



Tuvalu

**LABOUR AND EMPLOYMENT
RELATIONS ACT 2017**



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Tuvalu

LABOUR AND EMPLOYMENT RELATIONS ACT 2017

Act No.14 of 2017

I assent:

Sir Iakoba Taeia Italeli
Governor General

Dated on ²⁴..... November, 2017.

AN ACT TO PROVIDE FOR FAIR LABOUR STANDARDS, SUPPORT
PRODUCTIVE EMPLOYMENT RELATIONSHIPS AND GIVE BETTER EFFECT
TO FUNDAMENTAL CONVENTIONS OF THE INTERNATIONAL LABOUR
ORGANISATION.

ENACTED BY THE PARLIAMENT OF TUVALU

Commencement [5 October 2018]

1 Short Title

This Act may be cited as the Labour and Employment Relations Act 2017.

PART 1: PRELIMINARY

2 Commencement

This Act comes into force one year from enactment.

3 Act to bind the Crown

This Act binds the Crown.



4 Application

- (1) Subject to this section, this Act applies to all employees and employers in all workplaces in Tuvalu.
- (2) Subject to subsection (3), where terms and conditions of employment are provided for in any General Administrative Order applying to the Public Service or in any other written law, and such terms and conditions are more favourable than this Act, those terms and conditions shall continue to apply.
- (3) Division 2E of this Act does not apply to employees who have disciplinary criteria and disciplinary and dismissal procedures provided for in any other Act or Regulation, including any General Administrative Order applying to the Public Service.
- (4) Part 10 of this Act does not apply to police officers defined in section 6(2) of the Police Service Act 2009.
- (5) Where a contract of service is made outside of Tuvalu, relating to employment within Tuvalu, this Act applies to that contract as if it had been made in Tuvalu.

5 Interpretation

In this Act, unless the context otherwise requires:

“capacity” for the purposes of division 2E means the ability of an employee to perform the duties for which he or she was hired to a satisfactory level that would reasonably be expected by an employer;

“casual employee” means person whose contract of service provides for that person to be paid at the end of each work period;

“child” means a person aged under 18 years;

“collective agreement” means an agreement that is made between one or more trade unions, and one or more employers or employer organisations and:

- (a) prescribes (wholly or in part) the terms and conditions of employment of employees 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 meeting and negotiating with a view to concluding a collective agreement;

“company” means an entity that is registered and has a certificate of incorporation in accordance with the Companies Act;



“conduct” for the purposes of division 2E means the behaviour of an employee that would reasonably be expected by an employer in the workplace or in other places attended by the employee for work related purposes;

“contract of service” means an agreement, whether written or oral, expressed or implied, to employ or to serve as an employee, whether by piece work, task-based work, full-time work, part-time work or casual work, and whether for a fixed or indefinite period, and includes an apprenticeship or traineeship;

“Court” means any court of Tuvalu of competent jurisdiction;

“disability” means a permanent or temporary physical disability or impairment, physical illness, intellectual or psychological disability or impairment, or the presence in the body of organisms capable of causing illness;

“dispute” includes any dispute, difference, grievance or complaint between an employer and employee, employers and employees, or a trade union or group of employees and an employer or employers' organisation, which relates to -

- (a) the employment or non-employment of any person;
- (b) the interpretation or application of a contract of employment, a collective agreement, or any provision of this Act or regulations made under this Act;
- (c) a change of the existing terms and conditions of employment or work;
- (d) safety and health in a workplace;
- (e) any other matter that may be subject to collective bargaining;
- (f) subject to any other provision of this Act, the interpretation or application of this Act or regulations made under this Act.

“domestic employee” means a person who is employed in, or in connection with, the domestic services of any private dwelling house;

“employee” means a person who is employed by an employer and includes:

- (a) a prospective employee;
- (b) a domestic employee;
- (c) any immigrant employee; and
- (d) any employee who is an apprentice or trainee;

but does not include a person working as a volunteer who works without remuneration

“employer” means a person that employs an employee and includes a prospective employer;

“employer organisation” means an organisation representing two or more employers;

“essential service” means:

- (a) shipping services;
- (b) air services;
- (c) air traffic control services;
- (d) electricity supply services;
- (e) fire services;
- (f) rescue services;
- (g) port services;
- (h) hospital services;
- (i) sanitation services;
- (j) meteorological services;

“falekaupule” is defined in section 2 of the Falekaupule Act;

“lock-out” 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 employees employed by the employer in consequence of a dispute;
- (c) in breaking any of the employer’s contracts of service; or
- (d) in refusing or failing to engage employees for any work for which the employer usually employs the employee,

with a view to compelling the employee to accept terms or conditions affecting employment;

“Minister” means the Minister responsible for labour and employment matters;

“Ministry” means the Ministry responsible for labour and employment matters;

“occupier” means a person, who is 16 years of age or over who is living in, and exercises control over, a dwelling house.

“piece work employee” means a person who is paid according to the quantity of units or goods that they produce;

“private employment agent” means a person in the course of carrying on a business who places temporary employees with employers but maintains the responsibility for the payment of remuneration and other benefits to the employees;

“recruitment agent” means a person in the course of carrying on business who offers to find:

- (a) casual, part-time, temporary, permanent or contract work for a person;
- or

- (b) a casual, part-time, temporary, permanent or contract employee for a person;

“redundancy” means the dis-establishment of a job for economic, technological, structural or other operational requirements of an enterprise but does not include the dis-establishment of a job at the conclusion of a fixed-term contract of employment;

“remuneration” includes the ordinary, basic or minimum wage or salary, as well as any additional emoluments whatsoever payable directly or indirectly, whether in cash or kind, by the employer to the employee and arising out of the employee’s employment. Such emoluments include, but are not limited to the following:

- (a) time and piece wages, overtime, bonus or other special payments;
- (b) allowances, fees, commission, or any other payment, whether in one sum or several sums, and whether paid in money or not;
- (c) the value of a house, accommodation or the supply of food, fuel, light, water or medical attendance, or amenity or services;
- (d) a contribution paid by the employer on the employer’s own account to a pension fund or provident fund;
- (e) a travelling allowance or the value of a travelling concession;
- (f) a sum payable to an employee to defray special expenses incurred by the employee by the nature of the employee’s employment; or
- (g) a gratuity payable on discharge or retirement.

“representative employers’ organisation” for the purpose of section 117 means an organisation comprising one or more employers that is representative of the interests of employers in Tuvalu;

“representative employees’ organisation” for the purpose of section 117 means a trade union or organisation representing one or more trade unions that is representative of the interests of employees in Tuvalu;

“Secretary” means the head of the Ministry responsible for labour and employment matters.

“strike” means the act of a number of employees who are 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 contract of employment, 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 employees 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 intended due to an agreement, common understanding or concerted action, expressed or implied, made or entered into by the employees; but does not include a union meeting agreed to between a trade union and the employer;

“trade union” means an organisation representing employees that is registered under Part 7 of this Act;

“unauthorised absence” for the purposes of section 12 means the non-attendance at work by an employee:

- (a) without the permission of his or her employer to be absent from the workplace for the purposes of leave or other reasons; or
- (b) without other just cause for being absent.

PART 2: EMPLOYMENT RELATIONSHIPS

DIVISION 2A: ESTABLISHING EMPLOYMENT RELATIONSHIPS

6 Execution of written contract

- (1) A contract of service for a period of more than three calendar months, must:
 - (a) be in writing;
 - (b) include the particulars described in Schedule 2;
 - (c) be attested by the Secretary; and
 - (d) be signed by both the employer and employeein accordance with the requirements of this division.
- (2) Where a written contract of service has not been executed in accordance with subsection (1) or a copy of the contract cannot be produced, the contract of service will be deemed to be for an indefinite period.
- (3) All contracts, whether written or otherwise, may only be modified with the mutual consent of the contracting parties.

7 Undertakings to an employee prior to signing a contract of service

- (1) Before the contract is signed by the employee, the employer must advise him or her:
 - (a) that by signing the contract, he or she will become bound by the terms of the contract if it is subsequently attested under section 8;

- (b) not to sign the contract unless he or she understands and agrees to the terms of the contract; and
- (c) that he or she may obtain independent legal advice on the contract, obtain advice on the contract from his or her union representative or seek information on the legislative entitlements of employees from the Ministry.

8 Attestation

- (1) Every contract to which section 6 applies, must be provided to the Secretary to satisfy him or herself that:
 - (a) the contract contains at a minimum all the particulars described in Schedule 2;
 - (b) the terms and conditions of employment are consistent with the provisions of this Act and any other Act or regulations that may apply;
 - (c) the employee has freely consented to entering into the contract of service;
 - (d) the terms and conditions of the contract are not harsh and oppressive; and
 - (e) the employee understands the terms and conditions of the contract of service.
- (2) If the Secretary is not satisfied that subsection (1) has been complied with, he or she shall, without delay notify the employer and employee in writing of the areas of non-compliance with this Act and measures to rectify the contract of service.
- (3) Upon executing a written contract of service, the employer must give the employee a signed copy of that contract.

9 Recruitment agents and private employment agents

- (1) No person shall act as a recruitment agent or private employment agent, by enlisting or recruiting any person to perform work for a third party in Tuvalu or overseas, unless the person is authorised in writing by the Secretary.
- (2) The Minister may make regulations setting out the criteria and other requirements for the purpose of authorising a person as a recruitment agent or private employment agent, including any associated forms and fees.
- (3) A person that contravenes this section commits an offence.

10 Requirements of recruitment agents and private employment agents

- (1) No person acting as a recruitment agent or private employment agent shall:
 - (a) require a prospective employee to pay for their services;
 - (b) act in a manner that gives rise to an actual or perceived conflict of interest; or
 - (c) discriminate against any prospective employee on any of the grounds of discrimination described in section 50 of this Act.
- (2) A person who contravenes this section commits an offence.

DIVISION 2B: PAYMENT OF WAGES

11 Wage periods

- (1) The payment of an employee's wages must be at intervals that are reasonably appropriate to the nature of the contract of service but must be no less frequent than:
 - (a) every two weeks if an employee's wages are calculated by the hour, day or week; or
 - (b) once a month if an employee's wages are calculated on a monthly, annual or piece work basis.

12 Authorised deductions

- (1) An employer shall, when paying wages to an employee, only make deductions-
 - (a) for periods of an unauthorised absence from work, calculated in proportion to the period for which the employee was required to work by the terms of his or her contract of service;
 - (b) for the actual costs of meals supplied by the employer at the request of the employee;
 - (c) for recovery of advances or for adjustment of overpayment of wages;
 - (d) pursuant to an order made by a Court or authority having competent jurisdiction in that behalf;
 - (e) lawfully permitted under any enactment, regulations or rules for the time being in force; and
 - (f) for any other lawful purpose with the consent in writing, or at the written request, of the employee.

