actions for the recovery of penalties under this Promulgation;
- (d) to hear and determine questions of law referred to it by the Tribunal;
- (e) to hear and determine matters transferred to it under section 218(2);
- (f) to hear and determine applications for leave to have matters before the Tribunal transferred to it under section 218(3);
- (g) to hear and determine a question connected with an employment contract which arises in the course of proceedings properly brought before it;
- (h) to hear and determine an action founded on an employment contract;
- (i) subject to subsection (2) and in proceedings founded on an employment contract to make any order that the Tribunal may make under any written law or the law relating to contracts;
- (j) to hear and determine a question connected with the construction of this Promulgation or of any other law, being a question that arises in the course of proceedings properly brought before the Court, notwithstanding that the question concerns the meaning of the Promulgation under which the Court is constituted or under which it operates in a particular case;
- (k) to order compliance with this Promulgation;
- (l) to hear and determine an application for a discontinuance of an order in respect of an unlawful strike or lockout under this Promulgation;
- (m) to hear and determine proceedings founded on tort relating to this Promulgation; or
- (n) to exercise other functions and powers as are conferred on it by this or any other written law.

(2) In exercising its jurisdiction under subsection (1)(i) to make an order cancelling or varying an employment contract or a term of an employment contract, the Court must, notwithstanding anything in subsection (1)(h), make an order only if an order should be made and any other remedy would be inappropriate or inadequate.

(3) In all matters before it, the Court has full and exclusive jurisdiction to determine them in a manner and to make decisions or orders not inconsistent with this Promulgation or any other written law or with the employment contract.

(4) No decision or order of the Court, and no proceedings before the Court, may be held to be invalid for want of form, or be void or in any way vitiated by reason of an informality or error in form.

Power of Employment Relations Court to order compliance

221.—(1) If a person has not observed or complied with—

- (a) a provision of this Promulgation; or

- (b) an order, determination, direction, or requirement made or given under this Promulgation by the Court,

the Court may, in addition to any other power it may exercise, by order require, in or in conjunction with any proceedings under this Promulgation to which that person is a party, that person to do a specified thing, or to cease a specified activity, for the purpose of preventing further non-observance of or non-compliance with that provision, order, determination, direction, or requirement, and must specify a time within which that order is to be obeyed.

- (2) The power given to the Court by subsection (1) may be exercised by the Court—
 (a) on the application of a party to the proceedings; or
 (b) of its own motion.

(3) The Court may extend the time specified under subsection (1) on the application of the person who is required to obey the order.

- (4) An order made under subsection (1) may—
 (a) be subject to the terms and conditions as the Court thinks fit (including conditions as to the actions of the applicant); and
 (b) be expressed to continue in force until a specified time or the happening of a specified event.

(5) If the Court makes an order of the kind described in subsection (1) in any proceedings, it may then adjourn the proceedings, without imposing a penalty or fine or making a final determination in the proceedings, to enable the order of the Court to be complied with while the proceedings are adjourned.

(6) If a person fails to comply with a compliance order made under this section, or if the Court, on an application under section 212(6), is satisfied that a person has failed to comply with the compliance order under section 212, the Court may do one or more of the following things—

- (a) if the person in default is a plaintiff, order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by the plaintiff in the proceedings;
 (b) if the person in default is a defendant, order that the defendant's defence be struck out and that judgment be entered accordingly;
 (c) order that the person in default pays a penalty in a sum not exceeding \$10,000, or be sentenced to imprisonment for a term not exceeding 3 months; or;
 (d) order that the property of the person in default be sequestered.

Sittings

222.— (1) Sittings of the Court must be held at times and places as are from time to time fixed by a judge.

(2) Sittings may be fixed either for a particular case or generally for a class of cases then before the Court and ready for hearing.

(3) The Court may be adjourned from time to time and from place to place by a judge or by the Registrar of the Court, whether at a sitting or at a time before the time fixed for the sitting.

Prompting of wages

223.— (1) Notwithstanding any written law, if an attachment has been issued against the property of an employer, the proceeds realised may not be paid by the Court to any person until any order obtained against the employer in respect of a worker's wages has been satisfied to the extent of a sum not exceeding 3 years wages of the worker, and the Court has paid to the Permanent Secretary any sum the worker is entitled to be paid under this Promulgation.

(2) Subsection (1) does not prevent a worker from recovering any balance due on the order after payment under that subsection by ordinary process of law.

Case stated

224. In a matter before the Employment Relations Court, a judge may, on own motion or on application by a party, state a case to the Court of Appeal on a question of law arising in the matter, excluding a question as to the construction of an employment contract.

Proceedings not to abate by reason of death

225. Proceedings before the Court are not abated by reason of the death of a party to the proceedings in which case the legal personal representative of the deceased party must be substituted in the deceased party's stead.

*Division 4—Other General Provisions**Registrar and staff of the Court and the Tribunal*

226. The Permanent Secretary may—

- (a) designate one officer as the Registrar of the Court;
- (b) designate other officers as assistant registrars of the Court or the Tribunal; and
- (c) provide other staff necessary for the proper administration of the Court and the Tribunal.

Seals

227. The Tribunal and the Court must each have a seal, which must be judicially noticed by any other court or tribunal for all purposes.

Contempt

228.—(1) This section applies if a person—

- (a) assaults, threatens, intimidates, or wilfully insults a person, being a member of the Tribunal, a Judge, an officer of the Tribunal, a Registrar of the Court, any other officer of the Court, or a witness, during that person's sitting or attendance in the Tribunal or Court, or in going or returning from the Court or Tribunal;
- (b) wilfully interrupts or obstructs the proceedings of the Tribunal or the Court or otherwise misbehaves in the Tribunal or Court; or
- (c) wilfully and without lawful excuse disobeys an order or direction of the Tribunal or the Court in the course of the hearing of proceedings.

(2) If a person is cited for contempt in the course of a sitting of the Tribunal or the Court, the Tribunal or the Court may order a police officer, with or without the assistance of any other person to take the offender into custody and detain the offender until the end of the sitting.

(3) If the Tribunal cites a person under this section for contempt, the Tribunal must refer the matter to the Court for contempt proceedings.

(4) The Court may, upon finding a person guilty of contempt, impose a fine not exceeding \$1,000 or a term of imprisonment not exceeding 3 months or both.

Appearance of parties

229.—(1) A party to a proceeding before the Tribunal or Court may—

- (a) appear personally;
- (b) be represented by a representative whom the Tribunal or the Court is satisfied has authority to act in proceedings; or
- (c) be represented by a legal practitioner,

and may produce before the Tribunal or the Court witnesses, documents, books, and other evidence as the party thinks fit.

(2) In any proceedings, the Tribunal or the Court may, with leave of the Tribunal or the Court, allow a person who, in the opinion of the Tribunal or the Court, is entitled to be heard, to appear or to be represented.

(3) The Tribunal or the Court may order any person to appear or to be represented before it.

Employment grievance remedies

230.—(1) If the Tribunal or the Court determines that a worker has an employment grievance, it may, in settling the grievance, order one or more of the following remedies—

- (a) reinstatement of the worker in the worker's former position or a position no less advantageous to the worker;
- (b) the reimbursement to the worker of a sum equal to the whole or any part of the wages or other money lost by the worker as a result of the grievance;

- (c) the payment to the worker of compensation by the worker's employer, including compensation for—
 - (i) humiliation, loss of dignity, and injury to the feelings of the worker;
 - (ii) loss of any benefit, whether or not of a monetary kind, which the worker might reasonably expect to obtain if the employment grievance had not occurred; or
 - (iii) loss of any personal property.

(2) If the Tribunal or Court determines that a worker has an employment grievance by reason of being unjustifiably or unfairly dismissed, the Tribunal or Court may—

- (a) in deciding the nature and extent of the remedies to be provided in respect of the employment grievance, consider the extent to which the actions of the worker contributed towards the situation that gave rise to the employment grievance; and
- (b) if those actions so require, reduce the remedies that would otherwise have been decided accordingly.

(3) If the remedy of reinstatement is provided by the Tribunal or the Court, the worker must be reinstated immediately or on such a date as is specified by the Tribunal or the Court and, notwithstanding an appeal against the determination of the Tribunal or the Court, the provisions for reinstatement must, unless the Tribunal or the Court otherwise orders, remain in force pending the determination of the appeal.

Evidence

231.—(1) In proceedings brought before the Tribunal, the Tribunal may accept and admit evidence as it thinks fit.

(2) The Tribunal is not bound by the strict rules of evidence.

(3) The Tribunal or the Court may, if it thinks fit, dispense with adducing evidence on matters on which all parties to the proceedings have agreed in writing.

(4) A person summoned under this section as a witness who refuses or neglects, without sufficient cause, to appear or to produce documents required by the summons to be produced is liable on conviction by the Court to a fine not exceeding \$2,000.

(5) No person summoned under this section as a witness is liable to a fine under subsection (4) unless there has been paid or tendered to that person at the time of the service of the summons, or at some other reasonable time before the hearing, the sum in respect of that person's expenses as is for the time being prescribed in that behalf with respect to witnesses.

Power to summons and produce documents

232. Without prejudice to subsections (1), (2) and (3) of section 231, the following provisions must apply with respect to evidence in proceedings before the Tribunal or the Court—

- (a) on the application of any of the parties, the Registrar of the Court must issue a summons to a person to appear and give evidence before or to produce documents or things to the Tribunal or the Court;
- (b) the summons must be in the prescribed form, and may require the person to produce before the Tribunal or the Court; books, papers, or other documents in that person's possession or under that person's control in any way relating to the proceedings;
- (c) all documents produced before the Tribunal or the Court, whether produced voluntarily or pursuant to a summons, may be inspected by the Tribunal or the Court, and also by the parties as the Tribunal or the Court allows, but the information obtained must not, unless the Tribunal or the Court in its discretion so directs, be made public, and the parts of the documents as, in the opinion of the Tribunal or the Court, do not relate to the matter at issue may be sealed;
- (d) subject to the discretion of the Tribunal or the Court, a person attending the Tribunal or the Court on a summons, and every other person giving evidence before the Tribunal or the Court is entitled, as against the party calling that person, to a sum for that person's expenses and loss of time according to the scale of fees prescribed for witnesses;
- (e) a person present in Court or before the Tribunal who is required to give evidence but refuses to be sworn or to give evidence is liable on conviction by the Tribunal or the Court to a fine not exceeding \$2,000;

- (f) for the purpose of obtaining the evidence of witnesses at a distance the Court, or, while the Court is not sitting, the judge has all necessary powers and functions relating to the taking of evidence at a distance, but evidence may be taken at a distance by a duly authorised officer of the Ministry or by the Registrar;
- (g) the Tribunal or the Court may take evidence on oath, and for that purpose the judge, the Registrar, or any other person acting under the express or implied direction of the Tribunal or the Court, may administer an oath;
- (h) on an indictment for perjury it is sufficient to prove that the oath was administered under paragraph (g);
- (i) a party to the proceedings must be competent and may be compelled to give evidence as a witness; and
- (j) the Tribunal or the Court in its discretion may order that all or a part of its proceedings may be taken down in shorthand or recorded in any other manner.

Power to proceed if parties fail to attend

233. If, without good cause shown, a party to proceedings before the Tribunal or the Court fails to attend in person or by representation, the Tribunal or the Court may act as fully in the matter before it as if that party had duly attended or been represented.

Validation of informal proceedings, etc

234.—(1) If anything which is required or authorised to be done by this Promulgation is not done within the required time limit, or is done informally, the Court or the Tribunal may, if the matter is within its jurisdiction, on the application of a person interested, order—

- (a) the extension of time within which the thing may be done; or
- (b) the validation of the thing informally done.