13 Remuneration other than wages

An employee may, under a contract of service, receive other remuneration permitted by law in addition to wages for his or her work.

14 Interest on advances

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

15 Wages statement

- (1) An employer shall, provide the employee at the end of each pay cycle, with a written statement containing the following particulars in respect to a relevant wage period under section 11:
 - (a) the employee'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) any overtime worked during a wage period and the rate of wages payable for the overtime;
 - (g) the gross earnings of the employee;
 - (h) allowances, loadings or other sundry payments due to the employee;
 - (i) deductions made from the gross earnings of the employee in accordance with section 12;
 - (j) the net amount due to the employee after all deductions have been made in respect of each wage period.
- (2) An employer must inform an employee of any changes to the conditions of the employee's wages.
- (3) An employer who breaches subsection (1) commits an offence.

16 Employment records

- (1) An employer in relation to any employee employed under a contract of service under this Act, must keep employment records showing, for each employee -
 - (a) the name of the employee;
 - (b) the employee's date of birth;
 - (c) the employee's address;

- (d) the kind of work for which the employee is usually employed;
 - (e) the contract of service or collective agreement under which the employee is employed;
 - (f) the classification or designation of the employee according to which the employee is paid;
 - (g) the employee's hours of work;
 - (h) the wages paid to the employee for each wage period and the method of calculation;
 - (i) any overtime worked and the calculation of overtime pay;
 - (j) the employee's accrued annual leave entitlements ;
 - (k) the dates on which annual leave and public holidays are taken;
 - (l) the amount paid to the employee for paid annual leave and public holidays; and
 - (m) other information prescribed by regulations.
- (2) An employer who breaches this section commits an offence.

17 Inspection of employment records

- (1) An employer must, at the request of a labour inspector, produce for inspection by that officer, every employment record that is, or at any time during the preceding six years was, in use under the Act in respect of an employee employed by that employer at any time during the preceding six years.
- (2) An employer who breaches this section commits an offence.

18 Non-payment of wages

- (1) An employer who –
- (a) Fails, without a reasonable explanation, to pay wages in accordance with the employee's contract of service and this Act;
 - (b) upon demand in writing by the Secretary or a labour inspector, fails within seven days of receiving a demand notice to pay any wages due to an employee;
 - (c) pays or agrees to pay the wages of an employee otherwise than in the currency which is legal tender at the place where the wages are paid;
 - (d) makes a deduction from the wages of an employee in the nature of a fine, or due to poor or negligent work;
 - (e) imposes conditions upon the expenditure of an employee's wages; or
 - (f) pays an employee on a piece-work basis which results in the employee receiving less than the minimum wage before authorised deductions, if

applicable, or the rate of wages prescribed in the applicable contract of service, whichever is higher -

commits an offence.

DIVISION 2C: HOURS OF WORK

19 Maximum hours of work, daily and weekly rest periods

- (1) An employer must not request or require an employee to work more than 8 hours in a day, unless the additional hours are reasonable.
- (2) An employer must not request or require an employee to work more than 40 hours in a week, unless the additional hours are reasonable.
- (3) An employer must allow a daily rest period of at least 12 consecutive hours and a weekly rest period of at least 48 consecutive hours, unless limiting daily and weekly rest periods is reasonable.
- (4) In determining whether hours of work, or daily or weekly rest periods, are reasonable for the purposes of this section, the following must be taken into account:
 - (a) any risk to the employee's health and safety from working the additional hours;
 - (b) the employee's personal circumstances, including family responsibilities;
 - (c) the needs of the workplace in which the employee is employed;
 - (d) whether the employee is entitled to receive overtime payments;
 - (e) the nature of the employee's role, and the employee's level of responsibility;
 - (f) any other relevant matters.
- (5) For the purposes of subsections (1), (2) and (3), the hours an employee works in a week include any hours of authorised leave.

20 Overtime regulations

- (1) Subject to subsection (2) the payment of overtime to employees for work in excess of ordinary working hours, on weekends or on public holidays, shall be prescribed by regulations.
- (2) Overtime payments shall not apply to employees who are paid an annualised salary that includes compensation for the likelihood of working in excess of ordinary working hours.

21 Meal and tea breaks

Every employee who works for more than 6 consecutive hours in 1 day is entitled to an unpaid break of one hour for a meal, and to either one paid tea break of 20 minutes or two paid tea breaks of 10 minutes each.

22 Nursing breaks

- (1) An employer shall allow a female employee who is nursing a child under 12 months of age, one hour twice a day during her working hours for this purpose.
- (2) Nursing breaks provided under subsection (1) will be counted as hours worked for the purposes of calculating wages.

23 Consultation and notice of changes to hours of work

- (1) An employer who proposes to make changes to an employee's ordinary hours of work must consult with the employee and, if requested, the employee's representative, regarding the changes proposed.
- (2) Where the proposed changes affect multiple employees, and one or more of the affected employees are members of a trade union, the employer must consult with the relevant trade union regarding the changes proposed.
- (3) An employer must provide the employee with reasonable notice of any changes to the employee's ordinary hours of work.
- (4) The period that constitutes reasonable notice for the purpose of subsection (3) is to be determined with reference to the extent of the changes to the employee's hours of work and the employee's personal circumstances, including family responsibilities.

24 Offences

An employer who breaches any section in this division commits an offence.

DIVISION 2D: LEAVE

25 Application of this division

- (1) Subject to section 26, this division applies to:
 - (a) all employees, other than casual employees; and
 - (b) part-time employees on a pro-rata basis; and

- (c) piecework and task-based employees, subject to any additional provisions for the calculation of entitlements as prescribed by regulations.

26 Employer exemption

- (1) An employer may apply in writing to the Secretary for a temporary exemption from providing leave under this division.
- (2) The Secretary shall, within one month of receipt of an application, exempt an employer from one or more of sections of this division if the Secretary is satisfied that the employer has provided sufficient evidence of financial hardship that would be exacerbated by full compliance with this division.
- (3) The Secretary in providing a temporary exemption shall do so:
 - (a) for a period determined by the Secretary having regard to the circumstances of the employer, but for a period no longer than 24 months; and
 - (b) for a period that does not extend beyond three years from the date this Act comes into force; and
 - (c) only in respect of employees who had no existing entitlement to leave under a written or oral contract of service or collective agreement prior to the commencement of this Act.
- (4) An employer who has a temporary exemption must advise the Secretary without delay if they no longer experience financial hardship that would be exacerbated by full compliance with this division.
- (5) Temporary exemptions shall only be lawful for three years following the date of commencement of this Act.
- (6) At the expiry of three years after the commencement of this Act, an employer who has a temporary exemption who continues to not provide leave in accordance with this division commits an offence.

27 Annual leave

- (1) For each completed year of continuous service with the same employer, an employee is entitled to a minimum of 12 days paid annual leave for days the employee would otherwise work, and an employer shall pay such wages to an employee for any annual leave taken that would have been paid if the employee had worked during the annual leave period.
- (2) An employee is entitled to take annual leave on a pro rata basis on the completion of six months service with an employer.

- (3) Any public holiday falling within an employee's annual holiday shall not be counted as part of the employee's annual leave entitlement provided for by subsection (1).

28 Sick leave

- (1) If an employee is unable to work due to sickness or injury on a day the employee would otherwise work, he or she is entitled to paid sick leave for a minimum of 5 days for each completed year of continuous service.
- (2) An employer shall pay such wages to an employee for any sick leave taken that would have been paid if the employee had worked during the period of sick leave.

29 Compassionate leave

- (1) An employee shall be entitled to paid compassionate leave of up to 3 days for each completed year of continuous service in the case of a bereavement or a life threatening illness affecting an immediate family member who is the employee's spouse, child, mother, father, grandparent, sister or brother on a day that the employee would have otherwise worked.
- (2) An employer shall pay such wages to an employee for any compassionate leave taken that would have been paid if the employee had worked during the period of compassionate leave.

30 Maternity leave.

- (1) A female employee, upon production of a medical certificate from a medical practitioner confirming the expected date of delivery of a child, shall be entitled to leave from work for 12 weeks to be taken around the time of the birth of that child.
- (2) While absent from work pursuant to subsection (1), a female employee shall be entitled to be paid by her employer 100% of the wage or salary she would have earned had she not been absent from work.

31 Adoption leave

- (1) Subject to this section, a female employee, on the production of an Adoption Order within the meaning of the Adoption of Children Act 1986, shall be entitled to leave from work for 12 weeks following the placement of the child in her care.
- (2) An employee shall only be entitled to adoption leave, if the adopted child is under the age of three years old.

- (3) While absent from work pursuant to subsection (1), a female employee shall be entitled to be paid by her employer no less than 100% of the wage or salary she would have earned had she not been absent from work.

32 Paternity leave

- (1) Subject to this section, the male spouse of a woman who gives birth to or adopts a child, shall be entitled to 10 days paternity leave to be paid by his employer at no less than 100% of the wage or salary he would have earned had he not been absent from work.
- (2) Paternity leave shall be made available by the employer;
 - (a) in the case of the birth of a child, upon production of a medical certificate from a medical practitioner confirming the expected date of delivery of a child; or
 - (b) in the case of the adoption of a child, on the production of an Adoption Order within the meaning of the Adoption of Children Act 1986.
- (3) Paternity leave shall be taken by a male employee within four months from the date of the birth of a child or adoption of a child.

33 Offences

An employer who breaches any section in this division commits an offence.

DIVISION 2E: TERMINATION OF EMPLOYMENT

34 Application of this Division

- (1) Subject to subsection (2), a contract of service is conclusively presumed to be for an indefinite duration.
- (2) Subsection (1) does not apply —
 - (a) to a contract for a fixed period, which is presumed to terminate at the end of the fixed period;
 - (b) to a contract for a fixed task, which is presumed to terminate upon completion of the fixed task;
 - (c) to a contract engaging a casual employee on a casual basis, which is presumed to terminate at the end of each working period.
- (3) A contract of service of indefinite duration to which subsection (1) applies, or a contract for a fixed period where that fixed period has not yet expired, shall not be terminated by the employer unless it is for a lawful reason.
- (4) The termination of an employee's contract of service is for a lawful reason if:

- (a) it relates to the employee's capacity or conduct and sections 36 and 37 have been complied with; or
- (b) it is due to serious misconduct by the employee and section 35 has been complied with; or
- (c) it was due to redundancy and section 38 has been complied with; and
- (d) it is not unlawful under section 39.