(2) The power under subsection (1) does not include the power to make an order in respect of judicial proceedings already instituted in another court of law, other than the Court.

Powers to join as parties, etc

235. In order to enable the Court or the Tribunal to dispose of a matter effectively, the Court or the Tribunal may, at any stage of the proceedings, on its own motion or upon application, and upon terms as it thinks fit, by order—

- (a) direct parties to be joined or struck out;
- (b) amend or waive an error or defect in the proceedings;
- (c) subject to this Promulgation, extend the time within which anything is to be done or may be done; or
- (d) generally give directions as are deemed necessary or expedient in the circumstances.

Costs

236. The Tribunal or the Court in proceedings may order a party to pay to any other party costs and expenses (including expenses of witnesses) as it thinks reasonable, and may apportion the costs between the parties or any of them as it thinks fit, and may at any time vary or alter the order in the manner as it thinks reasonable.

Power to prohibit publication

237. The Tribunal or the Court may, with or without conditions, order that a part of any evidence given before it or the name of a witness not be published.

Rules of the Tribunal and Employment Relations Court

238.—(1) The Chief Justice may from time to time make rules for the purpose of regulating the practice and procedure of the Tribunal or the Court.

- (2) In the absence of such rules, or where no provision is made for a particular circumstance—
 - (a) the Magistrates' Courts Rules apply to the proceedings before the Tribunal; and
 - (b) the High Court Rules apply to the proceedings before the Employment Relations Court.

*Division 5 – Appeals**Appeals from Permanent Secretary*

239.—(1) A decision of the Permanent Secretary that is subject to appeal under this Promulgation lies as of right to the Tribunal.

(2) An appeal from a decision of the Permanent Secretary must be made by way of a Notice of Motion filed with the Registry of the Tribunal within 21 days from the date the proposed appellant received the decision.

(3) An appeal under this section is to be heard and determined by the Tribunal.

Appeals from Registrar of Trade Unions

240.—(1) A decision of the Registrar of Trade Unions that is subject to appeal under this Promulgation lies as of right to the Tribunal.

(2) An appeal from a decision of the Registrar of Trade Unions must be made by way of a Notice of Motion filed with the Registry of the Tribunal within 21 days from the date the proposed appellant received the decision.

(3) An appeal under this section is to be heard and determined by the Tribunal.

Appeals from the Minister

241.—(1) An appeal from a decision of the Minister under Part 18 or Part 19 lies as of right to the Court.

(2) An appeal from a decision of the Minister must be made by way of a Notice of Motion filed with the Registry of the Court within 21 days from the date the proposed appellant received the decision.

Appeals from Tribunal to Employment Relations Court

242.—(1) A party to proceedings before the Tribunal who is aggrieved by a decision of the Tribunal in the proceedings may appeal as of right or by leave to the Court.

(2) An appeal to the Court must be made in the prescribed manner within 28 days from the date of the decision of the Tribunal.

(3) A notice of appeal must specify—

- (a) the grounds of appeal;
- (b) the decision or the part of the decision appealed from; and
- (c) the precise form of the order which the appellant proposes to seek from the Court.

(4) Subject to subsection (2) an appeal lies as of right to the Employment Court—

- (a) from any first instance decision of the Tribunal; or
- (b) where any ground of appeal from any appellate jurisdiction of the Tribunal involves a question of law.

(5) No appeal shall lie—

- (a) from an appeal allowing an extension of time;
- (b) from any decision of the Tribunal where it is provided by this Promulgation that the decision is final;
- (c) except with leave of the Tribunal, from a decision made by consent of the parties;
- (d) except with leave of the Tribunal, from a decision as to costs only;
- (e) except with leave of the Tribunal or the Court—
 - (i) from any interlocutory decision;
 - (ii) from disallowing an appeal from the decision of the Permanent Secretary or the Tribunal on extension of time; or
 - (iii) from any compliance order of the Tribunal.

(6) For the purposes of hearing and determination of any appeal, the Court has all the power, authority and jurisdiction of the Tribunal and such other authority vested in a superior Court.

(7) When hearing and determining an appeal the Court may —

- (a) confirm, modify, or reverse the decision or a part of the decision of the Tribunal or set aside the decision of the Tribunal and substitute its own decision; or
- (b) refer the matter with or without any direction to the Tribunal to reconsider, either generally or in respect of specified matters, the whole or a part of the matter to which the appeal relates.

(8) If an appeal is referred back to the Tribunal, the Tribunal must hear and dispose of the matter without any delay.

Appeal on interlocutory order of Tribunal

243. A party who is dissatisfied with an interlocutory order of the Tribunal may, within 14 days, apply to the Court for leave to appeal.

Appeal on interlocutory order of the Court

244. A party who is dissatisfied with an interlocutory order of the Employment Court may, within 14 days, apply to that Court for leave to appeal to the Court of Appeal or if leave to appeal is refused by the Employment Court apply to the Court of Appeal for leave to appeal.

Appeals to Court of Appeal

245.—(1) An appeal from the Court shall lie to the Court of Appeal.

(2) For the purposes of an appeal to the Court of Appeal, the Court of Appeal Act applies, with necessary modifications.

(3) An appeal from the Employment Relations Court must be filed within 28 days of the delivery of the decision or judgment.

(4) A notice of appeal does not operate as a stay of proceedings in respect of the decision to which the appeal relates unless the Employment Relations Court or the Court of Appeal so orders.

PART 21 — OFFENCES

Offence to delay or obstruct officer

246.—(1) A person who—

- (a) wilfully delays or obstructs the Permanent Secretary or a labour officer, or labour inspector exercising a power or performing a duty conferred by this Promulgation;
- (b) fails to comply with a direction, requirement, request, demand or inquiry of the Permanent Secretary, a labour officer or a labour inspector made or given in accordance with the powers conferred by this Promulgation; or
- (c) conceals or prevents a person from appearing before or being examined by the Permanent Secretary, the labour officer or the labour inspector,

commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 12 months.