35 Summary dismissal for serious misconduct

- (1) An employer may dismiss an employee without notice for serious misconduct in the following circumstances—
 - (a) conduct described in section 56(2);
 - (b) theft or fraud;
 - (c) violence or the assault of another person or threats of violence;
 - (d) deliberate falsification of skills or qualifications for the purpose of obtaining employment or a promotion;
 - (e) being under the influence of intoxicating liquor or an unlawful drug while working; or
 - (f) any other circumstances that are a serious breach of the mutual trust and confidence between the employer and employee.

36 Termination for reasons relating to capacity or conduct

- (1) The termination of an employee's contract of service under section 34(3)(a) is lawful only if the employer has completed the following steps:
 - (a) warned the employee about any unsatisfactory capacity or conduct; and
 - (b) provided the employee with an opportunity and reasonable assistance to improve their capacity or conduct; and
 - (c) provided the employee with notice of termination in accordance with section 37.

37 Notice

- (1) Unless otherwise provided for in this Act, an employer or employee who terminates a contract of service, in the absence of a specific written agreement by the parties to the contrary shall give no less than one week's notice.
- (2) An employer may pay wages in lieu of notice in the event that a contract of service was terminated by the employer for a lawful reason under this Act.

38 Redundancy

- (1) An employer may terminate an employee's contract of service by reason of redundancy if:
 - (a) the employee cannot be redeployed to a similar or equivalent position within the employer's enterprise taking into account the duties, remuneration, responsibilities and location of any alternative positions; and
 - (b) the employer has complied with any requirements specified in any applicable collective agreement; and
 - (c) the employer has provided no less than four weeks' notice of termination.
- (2) If an employee at the commencement of his or her contract of service was brought to the place of employment by the employer from another place of origin, the employer shall pay the cost of transportation to repatriate the employee and his or her spouse and children to the employee's place of origin if an employee's contract of service is terminated under this section.

39 Unlawful reasons for termination

- (1) The termination of an employee's employment shall be unlawful and an offence if it is attributable to the following:
 - (a) any of the attributes listed in section 50(2)
 - (b) temporary absence from work because of illness or injury;
 - (c) trade union membership or participation in trade union activities outside working hours or, with the employer's consent, during working hours;
 - (d) non-membership of a trade union;
 - (e) raising a complaint or the participating in any proceedings against an employer whether under this Act or any other Act or Regulation; or
 - (f) absence from work during paternity leave, maternity leave or for a period of 12 weeks following maternity leave due to an illness certified by a medical practitioner to have arisen out of pregnancy or confinement.
- (2) In any dispute under this Act where an employee alleges that his or her contract of service was terminated for an unlawful reason, the onus is on the employer to establish that terminating an employee's contract of service was for a lawful reason.

40 Further requirements as to termination of contracts

- (1) An employer must pay to an employee all wages and benefits, including any accrued but untaken annual leave, that are due to the employee as soon as practicable, but no more than 14 days from the date of termination of a contract of service.
- (2) If a payment of wages is made in lieu of notice, such payment must include all wages and benefits that would have been payable to the employee if the employee had worked during the period of notice.

41 Offences

An employer who breaches this division commits an offence.

PART 3: EMPLOYMENT OF YOUNG PERSONS

42 Minimum age for employment

- (1) A child who has not yet completed the calendar year of schooling in which he or she reaches the age of 15 years must not be employed or work in any capacity, except in light work as prescribed by section 43.
- (2) Work engaged in by a child under the age of 16 years in schools, as part of an authorised programme of education or training, will not contravene this section.
- (3) Except as provided for in this Part, a person who employs, or otherwise causes to work, a child who has not yet completed the calendar year of schooling in which he or she reaches the age of 15 years, commits an offence.

43 Minimum age for light work

- (1) A child aged at least 15 years under the prescribed minimum age of employment in section 42 must not be employed or work in any capacity, except in light work that:
 - (a) is unlikely to be harmful to the health and development of the child;
 - (b) will not affect the child's school or vocational training attendance;
 - (c) will not affect the child's ability to benefit from schooling or vocational training; and
 - (d) complies with any other requirements for light work specified in regulations.
- (2) The Minister may make regulations setting out the requirements for light work, including the permitted times and hours of work, the activities that may

be carried out and the conditions under which these activities may be performed.

- (3) An employer who breaches this section commits an offence.

44 Minimum age for hazardous work

- (1) A child under the age of 18 years must not be employed or work in any hazardous work that by its nature or the circumstances under which it is carried out is likely to jeopardise the child's health, safety or morals as defined by Regulations in subsection (2).
- (2) The Minister may make regulations setting out the types of work in which a child under the age of 18 years is prohibited from engaging because it is deemed hazardous.
- (3) A person who employs, or otherwise causes to engage in hazardous work, a child under the age of 18 years, commits an offence and is liable to a term of imprisonment of up to one year or a fine of up to \$5,000 or both.

45 Register of child employees

- (1) An employer must create and maintain a register of all children employed by the employer.
- (2) The register must record the child's name, date of birth, sex, occupation, employment status, hours of work, school or vocational training attendance, rate of pay, and the dates on which the child's employment commenced and terminated.
- (3) An employer who breaches this section commits an offence.

PART 4: PROHIBITION OF THE WORST FORMS OF CHILD LABOUR AND FORCED LABOUR

46 Prohibition of the worst forms of child labour

- (1) Any person who uses, procures or offers a child for any of the following purposes:
- (a) debt bondage or serfdom;
 - (b) engagement in activities connected to armed conflict;
 - (c) prostitution;
 - (d) the production of pornography or for pornographic performances; or
 - (e) the production or trafficking of illegal drugs -

commits an offence and shall be liable on conviction to a term of imprisonment not exceeding 10 years.

47 Meaning of forced labour

In section 48

“forced or compulsory labour” means any work or service that a person is required to do under the threat of any penalty, but does not mean:

- (i) any work or service that a person is required to do as a consequence of a conviction in a court of law, 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 out to, or placed at the disposal of, private individuals, companies, or associations;
- (ii) any work or service required in case of emergency, provided that the work or service is limited to that strictly required by the exigencies of the situation and must cease as soon as the circumstances endangering the population or its normal living conditions no longer exist;
- (iii) unpaid labour on minor communal works that are reasonably required as part of reasonable and normal communal or civic obligations, provided that members of the community concerned must be consulted in regard to the need for the works, before any obligation is imposed on a person to undertake them.

“in case of emergency” means in the event of war, or of a calamity or threatened calamity such as 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 the well-being of the whole or part of the population.

48 Prohibition of forced labour

Subject to section 18 of the Constitution of Tuvalu, a person who exacts, procures or engages forced or compulsory labour commits an offence and is liable on conviction to a term of imprisonment not exceeding 10 years.

49 Parties to offences relating to the worst forms of child labour or forced labour

- (1) A person is a party to and guilty of the offence under section 46 or section 48 who—
 - (a) does or omits an act for the purpose of aiding any person to commit the offence; or
 - (b) abets any person in the commission of the offence; or

- (c) incites, counsels, or procures any person to commit the offence.

PART 5: EQUAL EMPLOYMENT OPPORTUNITIES

50 Prohibition of discrimination

- (1) An employer shall not discriminate, directly or indirectly, against any employee or prospective employee in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment, or other matters arising out of the employment relationship, for a prohibited reason.
- (2) For the purpose of subsection (1), a prohibited reason is a reason that is affected by any of the following attributes of the employee or prospective employee, whether actual or perceived:
 - (a) ethnic origin, race, colour, national extraction, social origin, social class or economic status; or
 - (b) gender, sex, pregnancy, marital status, sexual orientation or family responsibilities; or
 - (c) age, state of health, HIV / AIDS status, or disability; or
 - (d) religion or political opinion; or
 - (e) trade union membership or activity; or
 - (f) involvement in an dispute, an investigation or legal proceedings affecting the employer.
- (3) For the purpose of subsection (1):
 - (a) direct discrimination occurs when a distinction, exclusion or preference is made on the basis of an attribute listed in subsection (2); and
 - (b) indirect discrimination occurs when a distinction, exclusion or preference is made on the basis of an attribute that is not listed in subsection (2), but that disproportionately disadvantages people with a particular attribute listed in subsection (2).
- (4) For the purposes of subsection (3), trade union activity includes:
 - (a) the formation or registration of a trade union under this Act;
 - (b) the management or operation of a trade union;
 - (c) representation of a trade union or a trade union member in collective bargaining, disputes, employee consultations, or meetings where the interests of a trade union or a trade union member are discussed; or
 - (d) participation in industrial activity in accordance with this Act.
- (5) An employer who breaches this section commits an offence.

- (6) In any proceedings under this Act where a breach of this section is alleged, the onus is on the employer to establish that any distinction, exclusion or preference was not affected by an attribute set out in subsection (2).

51 Exceptions relating to inherent requirements of a position and requirements relating to reasonable accommodation

- (1) A distinction, exclusion or preference made by an employer, because the inherent requirements of a position requires the employer to choose a person who has particular characteristics, does not breach this Part.
- (2) Subsection (1) will not apply where reasonable accommodation could be made to allow an employee or prospective employee to perform the inherent requirements of a particular position.
- (3) Subsection (2) does not prevent different treatment based on disability if 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.
- (4) For the purposes of this section, “reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to any prospective employee or employee with any characteristic in subsection 50(2) is able to exercise his or her rights under this Act on an equal basis with other employees in the same workplace.

52 Exceptions in relation to special measures

- (1) A person may take special measures for the purpose of promoting or realising substantive equality for members of a group with a particular attribute, including an attribute set out in section 50(2).
- (2) A special measure must be:
- (a) undertaken in good faith for achieving the purpose set out in subsection (1); and
 - (b) reasonably likely to achieve the purpose set out in subsection (1); and
 - (c) a proportionate means of achieving the purpose set out in subsection (1); and
 - (d) justified because the members of the group have a particular need for advancement or assistance; and
 - (e) be examined periodically to assess whether it is still needed and remains effective.
- (3) A special measure taken in accordance with this section does not constitute a breach of section 50.

53 Prohibition of sexual harassment

- (1) It is unlawful for any person to sexually harass an employee or prospective employee.
- (2) An employer must take all reasonable steps to prevent the sexual harassment of an employee or prospective employee.
- (3) A person sexually harasses an employee or prospective employee if:
 - (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the employee or prospective employee or engages in unwelcome conduct of a sexual nature towards the employee or prospective employee; and
 - (b) a reasonable person, having regard to all the circumstances, would have anticipated that
 - (i) a rejection of the advance or request would disadvantage the employee or prospective employee in any way in connection with their employment or work or possible employment or work; or
 - (ii) the advance, request or conduct would create a hostile, intimidating or offensive working environment.
- (4) A person who breaches this section commits an offence.
- (5) If the person who breaches this section is an employee, the employer of that employee is also liable under subsection (4) unless the employer took all reasonable steps to prevent the sexual harassment.