(2) A person who—

- (a) makes or causes to be made or knowingly allows to be made an entry in a record required under this Promulgation to be kept by employers, which the person knows to be false in a material particular, or produces or provides; or
- (b) produces, provides or causes or allows to be produced or provided, a wages sheet, record, list or information which the person knows to be false in a material particular,

commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 12 months or both.

Payment of wages

247. An employer who—

- (a) fails to pay wages in accordance with the worker's contract of service except where the employer proves that he acted in good faith or took reasonable steps to pay the wages;
- (b) upon demand in writing by the Permanent Secretary, a labour officer or a labour inspector, fails within 7 days of the demand to pay any wages due to a worker;
- (c) if the employment contract—
 - (i) provides for the payment of wages at the end of the contract period; or
 - (ii) where a worker's employment is being terminated under this Promulgation,

fails to pay all wages due to a worker after a demand has been made within 24 hours of the termination of the contract or after expiry of the notice required under this Promulgation;

- (d) pays or agrees to pay the wages of a worker other than in the currency which is legal tender at the place where the wages are paid;
- (e) makes a deduction from the wages of a worker in the nature of a fine, or due to poor or negligent work;
- (f) imposes conditions upon the expenditure of the worker's wages;
- (g) except where expressly permitted by this Promulgation or any other law, makes a deduction or makes an agreement or contract with a worker for a deduction from the wages to be paid by the employer to the worker, or for a payment to the employer by the worker;
- (h) pays a worker on a piece-work basis which results in the worker receiving less than the rate of wages prescribed in the applicable employment contract,

commits an offence and is liable on conviction—

- (i) for an individual, to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 5 years or both; or
- (ii) for a corporation to a fine not exceeding \$100,000.

Offence by employer relating to worker's property

248. An employer commits an offence if—

- (a) before or after the termination of the employment contract; and
- (b) upon demand made by the worker, the Permanent Secretary, a labour officer or labour inspector,

without lawful cause, the employer refuses to deliver to the worker or permit the worker to take, any property owned by the worker that is lawfully in the employer's possession or control (whether in any land, premises or thing) without the employer having reasonable cause for believing that the property was lawfully detained, and is liable on conviction to a fine not exceeding \$5,000.

Offence by worker relating to money owed to employer

249. A worker who owes money to the employer in respect of wages or benefits in kind received in advance and leaves the service of the employer with intent not to return thereto under circumstances from which it appears that the worker intended to defraud the employer commits an offence, and is liable on conviction to a fine not exceeding \$5,000, or to a term of imprisonment not exceeding 2 years or both.

Offences where strikes or lockouts are unlawful

250.—(1) A trade union or employer that has been or is engaged in a strike or lockout that is or has been declared unlawful commits an offence.

(2) A person who, in connection with a strike or lockout under subsection (1), causes, procures, counsels or in any way encourages, persuades or influences others to take part in such a strike or lockout commits an offence.

(3) If the person who commits an offence under this section was at the time of the offence an officer or official of the organisation of employers or workers, or was purporting to act as an officer or official, it is a sufficient defence to the organisation that the person committed the offence without its authority.

(4) If an officer or official, or person purporting to act as an officer or official of an organisation of employers or workers commits an offence with the authority of that organisation, it is a sufficient defence to a person who at the time of the offence was an officer or official of that organisation that the offence was committed without the person's consent or connivance or that the person exercised all reasonable diligence to prevent the commission of the offence.

(5) A person who ceases work or refuses to continue work, being work which in terms of that person's employment the person is bound to do, in circumstances which gives rise to reasonable suspicion that the person is taking part in or acting in furtherance of an unlawful strike commits an offence.

(6) It is a sufficient defence to an offence under subsection (5) that the person ceased work, or refused to continue work, for causes wholly unconnected with that strike.

Misuse of money or property of a trade union

251.—(1) If, on complaint made by a member of a registered trade union or the Registrar, the Court is satisfied that a person—

- (a) has in his or her possession or control property of a trade union without authority under the constitution and rules of the trade union; or
- (b) has unlawfully expended or withheld money of the trade union,

the Court may order the person to deliver the property to the trade union or to pay to the trade union the money unlawfully expended or withheld.

(2) A complaint under subsection (1) must not be entertained if the complainant is a person other than the Registrar, unless the Court is satisfied that the complainant is, or was on the date of the complaint, a member of the trade union in respect of whose property the complaint is made.

(3) A person bound by an order made under subsection (1) who fails to comply within the time specified in the order commits an offence and is liable on conviction to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 4 years or both.

Failure to give notice or produce document

252.—(1) A registered trade union that fails to give notice, or to send or to produce any document which it is required by or under this Promulgation to give, send or produce, commits an offence and is liable on conviction to a fine not exceeding \$10,000.

(2) If an offence has been committed by a registered trade union under subsection (1), every officer of the trade union and every person required by the rules of the trade union to give the notice or to send or to produce the document also commits an offence and is liable on conviction to a fine not exceeding \$200, unless the officer or person satisfies the Court that he or she was ignorant of the failure which is the subject of the charge.

Offences by company or corporation

253.—(1) Where an offence against this Promulgation committed by a company or corporation is proved to have been committed with the consent or connivance of, or to have been attributable to a wilful neglect on the part of an officer of the company or corporation or person purporting to act as such an officer, that officer or person also commits the offence and is liable to the penalty for that offence.

(2) Where in proceedings under this Promulgation it is necessary to establish the intention of a company or corporation, it is sufficient to show that an officer, worker or agent of the company or corporation had that intention.

(3) In this section, "officer" of a company or corporation means—

- (a) a director, secretary or an executive officer; or
- (b) a person whose directions or instructions the directors are accustomed to act; or
- (c) a person concerned with its management.