54 Equal remuneration for work of equal value

- (1) An employer must pay male and female employees equal remuneration for work of equal value.
- (2) An employer who breaches this section commits an offence.

PART 6: OCCUPATIONAL SAFETY AND HEALTH

55 Duties of employers

- (1) An employer must provide and maintain, so far as practicable, a working environment for employees that is safe and without risks to health.
- (2) An employer must –
 - (a) identify existing and new hazards at work and assess each identified hazard to determine whether or not it is a significant hazard to any employee at work; and

- (b) take the following steps to reduce each significant hazard found in the workplace including the following:
 - (i) as far as is practicable eliminate each significant hazard in the workplace; and
 - (ii) if the hazard remains significant, take steps as far as practicable to minimise the hazard; and
 - (iii) if the hazard remains significant, take steps as far as practicable to isolate the hazard from employees at the workplace;
 - (iv) if the hazard remains significant, introduce a system to control each employee's exposure to the hazard and provide protective clothing and equipment to protect employees from any harm that might arise from the hazard; and
 - (c) provide such information, instruction, training and supervision as is necessary to enable employees to perform their work in a manner that is safe and without risks to their health or safety; and
 - (d) as far as practicable:
 - (i) monitor the health and safety conditions at the workplace;
 - (ii) monitor the health of employees at the workplace;
 - (iii) keep information and records relating to the health and safety of employees at the workplace; and
 - (iv) provide the results of any health monitoring of an employee to that employee.
- (3) An employer commits an offence who -
- (a) knows or should have known that any action, or failure to take action, is reasonably likely to cause serious harm to an employee;
 - (b) takes that action, or fails to take action; and
 - (c) the action or failure to take action is contrary to a provision in this part.

56 Duties of employees

- (1) While at work, an employee must –
 - (a) take reasonable care for his or her own health and safety and for the health and safety of any other employee who may be affected by his or her acts or omissions in the workplace; and
 - (b) cooperate with his or her employer with respect to any action taken by the employer to comply with any requirement of this Part.
- (2) An employee must not –
 - (a) wilfully or recklessly interfere with, or misuse, anything provided by the employer for the purpose of protecting the health and safety of people in the workplace; or

- (b) wilfully place at risk, the health or safety of any person in the workplace.
- (3) An employee commits an offence if he or she—
 - (a) fails to comply with subsection (1) and knows or should have known that his or her action, or failure to take action, is reasonably likely to cause serious harm to himself or herself or another employee;
 - (b) fails to comply with subsection (2).

57 Occupational safety and health standards

The Minister may, by regulations set minimum requirements for occupational safety and health in specific industries or occupations, or in respect to particular machinery, vehicles, buildings, work processes, operations or substances in a workplace.

PART 7: TRADE UNIONS AND EMPLOYER ORGANISATIONS

58 Freedom of association

- (1) Employees and employers may establish organisations for the promotion and protection of their economic and social interests and join such organisations of their choice.
- (2) An employer must not seek to prevent, discourage or influence the exercise of an employee's freedom of association under subsection (1).
- (3) An employer who breaches subsection (2) commits an offence.
- (4) Any person who, whether acting on his or her own behalf, or on behalf of a third party, and whether or not acting in contemplation or furtherance of a dispute, compels, persuades or induces, or attempts to compel, persuade or induce, any employer breach subsection (2), commits an offence.

59 Rights of trade unions and employer organisations

- (1) Trade unions and employer organisations have the right, in full freedom to:
 - (a) draw up their constitutions and rules;
 - (b) elect their representatives;
 - (c) organize the administration of their activities; and
 - (d) formulate their programmes.
- (2) Trade unions and employer organisations have the right to:
 - (a) form and join federations or confederations of trade unions or employer organisations;

- (b) affiliate with, and participate in the affairs of, any international affiliation of trade unions or employer organisations; and
- (c) contribute to, or receive financial assistance from, such organisations.

60 Trade unions not criminal

The purposes of any trade union will not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to make any member of that trade liable to criminal prosecution for conspiracy or any other offence.

61 Trade union not unlawful for civil purposes

The purposes of any trade union will not, by reason merely that it is in restraint of trade, be unlawful so as to make any agreement or trust of that organisation voidable.

62 Interference in the affairs of trade unions and employer organisations prohibited

- (1) A person must not interfere in the establishment or functioning of a trade union or employer organisation.
- (2) A trade union or employer organisation that believes its establishment or functioning has been interfered with in breach of subsection (1) may report it as a dispute to the Secretary.
- (3) An employer that provides financial or other resources to a trade union, does not interfere for the purposes of this section, without further intent of the employer to influence the establishment or functioning of the trade union.
- (4) A person who breaches this section commits an offence.

63 Register of trade unions

- (1) The Registrar must keep a register of trade unions, in which must be recorded the particulars required for registration and any alternations to the same.
- (2) A copy of an entry in the register certified by the Registrar is proof, until the contrary is shown, of the facts stated in it as on the date of that certified copy.

64 Application for registration as trade union

- (1) An organisation of employees established for the promotion and protection of its members' economic and social interests may apply to the Registrar for registration as a trade union under this Act.
- (2) An application for registration under subsection (1) must:

- (a) include a copy of the rules of the trade union signed by 5 or more members of it;
 - (b) state the name of the trade union;
 - (c) include a list of the titles and names of the officers of the trade union;
 - (d) indicate the principal address of the trade union and any branches thereof; and
 - (e) otherwise comply with the provisions of this Act and any regulations in force under this Act with respect to registration.
- (3) The rules of the organisation submitted to the Registrar in accordance with paragraph (a) of subsection (2) must contain all categories of information set out in Schedule 1.

65 Registrar may require further information

The Registrar may request further information for the purpose of determining whether an application for registration complies with the requirements of this Act and any regulations in force under this Act with respect to registration, or whether the trade union is entitled to registration under this Act.

66 Registrar may require alteration of name

- (1) An trade union must not apply to be registered with a name that:
 - (a) is identical to the name of an existing registered organisation;
 - (b) so closely resembles the name of an existing registered organisation that it is likely to deceive or mislead the public; or
 - (c) is in any other respect undesirable.
- (2) If the Registrar is not satisfied that the proposed name of a trade union meets the requirements under subsection (1), the Registrar
 - (a) may require the persons applying for registration to change the name of the trade union stated in the application;
 - (b) may refuse to register the trade union until the required alteration has been made to the Registrar's satisfaction.

67 Refusal of registration

- (1) The Registrar may refuse the application for registration if the Registrar is satisfied that:
 - (a) the trade union has not complied with the requirements of this Act or any regulations in force under this Act with respect to registration; or
 - (b) any of the objects in the rules of the trade union are unlawful; or

- (c) the trade union is formed or likely to be used for unlawful purposes.
- (2) If the Registrar refuses to register a trade union, he or she must notify the applicants in writing of the grounds of his or her or her refusal within 2 months of the date of receipt of the application.

68 Certificate of registration

- (1) Subject to sections 65, 66 and 67, the Registrar must register a trade union and must issue a certificate of registration to the trade union within 2 months of receiving the application.
- (2) A certificate of registration issued under subsection (1) is, unless proven to have been cancelled, conclusive evidence that the organisation is registered as a trade union under this Act.

69 Effect of registration

Upon registration as a trade union under this Act, the trade union becomes a body corporate by the name under which it is registered, and, subject to the provisions of this Act, with perpetual succession and the power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings, to do all things necessary for the purposes of its rules and to enjoy the rights, immunities and privileges of trade unions prescribed by this Act.

70 Cancellation of registration

- (1) The Registrar shall, by order served on the relevant trade union, cancel the registration of any trade union:
 - (a) at the request of the trade union upon its dissolution in accordance with its rules, to be evidenced in such manner as the Registrar may direct;
 - (b) on proof to the Registrar's satisfaction that a certificate of registration has been obtained by fraud or mistake, or that such trade union has wilfully, and after notice from the Registrar, violated any of the provisions of this Act or has ceased to function in accordance with the organisation's rules.
- (2) Where cancellation is proposed on account of grounds set out in paragraph (b) of subsection (1), the Registrar must give the trade union no less than 2 months' written notice of the proposed cancellation, specifying the grounds on which cancellation is proposed.
- (3) A trade union served with a notice under subsection (2) may, before the expiry of such notice, show cause in writing as to why the proposed cancellation should not be effected.

- (4) Where cause is shown under subsection (3), the Registrar may hold such enquiry as he or she considers necessary in the circumstances.
- (5) A cancellation order under subsection (1)(b) may not be made by the Registrar until the latest of the following:
 - (a) the notice period specified in subsection (2) has expired; and
 - (b) if the trade union has shown cause in writing in accordance with subsection (3), an enquiry under subsection (4) has been completed and failed to satisfy the Registrar that cancellation should not be ordered.
- (6) A cancellation order made by the Registrar under subsection (1) must:
 - (a) specify the grounds for the cancellation of the organisation's registration under this Act; and
 - (b) take effect from the date specified in the cancellation order, such date being -
 - (i) in the case of a cancellation order made under paragraph (a) of subsection (1), the date on which the trade union was dissolved in accordance with its rules; and
 - (ii) in the case of a cancellation order made under paragraph (b) of subsection (1), a date no earlier than one month from the date on which the order is served on the trade union.

71 Effect of cancellation of registration

- (1) A trade union that has had its registration cancelled under section 70 will, from the date the cancellation order takes effect and in addition to any other liability:
 - (a) cease to exist as a body corporate, and the Registrar may, notwithstanding anything contained in the rules of the organisation, appoint one or more persons to be liquidators thereof; and
 - (b) cease to enjoy the rights, immunities and privileges of trade unions as prescribed by this Act, but without prejudice to any liability incurred by the trade union which may be enforced against it or its assets, whether such liability is incurred before, on or after the date of the cancellation of registration.
- (2) The officers and members of a trade union that has had its registration cancelled under section 70 will, from the date the cancellation order takes effect, cease to enjoy the rights and privileges accorded to the officers and members of trade unions under this Act.
- (3) Any person acting or purporting to act as an officer of a trade union who breaches subsection (2) commits an offence.

72 Review of Registrar's decision

- (1) A person listed in subsection (2) may seek a review by the Secretary of any decision, direction, act or omission of the Registrar in relation to registration of a trade union, including but not limited to—
 - (a) a decision declining registration of a trade union;
 - (b) a decision requiring a trade union to alter its name;
 - (c) a decision declining to issue a certificate of registration to a trade union; or
 - (d) a decision to cancel the registration of a trade union;
 - (e) a decision pursuant to section 86
- (2) The following persons may apply for a review, or to be a party to or be heard in a review, of a Registrar's decision under subsection (1):
 - (a) the trade union;
 - (b) a member of the trade union;
 - (c) another trade union with a direct interest in the proceedings or which is directly affected by the existence of the union or its activities;
 - (d) any other person with the leave of the Secretary .

73 Application for review

- (1) A person seeking a review of any decision made by the Registrar shall apply to the Secretary.
- (2) The application must—
 - (a) be in writing;
 - (b) be made on the form provided by the Secretary for the purpose;
 - (c) identify the decision or decisions in respect of which it is made; and
 - (d) state the grounds on which it is made.
- (3) An applicant may also provide written submissions and any information (whether prepared by the applicant or any other person) in support of the application.

74 Time limit for application for review

- (1) Subject to subsection (2) an applicant must apply for review within 28 days after receiving notification of the Registrar's decision.
- (2) A review application may be accepted and considered later than the 28-day time limit if the Secretary is satisfied that the delay was caused by circumstances beyond the applicant's control.

75 Decision of Secretary

- (1) The Secretary must—
 - (a) confirm the decision; or
 - (b) modify the decision; or
 - (c) revoke the decision; or
 - (d) make any other decision that is appropriate to the circumstances of the case.
- (2) If the Secretary revokes the decision, he or she must—
 - (a) substitute his or her decision for that of the Registrar; or
 - (b) require the Registrar to make the decision again in accordance with directions that the Secretary gives to the Registrar.

76 Appeals from review decisions

- (1) A party to a review decision by the Secretary under section 74 may appeal to the Court against that decision.
- (2) An appeal is brought by the appellant giving a notice of appeal to the other party.
- (3) An appeal must be brought within 6 months following the date of the review decision.

77 Alteration and provision of rules of trade union

- (1) Every alteration to the rules of a trade union must be submitted to the Registrar and takes effect from the date of submission to the Registrar or such later date as is specified by those rules.
- (2) The rules of a trade union must not be altered in a manner inconsistent with Schedule 1.
- (3) Any alteration to the rules of a trade union not submitted to the Registrar, or otherwise not made in compliance with this section, is void.
- (4) A copy of the rules of a trade union shall be provided by a trade union to any person on request.

78 Trade unions to account

- (1) The treasurer of a trade union must maintain a just and true account in writing of all moneys received and paid by or on behalf of the trade union in the preceding year, and of the remaining sums of money and of all bonds and securities held by the trade union.

- (2) The trade union must appoint no less than every 2 years, one or more qualified accountants to audit the accounts of the trade union.
- (3) No less than every 2 years the audited accounts of a trade union must be presented to a meeting of the members of the trade union, and copies of the audited accounts made available to members upon request.

79 Audited accounts to be sent to Registrar

- (1) A trade union must submit a copy of audited accounts to the Registrar no later than one month after the audited accounts are presented to a meeting of members in accordance with section 78(3).
- (2) A trade union that fails to comply with subsection (1) commits an offence.

80 Falsification of accounts

- (1) An officer or member of a trade union must not -
 - (a) destroy, alter, mutilate or falsify any book, document, account or valuable security which belongs to the trade union or has been received by him or her on account of the trade union;
 - (b) make a false entry in any such book, document or account; or
 - (c) omit any material particular from any book, document or account.
- (2) Any person who breaches subsection (1) commits an offence and, if convicted, shall be disqualified from the right to hold an office of a trade union for a period of one year.

PART 8: COLLECTIVE BARGAINING

81 Right to bargain collectively and good faith requirements

- (1) Trade unions and employers, have the right, in full freedom to bargain collectively and negotiate collective agreements.
- (2) The parties bargaining for a collective agreement must deal with each other in good faith, including—
 - (a) being active and constructive in establishing and maintaining a productive bargaining relationship in which the parties are, amongst other things, responsive and communicative;
 - (b) providing information reasonably required to be able to engage in meaningful negotiations;
 - (c) concluding a collective agreement unless there is a genuine reason, based on reasonable grounds, not to.

- (3) Without limiting subsection (1), the parties must not, whether directly or indirectly, do anything—
 - (a) to mislead or deceive each other; or
 - (b) that is likely to mislead or deceive each other.

82 Parties with power to initiate collective bargaining

- (1) Bargaining for a collective agreement may be initiated by:
 - (a) one or more trade unions, for collective bargaining with one or more employers or an employer organisation; or
 - (b) one or more employers or an employer organisation, for collective bargaining with one or more trade unions.

83 Notice to initiate collective bargaining

- (1) A party initiates collective bargaining by serving each party with whom the initiating party proposes to bargain a notice that complies with subsection (2).
- (2) A notice complies with this subsection if it:
 - (a) is in writing;
 - (b) is signed by a duly authorised representative of the party initiating collective bargaining;
 - (c) identifies each of the intended parties to the collective agreement;
 - (d) identifies the intended coverage and expiry of the collective agreement;
 - (e) includes a statement of the initiating party's claims with respect to the collective agreement.

84 Time to initiate collective bargaining

- (1) A party may initiate bargaining for a new collective agreement at any time, unless there is an existing collective agreement in effect that has not yet passed its expiry date.
- (2) For the purposes of this section, an existing collective agreement includes an agreement that binds employees whose work is intended to come within the coverage clause in the collective agreement being bargained for.
- (3) If there is an existing collective agreement in effect, a party must not initiate bargaining for a new collective agreement until 60 days before the date on which the existing collective agreement expires.

85 Form and content of collective agreement

- (1) A collective agreement has no effect unless it is:

- (a) in writing;
 - (b) signed by each party to the agreement; and
 - (c) registered by the Registrar.
- (2) A collective agreement must contain:
 - (a) a coverage clause;
 - (b) a clause setting out the dispute resolution procedure the parties will follow at a workplace level; and
 - (c) a nominal expiry date.
- (3) A collective agreement must not contain:
 - (a) a clause providing for a means by which an employer or employee may elect (unilaterally or otherwise) not to be covered by the collective agreement, in part or in its entirety;
 - (b) a clause excluding or modifying the application of a provision of this Act or another applicable collective agreement to the detriment of an employee.
- (4) A collective agreement may contain such other provisions prescribing the terms and conditions of employment, or regulating the procedure to follow in negotiating the terms and conditions of employment, as the parties may agree.

86 Collective agreement to be registered

- (1) The parties to a collective agreement must, within 28 days of being signed by all parties, lodge a signed copy of the collective 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) The Registrar must register a collective agreement lodged for registration under this section, unless the Registrar concludes that the collective agreement:
 - (a) has the same or substantially the same coverage as a collective agreement that is in effect under this Act;
 - (b) does not comply with the requirements of section 85; or
 - (c) is otherwise contrary to this Act or any other written law.
- (4) Upon receipt of a collective agreement for registration, the Registrar must:
 - (a) issue a certified copy of the registered collective agreement to each party to the collective agreement; or
 - (b) notify the parties to the collective agreement of the grounds on which registration has been refused.

- (5) A collective agreement in force at the commencement of this Act is deemed to be registered under this Act.

87 When a collective agreement comes into effect

- (1) A collective agreement comes into effect on:
- (a) the date on which the collective agreement is registered; or
 - (b) such later date as specified in the agreement.
- (2) A collective agreement may provide that one or more of its provisions come into effect on different dates.

88 Application of collective agreement

- (1) A collective agreement that is in effect binds and is enforceable by:
- (a) the parties to the agreement; and
 - (b) one or more employers who are a party to the agreement; and
 - (c) an employee who is -
 - (i) employed by an employer that is a party to the agreement; and
 - (ii) a member of a trade union that is a party to the agreement.
- (2) If the registration of a trade union that is a party to a collective agreement is cancelled, the collective agreement continues to bind the employer or employers who are parties to the agreement, and the employees who are members of the trade union at the time its registration is cancelled.

89 Termination of collective agreement

- (1) A collective agreement that is in effect under this Part may only be terminated by the Registrar upon application of a party to the collective agreement:
- (a) before the nominal expiry date, - with the consent of all parties to the collective agreement; or
 - (b) on or after the nominal expiry date, - following written notice to all parties to the collective agreement of the application for termination.
- (2) The Registrar may make an order terminating the collective agreement under subsection (1) if the Registrar is satisfied that it is in the public interest to do so.

90 Compliance with collective agreement

A person who is bound by a collective agreement that is in effect under this Part, and who fails to comply with one or more provisions of the collective agreement, commits an offence.

PART 9: SETTLEMENT OF DISPUTES

91 Application of this Part

Except as otherwise provided in this Act, a dispute within the meaning of section 5 shall be determined in accordance with this Part.

DIVISION 9A: DISPUTE RESOLUTION SERVICES

92 Access to dispute resolution services

- (1) A party to a dispute may, if the dispute cannot be settled at the workplace level, apply to the Secretary for dispute resolution services.
- (2) An application under subsection (1) shall be accepted for dispute resolution services if:
 - (a) it is a dispute within the meaning of this Act;
 - (b) the party has applied for dispute resolution services within three months of the matter giving rise to the dispute coming to their knowledge;
 - (c) the party has unsuccessfully attempted to resolve the dispute at a workplace level;
 - (d) the dispute is not frivolous, vexatious or trivial; and
 - (e) the application is in the form prescribed by regulations (if any).
- (3) Where the Secretary is of the opinion an application under subsection (2) does not contain sufficient information, he or she may request further information from the party making the application.
- (4) Where the Secretary is of the opinion an application does not meet the criteria in section 92(2) of this Act, he or she shall no later than one month of receiving an application, notify the party making the application in writing of the reasons for the decision.
- (5) Where the Secretary is of the opinion that the application appears to disclose the commission of an offence under this Act, the Secretary shall, instead of providing dispute resolution services, refer the matter:
 - (a) to a labour inspector to investigate in accordance with this Act; or
 - (b) to the Office of the Attorney General for prosecution in accordance with this Act.

93 Nature of dispute resolution services

- (1) If a dispute is accepted by the Secretary under section 92, the Secretary shall, as soon as reasonably practicable, provide dispute resolution services in accordance with subsection (2).
- (2) The Secretary may, considering the most appropriate way to resolve a dispute, provide one or more of the following services:
 - (a) verbal or written information to the parties to a dispute about rights and obligations under this Act;
 - (b) information to support the parties to a dispute to fix new terms and conditions of employment;
 - (c) conciliation services in accordance with section 94.