Intimidation or annoyance

254.—(1) A person who, with a view to compelling any other person to do or abstain from doing an act which the other person has a legal right to do or abstain from doing under Part 18 or 19, wrongfully and without legal authority—

- (a) uses violence to or intimidates that other person or his or her spouse or children or injures or damages that other person's property;
- (b) persistently follows that other person about from place to place;
- (c) hides any tools, clothes, or other properties owned or used by the other person, or deprives, or hinders that other person of their use;
- (d) watches or besets the house or other place where the other person resides, works, carries on business or happens to be, or is at the approach to that house or place; or
- (e) follows that other person with 2 or more further persons in a disorderly manner in or through any street, road or place,

commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both.

(2) For the purpose of subsection (1)(d), a person besets a house or place if the person attends at or near it in the manner or in such number as would constitute an offence.

Peaceful picketing and prevention of intimidation

255.—(1) It is lawful for one or more persons acting on their own behalf or on behalf of a registered trade union or of an individual employer or firm in contemplation or furtherance of an employment dispute to attend at or near a place where a person works or carries on business or happens to be, such persons so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading a person to work or abstain from working.

(2) If one or more persons attend at or near a house or place where a person resides, carries on business or happens to be—

- (a) for the purpose of obtaining or communicating information or of persuading or inducing a person to work or abstain from working; and
- (b) in such numbers or in such manner as to be calculated to intimidate any person in that house or place, to obstruct the approach to, or the entry to, or exit from it, or to lead to a breach of the peace,

that person or persons commit an offence and are liable on conviction to a fine not exceeding \$5,000 or a term of imprisonment not exceeding 12 months or both.

General penalty

256. A person who commits an offence under this Promulgation for which no particular penalty is provided, is liable on conviction—

- (a) for an individual, to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both;
- (b) for a company or corporation or trade union, to a fine not exceeding \$50,000; and
- (c) where applicable, to disqualification from holding a post as an officer of a trade union for 5 years from the date of conviction for the offence.

Exemption of employer on conviction of actual offender

257.—(1) If—

- (a) an employer is charged with an offence under any of the provisions of this Promulgation, the employer is entitled, upon information duly laid, to have any other person whom the employer alleges to be the actual offender charged and brought before the Court at the time appointed for hearing of the charge; and
- (b) after the commission of the offence has been proved, the employer proves to the satisfaction of the Court that the employer has used due diligence to enforce the relevant provisions of this Promulgation; and
- (c) that other person has committed the offence in question without the employer's knowledge, consent or connivance,

the other person must be convicted of the offence and the employer must be exempt from the penalty.

(2) If, at the time of investigating the offence, a labour officer or labour inspector is satisfied that, the employer has used due diligence to enforce the provisions of this Promulgation and another person has committed the offence, the labour officer or labour inspector must proceed against that other person other than the employer.

(3) The provisions of this section do not apply for offences and misconduct concerning sexual harassment.

PART 22 — MISCELLANEOUS

Removal of liability for interfering with a person's business

258. An act done by a person in contemplation or furtherance of an employment dispute is not actionable only on the ground that it induces some other person to break an employment contract or that it is an interference with the trade, business or employment of some other person, or with the right of some other person to dispose of that person's capital or labour.

Prohibition of action of tort

259. An action against a registered trade union or any of its members or officials on behalf of themselves and all other members of the union in respect of a tortious act alleged to have been committed by or on behalf of the union must not be entertained by any court.

Protection against civil and criminal proceedings

260. No action or proceeding, civil or criminal, lies against the Permanent Secretary or a labour officer, labour inspector and a member of an institution or body established by or under this Promulgation, for anything done or omitted in good faith in the exercise or purported exercise of their functions under this Promulgation.

Conspiracy in employment disputes

261.—(1) An agreement or combination by 2 or more persons to do or procure to be done an act in contemplation or furtherance of an employment dispute is not punishable as a conspiracy if the act when committed by one person would not be punishable as a crime.

(2) An act done in pursuance of an agreement or in combination by 2 or more persons, if done in contemplation or furtherance of an employment dispute, is not actionable unless the act if done without the agreement or in combination would be actionable.

(3) Nothing in this section exempts from punishment a person found guilty of a conspiracy for which a punishment is imposed by any other written law.

(4) Nothing in this section affects the law relating to riot, unlawful assembly, breach of the peace, sedition, or an offence against the Government.

(5) For the purpose of this section, "crime" means an offence for the commission of which the offender is liable to imprisonment.

Time for instituting proceedings for offences

262. Notwithstanding anything in any other written law, proceedings for an offence against this Promulgation may be instituted within the period of 12 months after the act or omission alleged to constitute the offence except that the Court may grant leave to extend such period for a further 6 months.

Fixed penalties

263.—(1) The offences and the fixed penalties for which fixed penalty notices may be issued are set out in Schedule 8.

(2) A labour officer or other public officer authorised in writing by the Permanent Secretary may issue a fixed penalty notice for the purpose of this Promulgation.

(3) The fixed penalty notice must be issued in the prescribed form and contain the prescribed matters.

(4) The penalties prescribed in fixed penalty notices shall not exceed one-fifth of the maximum penalty prescribed for that offence.