94 Conciliation services

- (1) The Secretary, or any officer appointed as a conciliator by the Secretary to provide conciliation services, shall use his or her the best endeavours to assist the parties to a dispute to reach a settlement using any of the following methods:
 - (a) providing information to the parties to a dispute;
 - (b) exchanging information by email, letters or phone calls;
 - (c) meeting with both parties, either together or separately;
 - (d) any other methods as appropriate.
- (2) In determining the most appropriate method of conciliation, the conciliator shall have regard to the location of the parties and the circumstances of the dispute.

95 Powers of a conciliator

- (1) A conciliator may, for the purpose of conciliating a dispute, require any party to a dispute to appear before him or her and require any party to a dispute to furnish information or give evidence.
- (2) Any person who is required to furnish information or to give evidence under subsection (1), and who:
 - (a) wilfully furnishes information or makes a statement which he or she knows to be false or which he or she does not believe to be true; or
 - (b) without good reason, fails to furnish information or give evidence –commits an offence.

96 Confidentiality and conflicts of interest

- (1) A conciliator shall, except with the consent of the parties or a relevant party:
 - (a) keep confidential any statement, admission, or document prepared for the purposes of the conciliation; and
 - (b) keep confidential any information that, for the purposes of the conciliation, is disclosed orally in the course of the conciliation.
- (2) Subject to subsection (3), a conciliator shall excuse himself or herself from conciliating a dispute if his or her involvement in conciliating the dispute gives rise to actual or perceived conflict of interest.
- (3) If both parties to a dispute agree by consent that the conciliator provide dispute resolution services despite subsection (2), the conciliator shall conciliate the dispute.

97 Representation of parties in conciliation

In any conciliation proceedings under this Act, a party to those proceedings may appear in person and be supported or represented by any advocate, lawyer, employee, officer, family member or other representative appointed by that party.

98 Settlement agreements

- (1) If, as a result of conciliation, a dispute is settled by the parties, the conciliator shall prepare a written settlement agreement recording the terms agreed to by the parties, and such agreement shall be signed by the parties and witnessed by the conciliator.
- (2) Before the parties sign a written settlement agreement, the conciliator must advise the parties:
 - (a) of the terms of the agreement;
 - (b) that by affixing their signature to the agreement, the agreement is final and binding on them; and
 - (c) except for enforcement purposes, no party may seek to bring the terms of the agreement before any tribunal or court for review.
- (3) A party who breaches an agreed term of a settlement agreement commits an offence.

DIVISION 9B: COURT CAN DETERMINE DISPUTES

99 Court

- (1) A party to a dispute may apply to the Court, in accordance with the rules of the Court, to have the dispute determined if reasonable attempts to conciliate the dispute have failed.
- (2) The Court shall have the power to hear and determine a dispute under this Act.
- (3) The Court shall have the power to refer a dispute to conciliation if it is not satisfied that all reasonable attempts to conciliate the dispute have been made.

100 Right of appeal

A party aggrieved by a decision of the Court, shall be entitled to appeal a decision of the Court on a matter of law in accordance with the rules Court.

PART 10: INDUSTRIAL ACTION

101 Objects of this Part

The object of this Part is to establish the circumstances in which industrial action is lawful and to establish special procedures for industrial action in essential services.

102 Lawful strikes and lock-outs

- (1) Subject to this Part, a strike or lock-out is lawful, only if it—
 - (a) relates to a dispute about the formation, variation or application of a collective agreement;
 - (b) complies with sections 103 and 104;
 - (c) in the case of an essential service defined in section 5, complies with section 105.

103 Strikes and lock-outs where dispute resolution procedures are not followed

- (1) A party to a dispute shall not take strike or lock-out action in furtherance of a dispute, unless that party has made all reasonable endeavours to resolve the dispute in accordance with:
 - (a) the dispute resolution clause of an applicable collective agreement (if a collective agreement is in place); and
 - (b) division 9A of this Act.

104 Strikes and lock-outs where a collective agreement, settlement agreement or order is in force

- (1) A party to a dispute shall not take strike or lock-out action in furtherance of that dispute, where a collective agreement, conciliation settlement agreement or other order has been made by, or in relation to, the parties to the dispute, which:
 - (a) deals with the matters to which the dispute relates; and
 - (b) is expressed to have effect until a date that has not yet passed.

105 Strike and lock-out notice periods in essential

- (1) Subject to subsection (2) party to a dispute shall not take strike or lock-out action in furtherance of a dispute unless the party has given no less than 3 days' notice of the intended strike or lock-out to the Registrar and to all other parties to the dispute.
- (2) If a strike or lock-out is in an essential service, the notice period shall be no less than 20 days, and such notice shall be provided to the Registrar and all other parties to the dispute.

106 Registrar may decide if action lawful

- (1) Where a strike or lock-out takes place, an affected party may apply to the Registrar to make a decision as to whether the action is lawful under this Act.
- (2) The Registrar shall:
 - (a) notify the parties to the dispute of his or her decision under subsection (1) as soon as practicable; and
 - (b) where the Registrar is of the opinion that the action is unlawful under this Act, by order instruct the parties to the dispute to end the strike or lock-out.

107 Registrar may decide if action liable to endanger life, etc.

- (1) Where a strike or lock-out takes place and:
 - (a) it is in essential service within the meaning of this Act, and the Registrar is of the opinion on reasonable grounds that the interruption of the essential service is liable to endanger the life, health or safety of the whole or part of the population; or
 - (b) the Registrar is of the opinion on reasonable grounds that the strike or lockout relates to employees exercising authority in the name of the State; or
 - (c) the Registrar is of the opinion that the strike or lockout coincides with an acute national crisis

- he or she shall by order instruct the parties to the dispute to end the strike or lock-out.

108 Effective date of orders

- (1) An order made by the Registrar shall come into effect on the day after it is made, unless a later date is prescribed by the Registrar.
- (2) Where members of a trade union or employer organisation are affected by an order of the Registrar under this Part, the trade union or employer organisation must take all reasonable steps to:
 - (a) bring the contents of the order to the attention of its members; and
 - (b) inform them of the legal consequences of contravening the order.
- (3) A trade union or employer organisation that fails to comply with an order made by the Registrar or with subsection (2) commits an offence.

109 Appeals from decision of Registrar

- (1) Any person aggrieved by a decision of the Registrar under this Part, may appeal the decision to the Court.
- (2) An appeal under subsection (1) must be lodged with the Court within 14 days of the date on which the Registrar makes a decision under this Part.
- (3) Upon an appeal under subsection (1), the Court may make any orders it thinks proper, including directions as to costs.

110 Prohibition of expulsion of members

- (1) No member of an organisation who refuses to take part or to continue to take part in any unlawful strike or lock-out action shall by reason of such refusal be subject to:
 - (a) expulsion from membership of any organisation; or
 - (b) any fine or other penalty; or
 - (c) deprivation of any right or benefit to which he, she or their personal representatives would otherwise be entitled; or
 - (d) any disadvantage (whether directly or indirectly) as compared with other members of the organisation notwithstanding anything to the contrary in the rules or constitution of an organisation.

111 Intimidation or annoyance

- (1) A person shall not, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority:
 - (a) use violence against or intimidate such other person or a family member of that person, or injures his or her property; or
 - (b) persistently follow such other person about from place to place; or
 - (c) hide any tools, clothes or other property owned or used by such other person, or deprive him or her of, or hinders him or her in the use thereof; or
 - (d) watch or beset the house or other place where such other person resides or works or carries on business or happens to be, or the approach to such house or place; or
 - (e) follow such other person with two or more other persons in a disorderly manner in or through any street or road; or
 - (f) attend at or near a house or place where a person resides or works or carries on business or happens to be, in such numbers or in such manner as to be calculated to intimidate any person in that house or place, or to obstruct the approach thereto or egress there from, or to lead to a breach of the peace.
- (2) A person who contravenes this section commits an offence.

112 Immunity of trade unions or employer organisation from actions of tort

- (1) An action against a trade union or employer organisation, or against any members or officials thereof, on behalf of themselves and all other members of the trade union or employer organisation, in respect of any tortious act alleged to have been committed by or on behalf of the trade union or employer organisation, shall not be entertained by any court.
- (2) Nothing in this section shall affect the liability of a trade union or employer organisation or any official thereof to be sued in any court touching or concerning the property or rights of a trade union or employer organisation in contemplation or in furtherance of a dispute.

113 Conspiracy in relation to disputes

- (1) An agreement or combination of two or more persons to do or procure to be done any act in contemplation or furtherance of a dispute shall not be liable as a conspiracy if such act committed by one person would not be punishable as a crime.
- (2) An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a dispute, not be

actionable unless the act, if done without any such agreement or combination, would be actionable.

- (3) Nothing in this section shall exempt from punishment any person guilty of a conspiracy for which a punishment is awarded by any law in force in Tuvalu.
- (4) Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace or sedition.
- (5) A crime for the purposes of this section means an offence for the commission of which the offender is liable to be imprisoned, either absolutely or at the discretion of the Court as an alternative for some other punishment.

114 Removal of liability for interfering with another person's business

An act done by a person in contemplation or furtherance of a dispute shall not be actionable on the ground only that it induces some other person to break a contract of service 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 his or her capital or labour as he or she wills.

115 Peaceful picketing

It shall be lawful for one or more persons, in contemplation or furtherance of a dispute to peacefully picket at any place, provided that such place is not private property.

PART 11: MINIMUM WAGE SETTING

116 Objects of this Part

The object of this Part is to set out the process by which the Minister is to fix the minimum wage rate for employees.

117 Establishment of a Minimum Wage Board

- (1) This section establishes the Minimum Wage Board (the Board).
- (2) The Board consists of not more than 9 members and must include:
 - (a) three members representing the interests of employees nominated by the representative employees' organisation;
 - (b) three members representing employers or employer organisations in the private sector nominated by the representative employers' organisation;
 - (c) one member representing the Public Service Commission;
 - (d) one member representing the Ministry of Finance;

- (e) one member representing the Ministry to be the Chairperson of the Board.
- (3) The Minister—
 - (a) shall appoint members under subsection (2)(a) and (b) that are nominated by the representative employees' organisation and representative employers' organisation;
 - (b) may, by notice in writing to a member, remove the member from office for misconduct, inability to perform the functions of office, or neglect of duty;
 - (c) may give terms of reference (including the purpose, objectives and timeframes) for the advice that the Board provides to the Minister.
- (4) The Board may, subject to any provision of this Act or regulations made under this Act, determine its own procedure.

118 Quorum

- (1) A quorum for the purposes of any meeting of the Board shall be no less than five people, and comprise of at least:
 - (a) one representative of private sector employers;
 - (b) one representative of employees; and
 - (c) one representative of government.

119 Deputy Chairperson

- (1) The Minister must appoint one of the Board members as the Deputy Chairperson.
- (2) The Deputy Chairperson must act as the Chairperson when:
 - (a) the office of the Chairperson is vacant;
 - (b) the Chairperson is unable to attend any meeting of the Board;
 - (c) the Chairperson is, for any other reason, unable to carry out his or her functions.
- (3) The Deputy Chairperson, when acting as the Chairperson, will have the powers and capacity of the Chairperson.

120 Board serviced by Ministry

The Ministry must provide the resources and administrative support necessary to enable the Board to perform its functions.

121 Term of appointment

- (1) The term of office of a member of the Board must not exceed five years.
- (2) A member of the Board may be reappointed for one or more further terms under subsection (1).
- (3) A member may resign at any time by written notice to the Minister, and in such an event, the Minister shall appoint a replacement member following the criteria for membership and appointment in this division.

122 Remuneration of members of Board

- (1) Each member of the Board is entitled —
 - (a) to receive remuneration for services as a member at a rate and of a kind determined by the Minister; and
 - (b) to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member.

123 Board to make minimum wage recommendations

- (1) The Board must make recommendations to the Minister concerning the fixing of the minimum wage for employees no less than every three years.
- (2) A minimum wage recommendation under subsection (1) may pertain to employees generally, or be limited to:
 - (a) employees in a specified occupation or class or grade of occupation;
 - (b) employees in a specified area, island or region of Tuvalu;
 - (c) employees in a specified sector; or
 - (d) employees in a specified industry.
- (3) A minimum wage recommendation under subsection (1) may recommend different minimum rates for different types of employment or different types of work, as the Board thinks fit, including, but not limited to, employees who are:
 - (a) employed as casual employees, fixed-term employees, piece-work employees or task-based employees; or
 - (b) required to work hours outside the employee's ordinary hours of work or to work at night.
- (4) The Board may advise the Minister on other matters related to the fixing of minimum wages for employees.
- (5) The Board may exercise its powers under this section at its own initiative or upon the request of the Minister, provided that the Board must make a recommendation under subsection (1) at least once every three years.

124 Criteria for minimum wage recommendations

- (1) In exercising its responsibilities under section 123 the Board must consider the following:
 - (a) the needs of employees and their families;
 - (b) the general level of wages in Tuvalu;
 - (c) the cost of living and its effect on the real value of the minimum wage;
 - (d) whether other social protection measures have compensated for cost of living increases in paragraph (c);
 - (e) the relative living standards of other social groups;
 - (f) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment in Tuvalu;
 - (g) the right to equal remuneration for work of equal value;
 - (h) any other information, including information submitted to it by employee and employer representatives and other interested parties, relating to the reasonableness of any wage, including information of a financial or economic nature either at the national level or in relation to an industry, sector, occupation or geographic area; and
 - (i) such other matters as it thinks fit.

125 Subcommittees and advisors

- (1) The Chairperson may, after consultation with the Board:
 - (a) appoint from amongst the members of the Board, one or more subcommittees for the purpose of reviewing the minimum wage; or
 - (b) invite, as appropriate, the national statistics officials, non-government organisations, the Office of the Attorney General and other agencies to provide advice to the Board on matters relating to fixing the minimum wage, but such advisors are not be entitled to vote at any Board meeting.

126 Consultation and determination by the Board

- (1) Before submitting a minimum wage recommendation to the Minister, the Board must:
 - (a) invite submissions from, and consult with, employee and employer representatives, and in particular with those representing employees and employers in sectors, industries, occupations or geographical areas paying the lowest wages;
 - (b) request analysis of current wage rates from relevant government departments; and

- (c) invite and receive relevant submissions from other such interested parties, people or organisations as the Board considers appropriate.
- (2) The content of all minimum wage recommendations and advice given to the Minister must be determined by a majority vote of the Board members present and voting, provided that where there is an equality of votes, the Chairperson's vote is decisive.

127 Reasons for recommendation or advice

When submitting a minimum wage recommendation or advice to the Minister, the Board must provide the Minister with a written statement of the reasons for its recommendation or advice.

128 Consultation by the Minister

Upon receiving a minimum wage recommendation that affects a specific occupation, industry or sector, the Minister must consult with any other ministers with responsibility for the relevant industry or sector before making a minimum wage order under section 129.

129 Minimum wage orders

The Minister may, but is not obligated to, make an order, fixing the minimum wage rate for employees in accordance with a minimum wage recommendation made by the Board.

130 Effect of minimum wage order

An employer who fails to comply with a provision of a minimum wage order made by the Minister under section 129 commits an offence.

PART 12: SECRETARY, COMMISSIONER, INSPECTORS AND REGISTRAR

131 Objects of this Part

The object of this Part is to establish the personnel necessary for administering this Act.

132 Secretary

There shall be a Secretary of Labour for the purposes of administering this Act.

133 Secretary's functions and powers

- (1) The functions of the Secretary are to:
 - (a) promote and monitor compliance with this Act, and with any orders, regulations, contracts of service or collective agreements made under this Act;
 - (b) advise and assist employers, employees, trade unions and employer organisations on particular or general matters relating to employment or industrial relations;
 - (c) provide information, advice, awareness or training to employers, employees, trade unions and employer organisations on matters related to compliance with this Act, and with any orders, regulations or collective agreements made under this Act;
 - (d) provide conciliation services in relation to disputes within the meaning of section 5 under this Act;
 - (e) publish a biennial labour inspection report including statistics on inspection visits, recorded breaches of the Act and penalties issued;
 - (f) formulate such enterprise or national policies, codes, guidelines and strategies on matters relating to employment or industrial relations; and
 - (g) refer a matter to the Office of the Attorney General for prosecution in respect of contravention of this Act.
- (2) The Secretary has such other powers as are necessary or expedient to perform his or her functions under this Act.
- (3) The Secretary shall:
 - (a) appoint officers for the purposes of carrying out the provisions of this Act;
 - (b) designate one or more officers as labour inspectors for the purposes of this Act;
 - (c) delegate certain powers to require certain information relating to compliance with this Act to Officers of Falekaupule as prescribed by regulations;
 - (d) designate one or more officers as conciliators for the purposes of Division 9A of this Act.
- (4) The Secretary may delegate, in writing, the performance of a function or the exercise of a power under this Act, to an officer appointed under this Act.

134 Commissioner of Labour

The Secretary may delegate one or more of his or her functions to an officer who shall be the "Commissioner of Labour" and references to such functions and powers of the Secretary in this Act shall be deemed to be references to the functions and powers of the Commissioner of Labour, including the power to delegate.

135 Appointment of a Registrar

- (1) The Secretary shall appoint one officer to be the Registrar of Industrial Organisations on the advice of the Public Service Commission established under the Public Service Act.
- (2) The Registrar shall perform the functions in s.136, but may perform other duties in the Ministry, provided that such duties do not interfere, or are likely to be perceived as interfering with his or her independence in the performance of duties as the Registrar.

136 Functions and powers of Registrar

- (1) The functions of the Registrar include—
 - (a) registering trade unions in accordance with the provisions of this Act;
 - (b) maintaining a register of trade unions as required under this Act;
 - (c) powers to make decisions relating to strikes and lockouts;
 - (d) the power to refer a matter to the Office of the Attorney General for prosecution in accordance with this Act; and
 - (e) any other functions or powers required by this Act.

137 Registrar's duty to act independently and disclose previous involvement

The Registrar must act independently when exercising his or her functions as Registrar and shall not, with respect to his or her decision making with respect these functions be under the direction or control of the Ministry.

138 Functions of Labour Inspectors

- (1) The functions of a labour inspector include—
 - (a) receiving and investigating any allegation of a breach of this Act, or any orders, regulations, contracts of service or collective agreements made under this Act;
 - (b) any other functions delegated in writing by the Secretary of Labour or required by this Act.

139 Powers of Labour Inspectors

- (1) For the purpose of performing his or her functions under this Act, a labour inspector has the following powers:
 - (a) to enter and inspect any place which he or she has reasonable cause to believe is a place of employment and into any house or accommodation provided by an employer for employees;

- (b) to interview any person at a place of employment;
 - (c) to interview any employer or any employee;
 - (d) to require the production of, and to inspect and take copies from,—
 - (e) any wages and time record or any holiday and leave record;
 - (f) any other document held which records the remuneration of any employees;
 - (g) to require any employer to supply to the labour inspector a copy of the wages and time record or holiday and leave record or employment agreement or both of any employee of that employer;
 - (h) to question any employer about compliance;
 - (i) to remove, or cause to be removed, an employee from the place of employment where he or she is employed for further enquiry into the matter, if a labour inspector has reasonable grounds to suspect that any offence has been committed against that employee;
 - (j) to issue demand notices under this Act;
 - (k) any other powers delegated in writing by the Secretary of Labour or conferred under this Act.
- (2) A labour inspector must not enter or inspect a private dwelling house without the consent of the occupier of that dwelling house.
- (3) When visiting a place of employment for the purposes of this Act, a labour inspector must:
- (a) notify the employer or the employer's representative upon arrival of his or her presence, unless the inspector has reasonable grounds for believing that such notification may be prejudicial to the performance of his duties;
 - (b) produce evidence of his or her appointment if requested to do so by any person in the workplace in the course of performing his or her functions.

140 Referral for dispute resolution

- (1) At any time before or during the investigation of an allegation received under section 138, a labour inspector may refer all or part of the matters raised in the allegation for dispute resolution services in accordance with Division 9A of this Act, if the labour inspector is of the opinion that —
- (a) it is a dispute within the meaning of section 5 under this Act;
 - (b) dispute resolution is more appropriate than investigation for addressing all or part of the matters raised in the allegation, as the case may be; and
 - (c) the parties have not made all reasonable endeavours to resolve the dispute in accordance with Division 9A of this Act.

- (2) A labour inspector shall not continue to investigate any matter raised in an allegation that is referred for dispute resolution services under subsection (1).

141 Decision and notification of labour inspector's decision

- (1) Upon completion of an investigation of an allegation received under section 138, a labour inspector shall make one or more of the following decisions in relation to the matters raised in the allegation:
 - (a) take no further action;
 - (b) issue a demand notice under section 143;
 - (c) refer the matter to the Office of the Attorney General for prosecution in accordance with this Act.
- (2) The labour inspector shall notify the relevant parties of his or her decision(s) and the reasons for the decision(s) in writing as soon as practicable.