Regulations

264.—(1) The Minister may, on advice of the Board, make regulations to give effect to the provisions of this Promulgation, and in particular to make regulations for any of the following purposes—

- (a) providing for the particulars to be contained in written contracts of service, and for the manner of their execution, attestation and registration and for all other matters relating to their making, enforcement, transfer and cancellation;

- (b) prescribing the adequacy and cash value of housing and other essential supplies where they form part of the remuneration of workers in employment generally or in relation to a particular kind of work or employment;
- (c) prescribing the hours of work of children;
- (d) prohibiting or regulating the employment of persons suffering from an infectious disease or any prescribed physical disability;
- (e) prescribing the records, registers, books, accounts and other documents to be kept and the information or returns to be rendered by employers and other persons in respect of workers including working children;
- (f) providing for the application of sums due to the estates of deceased workers;
- (g) prohibiting, restricting, controlling or regulating the employment of children in workplaces or specified occupations;
- (h) prescribing for any period the maximum number of hours during which a worker or class of workers, either generally or in relation to a particular kind of work or employment, may be required to work;
- (i) regulating the enlisting, recruitment, engagement and the embarkation of workers to be employed under foreign contracts of service;
- (j) providing for the establishment and administration of public employment exchanges;
- (k) providing for all matters relating to the return of workers from the place of employment to the place of engagement;
- (l) providing for the giving of security by employers or other persons and all matters relating thereto;
- (m) prescribing the manner in which trade unions and the constitutions and rules of trade unions are to be registered and the fees payable for registration;
- (n) prescribing the manner in which and the qualifications of persons by whom the accounts of registered trade unions are to be audited;
- (o) prescribing the conditions subject to which inspection of documents kept by the Registrar will be allowed;
- (p) regulating the creation, administration, protection, control, disposal and safe custody of the funds of registered trade unions;
- (q) regulating the conduct of secret ballots by registered trade unions;
- (r) prescribing procedures in the issuance of notices under this Promulgation;
- (s) prescribing procedures and rules for resolution of employment related matters for mediation services;
- (t) prescribing procedures for authorisation of recruitment agents and private employment agencies for local or overseas employment;
- (u) prescribing fees and forms for the purpose of this Promulgation;
- (v) regulating the employment conditions of seafarers;
- (w) prescribing wages and salaries criteria and guidelines for workplaces; and
- (x) prescribing all matters which are required to be prescribed by this Promulgation.

(2) Regulations made under the provisions of subsection (1) may impose conditions, require acts or things to be performed or done to the satisfaction of the Permanent Secretary, Registrar of Trade Unions, Mediator, labour officer or labour inspector and empower the Permanent Secretary or any such officer to issue orders either orally or in writing prohibiting acts or things from being performed or done or requiring acts or things to be performed or done, and prescribe periods or dates upon, within or before which the conditions must be fulfilled, and provide for appeals against orders, notices or directions.

(3) Regulations made under this Promulgation may impose a fine not exceeding \$20,000 or a term of imprisonment not exceeding 2 years or both.

(4) The Minister may, on the advice of the Board, issue codes of practice or guidelines for the purposes of this Promulgation.

(5) The Minister may, by regulations, amend any Schedule subject to subsections (6) and (7).

(6) If the Minister is satisfied that it is in the interest of national security, public safety, public order or protecting the national economy that a service be added to Schedule 7, the Minister may, subject to resolution of the House of Representatives, add a service to Schedule 7 for a specific period.

(7) For the purposes of subsection (6), if it is impracticable to obtain the resolution of the House of Representatives, the Minister may, with the approval of Cabinet, add a service to Schedule 7, but such regulation shall be laid before the House of Representatives for a resolution, as soon as practicable.

Repeals, consequential amendments and savings

265.—(1) The following Acts are repealed—

- (a) Employment Act (Cap. 92);
- (b) Trade Disputes Act (Cap. 97);
- (c) Wages Councils Act (Cap. 98);
- (d) Trade Unions Act (Cap. 96);
- (e) Trade Unions (Recognition) Act 1998; and
- (f) Public Holidays Act (Cap. 101).

(2) The Workmen’s Compensation Act (Cap.94) is amended—

- (a) by deleting “resident magistrate” and substituting “Employment Relations Tribunal”; and
- (b) by deleting “High Court” and substituting “Employment Relations Court”,

wherever they appear in that Act.

(3) The Sugar Industry Act (Cap 206) is amended to allow for employment disputes and grievances in the sugar industry to use the machinery under the Promulgation.

(4) The provisions under the Daylight Savings Act 1998, Shop (Regulation of Hours and Employment) Act (Cap. 100) and the Industrial Associations Act (Cap. 95) are not amended under this Promulgation.

(5) At the commencement of this Promulgation, the existing members of the Labour Advisory Board appointed under the Employment Act (Cap. 92) continue in office under the same terms and conditions as if they were appointed under this Promulgation as members of the Employment Relations Advisory Board.

(6) At the commencement of this Promulgation, the existing members of all the Wages Councils appointed under the Wages Councils Act (Cap. 98) continue in office under the same terms and conditions as if they were appointed under this Promulgation as members of the respective Wages Councils.

(7) At the commencement of this Promulgation, any subsidiary legislation made under the Acts repealed under subsection (1) continues as if it were made under this Promulgation to the extent that it is not inconsistent with this Promulgation.

(8) The Permanent Secretary and any officer appointed under or for the purposes of administration of the Employment Act (Cap. 92) are deemed to have been appointed under this Promulgation.

(9) An employment contract that is valid and in force at the commencement of this Promulgation continues to be in force after the commencement of this Promulgation and to the extent that it is not in conflict with this Promulgation is deemed to be made under this Promulgation and the parties to the contract are subject to and entitled to the benefits of this Promulgation.

(10) A registered trade union in existence at the commencement of this Promulgation continues to be a registered trade union and this Promulgation applies to that trade union.

(11) The Minister may make regulations for the purposes of other transitional matters, including pending trade disputes and labour complaints.

SCHEDULE 1
(Section 9(3))

GUIDELINES FOR LABOUR-MANAGEMENT CONSULTATION AND COOPERATION

1. For employers to be successful in employment relations, it is important to have a clear sense of purpose which workers can identify and work with. This also sets the direction for the organizational activities and actions, and helps harness the workers' energy towards achieving the building of good labour-management relations. This must extend right down to the shop-floor.

2. Unless the top management and all those who are actually implementing the programmes are committed to the promotion of consultation and cooperation, good employment relations may not be achievable. Support given by the top management is a pre-requisite but not a guarantee for success. Middle and lower management, executives and supervisors must also support such programmes to ensure its success. At the same time, middle and lower management personnel, and supervisors should also be trained in people-management skills so that they are responsive to the needs of workers.

3. Effective communications should be a two-way process, and should take place at all levels in the organization. There is a need to keep workers at the lower level informed about the organizations performance, plans and matters relating to their work. Employers should not confine themselves to adopting just one form of labour management consultation mechanism. Different structures would help to meet the needs of different levels of workers.

4. Employers should also participate in greater information sharing with their workers, such as the general economic performance and outlook of the industry, performance, output, productivity and their long-term plans. Such information-sharing activities will bring about better communication and understanding among the workers, unions and management.

5. Training and education is important not only to impart skills and techniques for labour-management cooperation, but also to change attitudes to facilitate labour-management programmes. Managers, union leaders and workers would be committed to better labour-management cooperation and greater consultation only if they are convinced of its benefits. Education and training would help to convince the benefits.

6. At the workers' level, employers could develop induction and orientation programmes to help them understand the corporate philosophy and help to establish communication between the management and the new workers. This will help inculcate in the new workers the employer's philosophy, culture, objectives, etc, so that such workers would have a greater sense of belonging and identity with the company.

7. Management and unions should be encouraged to discuss and consult each other on any matters which directly, or indirectly affect the interest and welfare of workers in the organisation. Such issues could include safety and health, productivity improvements, social and recreational activities, staff development, operational procedures, and worker-management relations.

8. Arising from closer labour-management and cooperation and consultation in improving labour-management relations and hence higher productivity, the gains of these benefits should also be shared with the workers. This could be achieved through profit sharing or sharing of productivity gains and better benefits for workers. Such sharing of profits would add greater credibility to labour-management consultation and cooperation programmes and generate greater participation and commitment from workers.

9. Agreed labour management relations require continued efforts to attain the ultimate goals. While at the national level, the Government, employers and trade unions set the framework for close tripartite cooperation and consultation, at the enterprise level it is important that the spirit of tripartism is translated into close cooperation and consultation.

SCHEDULE 2
(Section 38)

PARTICULARS OF WRITTEN CONTRACT OF SERVICE FOR INDIVIDUAL EMPLOYMENT CONTRACT

Name of Employer:

Registered Office of Employer:

Name of Worker:

Address of Worker:

Place of Work:

Type of Work:

Days/Hours of Work:

Wages/Salary:

Holidays and Leave:

Entitlements:

Disciplinary and Grievance Procedure:

Duration of contract:

Signed by:

Employer:

Worker:

Date:

SCHEDULE 3

(Section 53)

CONSTITUTION AND PROCEDURES OF WAGES COUNCILS

1. The Minister has the power to appoint a wages council consisting of—
 - (a) not more than 3 independent members;
 - (b) such number of members to represent employers in relation to whom the council is to operate;
 - (c) such number of members to represent workers in relation to whom the council is to operate.
2. The Minister may appoint one chairperson of all the Wages Councils, and a member of each Council as deputy chairperson to act in the absence of the chairperson.
3. Before appointing a person under sub-paragraph (b) or sub-paragraph (c) of paragraph 1, the Minister shall consult any organisations appearing to the Minister to represent employers or workers concerned, and the persons appointed under those sub-paragraphs shall be equal in number.
4. The Minister may appoint a secretary and such other officers for a wages council.
5. A wages council may appoint a committee or subcommittee to exercise its powers under this Promulgation (except the powers to submit wages regulation proposals) from amongst its members consisting of such number of persons, as it thinks fit (members representing employers and workers shall be equal in number).
6. The Minister may make rules as to the meetings and procedure of a wages council and of any committee or sub-committee, including rules as to the quorum and the method of voting, but, subject to the provision of this Promulgation and to any rules so made.
7. A wages council committee or a sub-committee may regulate its procedures in such manner as it thinks fit.
8. The Minister may determine the terms and conditions of members of wages councils, subject to other prescribed conditions.
9. The members of a wages council are entitled to remuneration and travelling and other allowances, as the Minister may determine after consulting the Higher Salaries Commission.

SCHEDULE 4

(Section 110)

STANDARD CLAUSES ON PROCEDURES FOR SETTLEMENT OF EMPLOYMENT GRIEVANCES

Settlement of employment grievance

1.—(1) An employment grievance of a worker bound by this employment contract must be settled in accordance with the procedure set out in clauses ... toof this employment contract.

(2) Where the employment grievance relates to dismissal, paragraphs 2 to 6 do not apply. The aggrieved party may refer the employment grievance directly to the Mediation Services in the prescribed manner.

Submission of grievance to employer

2.—(1) A worker who considers that he or she has grounds for an employment grievance may submit the grievance to the employer or representative of the employer.

(2) Such grievances must be kept confidential between the parties unless circumstances require otherwise.

(3) In such cases, the worker is entitled to have a third party present at such meetings.

Time within which employment grievance must be submitted

3.—(1) The grievance must be submitted within a period of 6 months beginning with the date on which the action alleged to amount to an employment grievance has occurred or has come to the notice of the worker, whichever is later, so as to enable the employer to remedy the grievance rapidly and as near as possible to the point of origin.

(2) If the grievance is not submitted within the period prescribed by subparagraph (1), the employer is not obliged to consider the worker's grievance, unless the Tribunal grants the worker leave to submit the employment grievance after the expiration of that period.

(3) If the Tribunal grants leave or if the employer consents to the employment grievance being submitted after the expiration of that period, the employer and worker must comply with the provisions below.

(4) Where the grievance is submitted to the employer, the employer is required to accord the worker a fair hearing by allowing the worker an opportunity to be heard, and in the presence of a third party if requested by the worker.

Worker's written statement

4. If the grievance is not settled in discussions between the worker and the employer, the worker must promptly give to the employer a written statement setting out—

- (a) the nature of the grievance;
- (b) the facts giving rise to the grievance; and
- (c) the remedy sought.