142 Appeal of labour inspector's decision

- (1) A party aggrieved by a labour inspector's decision to take no further action under section 141 may, within 28 days of the date of the notification of that decision, apply in writing to the Secretary to have the decision reviewed.
- (2) If the Secretary confirms the labour inspector's decision to take no further action, a party aggrieved by that decision may appeal to the Court.
- (3) An appeal under subsection (2) must be lodged with the Court within 28 days of the date on which the Secretary's decision was made.

143 Power to issue demand notices

- (1) A labour inspector may issue a demand notice in accordance with this section if—
 - (a) he or she observes an employer committing a breach of, or believes on reasonable grounds, that an employer is breaching or has breached this Act or any order, regulation, contract of service or collective agreement made under this Act; and
 - (b) an inspector or another person has not taken enforcement action against the same employer in respect of the same matter.
- (2) A demand notice for the purposes of subsection (1) shall include:
 - (a) The section of the Act, order, regulation, contract of service or collective agreement under which the employer is failing or has failed to comply; and
 - (b) the action that must be taken by the employer to comply and if appropriate, to remedy the effects of non-compliance; and

- (c) the date by which the employer must comply with the demand notice, which shall be a date no less than 28 days from the date the demand notice is issued.
- (3) An employer may, in extenuating circumstances, apply to the Secretary under section 144 for an extension of the date specified for compliance with the demand notice.

144 Review of demand notice

- (1) An employer may, within 28 days of the demand notice being issued, apply in writing to the Secretary to have a demand notice reviewed.
- (2) On receipt of an application under subsection (1), the Secretary shall within 28 days, having regard to all the facts and the law, affirm, vary or rescind a demand notice, and shall do so in writing setting out the reasons for his or her decision.

145 Appeal of Secretary's decision

- (1) A person aggrieved by a decision of the Secretary made under section 144 may appeal that decision to the Court within 28 days of the Secretary's decision.
- (2) The Secretary shall be entitled to be heard on any appeal under this section.

146 Enforcement of demand notice

If an employer has not complied with a demand notice, the Secretary may refer the matter to the Office of the Attorney General to apply to have the demand notice enforced by the Court.

147 Offences

An employer who fails to comply with a demand notice issued under this Part, commits an offence.

148 Conflicts of interest and confidentiality

- (1) A labour inspector —
 - (a) must not have any direct or indirect interest in any workplace that is under his or her supervision in the course of performing his or her functions or exercising his or her powers under this Act;
 - (b) must not make use of or reveal, either during the period of his or her appointment or after (including after leaving Government service), any

- manufacturing or commercial secrets or working processes or confidential information which may come to his or her knowledge in the course of his or her appointment;
- (c) must treat as confidential the source of a complaint received by the labour inspector regarding an employer failure, or alleged failure, to comply with this Act or with any orders, regulations or collective agreements made under this Act;
 - (d) must not give any 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 labour inspector who contravenes subsection (1) commits an offence.
 - (3) An officer has a "direct or indirect interest" in a workplace —
 - (a) if he or she (or their spouse, de facto partner, child, or parent):
 - (i) may derive a financial benefit from it; or
 - (ii) may have a financial interest in (or are a partner, director, officer, board member, or trustee of) it; or
 - (iii) is otherwise directly or indirectly interested in the matter;
 - (b) that may reasonably be regarded as likely to influence the labour inspector in carrying out their responsibilities.
 - (4) A labour inspector who has a "direct or indirect interest" in a workplace —
 - (a) must disclose the nature and value (or extent) of the interest to the Secretary;
 - (b) must not perform any functions or exercise any powers in relation to the workplace, unless the Secretary considers that the conflict of interest is not likely to materially affect the labour inspector's impartiality.
 - (5) An employer who believes that a labour inspector has a "direct or indirect interest in a matter" may ask the Secretary to —
 - (a) consider the nature and value (or extent) of the labour inspector's interest;
 - (b) determine whether the labour inspector should be directed not to perform any functions or exercise any powers in relation to that employer's workplace.

PART 13: MISCELLANEOUS

149 Objects of this Part

The object of this Part is to provide for matters relating to liability, penalties, regulations and other miscellaneous matters pertaining to this Act.

150 Prohibition of victimisation

- (1) A person must not victimise an employee or prospective employee because the employee or prospective employee, or a person associated with the employee or prospective employee, has, in good faith:
 - (a) exercised rights or responsibilities under this Act; or
 - (b) raised allegations of one or more breaches of this Act; or
 - (c) reported an employment dispute under Part 9 of this Act; or
 - (d) provided evidence, information or assistance in connection with any employment dispute, hearing or proceedings under this Act; or
 - (e) participated in industrial activity in accordance with Part 10 of this Act; or
 - (f) refused to do anything that the employee or prospective employee had reason to believe would breach this Act.
- (2) A person victimises an employee or prospective employee if the person subjects, or threatens to subject, the employee or prospective employee to any detriment, prejudice or penalty.
- (3) A person breaches subsection (1) if the employee or prospective employee is victimised for reasons that include a reason set out in subsection (1).
- (4) A person who breaches this section commits an offence.
- (5) If the person who breaches this section is an employee, the employer of that employee is also liable under subsection (4) unless the employer can prove that it took all reasonable steps to prevent the victimisation.
- (6) In any proceedings under this Act in which a breach of this section is alleged, the person accused of victimising an employee or prospective employee bears the onus of proving that the detriment, prejudice or penalty was not affected by a reason set out in subsection (1).

151 Terms and conditions superior or in contravention of Act

- (1) Nothing in this Act prevents an employer and employee or an employer and one or more trade unions from negotiating any term or condition of employment that is more favourable than that provided by this Act.

- (2) Any term or condition of a contract of service or a collective agreement that contravenes a provision of this Act is void to the extent of its contravention.

152 Liability of persons appointed under Act

No person is liable for any act done or omitted to be done by him or her in good faith and without negligence in the carrying out of any function under this Act.

153 Offences by a company

- (1) Where an offence against this Act committed by a company, is proved to have been committed with the consent or connivance of, or to have been attributable to the wilful neglect on the part of, an officer of the company 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 Act it is necessary to establish the intention of a company, it is sufficient to show that an officer, employee or agent of the company had that intention.
- (3) In this section, “officer” in relation to a company means:
 - (a) a director, secretary or executive officer of the company; or
 - (b) a person in accordance with whose directions or instructions the directors of the company are accustomed to act; or
 - (c) a person concerned in the management of the company.

154 General penalty

- (1) A person who commits an offence under this Act for which no specific penalty is prescribed is liable on conviction:
 - (a) where the person is an individual, to a fine of up to \$3,000
 - (b) where the person is a company, trade union or employer organisation, to a fine of up to \$5,000

155 Regulations under this Act

- (1) The Minister may make Regulations —
 - (a) setting out the criteria and other requirements for the purpose of authorising a person as a recruitment agent or private employment agent under section 9;
 - (b) setting out minimum requirements relating to occupational safety and health under section 56;
 - (c) specifying requirements for light work under section 43;

- (d) setting out the types of hazardous work in which a child under the age of 18 years is prohibited from engaging under section 44;
- (e) specifying requirements for registration as a trade union under Part 7;
- (f) prescribing the appointment process for members of, and procedures for, the Minimum Wage Board established under Part 11;
- (g) prescribing forms and fees required under this Act; and
- (h) for the proper and efficient administration of this Act.

156 Savings and transitional provisions

- (1) Any proceedings commenced prior to this Act coming into force that relates to the Employment Act, Industrial Relations Code or Trade Unions Act, as the case may be, shall continue as if those Acts remain in force.
- (2) Any organisation registered under the Trade Unions Act shall continue to be registered on the commencement of this Act and for the avoidance of doubt:
 - (a) officers appointed under the Trade Unions Act shall be deemed valid;
 - (b) rules relating to any trade union or employer organisation made under the Trade Unions Act shall be deemed to be lawful.
- (3) Any person who is registered as a recruitment agent or employment agent under the Employment Act at the commencement of this Act shall continue to be registered as if they are registered in accordance with this Act.

157 Acts and regulations repealed

- (1) The following Acts and Regulations are repealed:
 - (a) Employment Act (CAP 40.28)
 - (b) Industrial Relations Code (CAP 40.32)
 - (c) Trade Unions Act (CAP 40.64)
 - (d) Employment (Form for workers recruiting licence) Regulations (CAP 40.28.1)
 - (e) Employment Act (Fees) Regulations (CAP 40.28.2)

158 Consequential amendments to other laws

- (1) Section 8 of the Public Holidays Act (Cap 22.10) is repealed.
- (2) Section 249 of the Penal Code (Cap 10.20) is repealed.

SCHEDULE**SCHEDULE 1 – TRADE UNION RULES**

The rules of a trade union must include the following information:

- (1) The name of the trade union.
- (2) The objects for which the trade union is to be established, the purpose for which the union's funds may be used, and the conditions under which any member may become entitled to any benefits assured by those funds, and the fines and forfeitures to be imposed on any member of the trade union.
- (3) The manner of making, altering, amending and rescinding the rules.
- (4) A provision for the appointment and removal of a general committee of management, of a treasurer and other officers.
- (5) A provision for the keeping of full and accurate accounts by the treasurer.
- (6) A provision for a meeting of members to be convened as soon as practicable after the end of the financial year with the express purpose of enabling the treasurer to present the audited accounts.
- (7) A provision for the investment of the funds or their deposit in a bank and for an annual or periodical audit of accounts.
- (8) The inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union.
- (9) The manner of the dissolution of the trade union and the disposal of the funds thereof available at the time of such dissolution.

SCHEDULE 2 – PARTICULARS OF CONTRACTS OF SERVICE

- (1) Name of employer
- (2) Name of employee
- (3) Position description / inherent requirements of position
- (4) Applicable minimum wage order and collective agreement(s)
- (5) Classification or designation of the employee under the applicable minimum wage order or collective agreement(s)
- (6) Type of contract (full time / part time / casual / piece work)
- (7) Term of contract (indefinite / fixed term)
- (8) Place of work
- (9) Hours of work
- (10) Wages/salary
- (11) Allowances
- (12) Pay period
- (13) Holidays and leave
- (14) Employment dispute procedure
- (15) Other entitlements
- (16) Notice of termination
- (17) Date of contract

I certify that this is a correct copy of the Act passed by the parliament of Tuvalu on the _____
October 2017.



Lakaga Uniuni

Clerk to Parliament (Ag)

I certify that this Act has been assented to by the Governor General as representative of Head of State.



Laigane Italeli Talia

Attorney General (Ag)

Published by exhibition at the public notice board of the Government of Tuvalu this 24th
November, 2017.



Nese Ituaso Conway

Secretary to Government (Ag)