Employer's response

5. If the employer is not prepared to grant the remedy sought, and the parties have not otherwise settled the grievance, the employer must as soon as possible, but in any event not later than the 7th day after the day on which the employer receives the worker's written statement, give to the worker a written response setting out—

- (a) the employer's view of the facts; and
- (b) the reasons why the employer is not prepared to grant the remedy sought.

Written statements waived

6. If the worker and employer agree in writing to waive the requirement for an exchange of written statements, that agreement does not affect the further application of these procedures.

Right to refer employment grievance to Mediation Services

7. If—

- (a) the worker is dismissed; or
- (b) the worker is not satisfied with the employer's written response; or
- (c) the employer fails to provide, within 7 days after the day on which the employer receives the worker's written statement, a written response; or
- (d) the employer and worker have agreed to waive the requirement for an exchange of written statements and the worker is not satisfied with the employer's response to the grievance,

the worker may refer the employment grievance to the Mediation Services in the prescribed manner.

SCHEDULE 5

(Section 130)

PROVISIONS WHICH MUST BE MADE IN THE RULES OF A REGISTERED TRADE UNION

1. The name of the trade union and the location and postal address of its registered office.
2. The persons eligible for membership of the trade union.
3. The objects for which the trade union is established.
4. A list of officers of the trade union and the functions of each office.
5. A list of officers empowered to operate bank accounts.
6. The establishment of the executive committee and secretary, treasurer, and other officers of the trade union.
7. The manner of making, altering and rescinding rules.
8. The keeping of a register of members of the trade union.
9. The registration of collective agreements by the Registrar and all amendments thereto.
10. Convening and conducting annual general meetings and extraordinary general meetings or annual delegates' conferences whichever are more convenient, and the matters to be presented to the members of the trade union at such meetings, such as the presentation of audited accounts.
11. The annual or periodical audit of the accounts.
12. Provisions for keeping in a separate fund all moneys received or paid by the trade union in respect of any contributory provident fund or pension fund scheme.
13. The manner of the dissolution of the trade union and the disposal of the funds at the same time of such dissolution.
14. The taking of decisions by secret ballot by voting members of the trade union on the following—
 - (a) the election of officers of the trade union;
 - (b) the alteration of the rules of the trade union;
 - (c) all matters relating to strikes and lock-outs;
 - (d) dissolution of the trade union;
 - (e) the amalgamation of the trade union with any other trade union;
 - (f) the federation of the trade union with any other union or with a trade union federation; and
 - (g) the imposition of levies.
15. The right of any member, who is not disqualified from voting, to a reasonable opportunity to vote.
16. The amount of subscriptions and fees payable by members.
17. A requirement that at any meeting of the trade union or branch, a quorum consists of not less than 20% of the voting members of the union or branch.

SCHEDULE 6

(Section 168)

STANDARD CLAUSES ON PROCEDURES FOR SETTLEMENT OF DISPUTES

Application of procedures

1. The procedures set out in clauses 2 to 8 apply to the settlement of a dispute.

Persons who may invoke procedure

2. A union or employer that is a party to a dispute may invoke these procedures.

Submission of dispute to other party

3. The party invoking the procedure must advise the other party or parties to the contract of—
 - (a) the existence of the dispute;
 - (b) the basis of the dispute; and
 - (c) the solution sought in respect of the dispute.

Meetings

4. The parties must then meet to discuss the dispute.

Written statement

5. If the parties fail to resolve the dispute, the party who invoked the procedure must within 7 days give to the other party or parties a written statement setting out—
 - (a) the nature of the dispute;
 - (b) the relevant facts in relation to the dispute; and
 - (c) the solution sought in respect of the dispute.

Response

6. If the other party is or parties are not prepared or able to provide the solution sought, and the dispute has not otherwise been settled, the other party must no later than the 7th day after the day of receiving the written statement of the dispute under clause 5, provide a written response setting out—
 - (a) that party's view of the facts; and
 - (b) the reason why that party is not prepared or able to provide the solution sought.

Waiver of written statements

7. If the parties agree in writing that the exchange of written statements under the preceding provisions is inappropriate or unnecessary, the parties may dispense with parts of these procedures.

Right to refer dispute to Permanent Secretary

8. If—
 - (a) the party invoking the procedure is not satisfied with the other party's written response; or
 - (b) the other party fails to provide, within the 7 day period required, a written response; or
 - (c) the parties have agreed to waive the requirement for an exchange of written statements and the party invoking the procedure is not satisfied that the dispute has been resolved,
 the party invoking the procedure may refer the dispute to the Permanent Secretary in the prescribed manner.

SCHEDULE 7

(Section 185)

LIST OF ESSENTIAL SERVICES

The essential services for the purposes of Part 19 are—

- (a) Air/Sea Rescue Services;
- (b) Air Traffic Control Services;
- (c) Civil Aviation Telecommunication Services;
- (d) Electricity Services;
- (e) Emergency Services in times of national disaster;
- (f) Fire Services;
- (g) Health Services;
- (h) Hospital Services;
- (i) Light House Services;
- (j) Meteorological Services;
- (k) Mine Pumping, Ventilation and Winding;
- (l) Sanitary Services;
- (m) Supply and distribution of fuel, petrol, oil, power and light essential to the maintenance of the Services in this Schedule;
- (n) Telecommunications;
- (o) Transport Services necessary for the operation of any Services in this Schedule; and
- (p) Water Services.

SCHEDULE 8
(Section 263)

FIXED PENALTY OFFENCES

Section	Fixed penalty
44(3)	\$100
45(4)	\$100
49(2)	\$100
55(2)	\$100
56(2)	\$100
70(3)	\$100
96(2)	\$100
99(3)	\$100
105(2)	\$100
129(4)	\$100
132(4)	\$100
201(2)	\$100
247	\$1,000 for individuals \$5,000 for corporations
248	\$100
249	\$100

Given under my hand this 1st day of October 2007.

J. I. ULUIVUDA
President of the Republic of the Fiji Islands