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EMPLOYMENT RELATIONS BILL 2018

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EMPLOYMENT RELATIONS BILL 2018

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EMPLOYMENT RELATIONS BILL 2018

A BILL FOR AN ACT TO ESTABLISH FAIR WORKING CONDITIONS FOR EMPLOYEES IN TONGA AND FOR RELATED MATTERS

Commencement []

PART I – PRELIMINARY

1 Short title and commencement

- (1) This Bill may be cited as the Employment Relations Bill 2018.
- (2) This Bill shall come into force on a date specified by notice in the Gazette [shall come into force as follows –
 - (a) Parts [x, x and x] immediately following enactment of this Bill; and
 - (b) Part [x, x and x] on a date specified by the Minister in the Gazette.

2 Interpretation

In this Act, unless the context otherwise requires –

to

“AIDS” means the Acquired Immune Deficiency Syndrome, a human disease which is caused by HIV and which is characterised by the progressive destruction of the body’s immune system;

“capacity or conduct” for the purposes of dismissal, means;

- (a) the ability of an employee to perform the duties for which they were hired to a satisfactory level that would reasonably be expected by an employer; or
- (b) the behaviour of an employee in the workplace that would reasonably be expected by an employer;

“casual employee” means an employee employed under a contract of employment who -

- (a) has no fixed hours of work; or
- (b) has an irregular pattern of working days; and
- (c) is paid at the end of each work period,

and has no on-going expectation of employment;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry;

“child” for the purposes of this Act means a person who is under the age of 18 years;

“collective agreement” means an agreement made between one or more registered trade unions and one or more employers which –

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

“collective bargaining” means all negotiations between employers (or employer’s organisations) and trade unions for the purposes of –

- (a) determining working conditions and terms of employment;
- (b) regulating relations between employers and employees; or
- (c) regulating relations between employers or employer’s organisations and a trade union or organisation of trade unions;

“Committee” means the Employment Relations Advisory Committee constituted under section 12;

“contract of employment” means a written or verbal contract, whether expressed or implied, to employ a person whether for a fixed or indefinite

period, and includes an employee's terms and conditions contained in a collective agreement;

“Court” means the Supreme Court of Tonga;

“day” means a period of 24 hours beginning and ending at midnight;

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

“dispute” for the purposes of this Act means a dispute or difference between an employee and one or more employers (or one or more trade unions) in relation to the –

- (a) employment or non-employment; or
- (b) terms and conditions of employment, of an employee under this Act;

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

“employee” subject to section 161, means a prospective employee or person engaged under a contract of employment by an employer and includes an apprentice, learner, domestic employee, part-time employee, casual employee or out worker, but does not include –

- (a) a church Minister; or
- (b) a person who holds a similar or equivalent position in a church;

“employer” means a natural person or legal entity by whom an employee is employed under a contract of employment;

“employment” means the performance by an employee of a contract of employment;

“essential service” means a service listed in Schedule 5;

“forced labour” for the purposes of this Act, means –

- (a) any work or service that is extracted from a person under the threat of penalty; and
- (b) is not offered voluntarily,

but does not include –

- (i) any work that is exacted as part of a school's compulsory educational programme;
- (ii) any work or service exacted in accordance with compulsory military service laws for work of a purely military character;

- (ii) any work or service which forms part of the normal civic, traditional or religious obligations of a person;
- (iii) any work or service exacted from any person 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 the person is not hired or placed at the disposal of private individuals, companies or associations;
- (iv) any work or service exacted by a person or the Government or a legal entity under an Act in cases of emergency, such as war calamity, threatened calamity, fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstances that would endanger the existence or well-being of the whole or part of the people of Tonga; or
- (v) communal services of a kind performed by members of the community in the direct interest of the community, in accordance with communal rules or customary practice;

“Government” means Government of the Kingdom of Tonga;

“guardian” for the purposes of this Act refers to a person –

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

“HIV” means Human Immunodeficiency Virus, a virus that weakens the body’s immune system, ultimately causing AIDs;

“industry” for the purposes of this Act includes but is not limited to the following –

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

“labour officer” means a person designated by the Chief Executive Officer as a labour officer under Part XVII of this Act, and for the purposes of this Act, includes the Head of the Labour Division;

“lockout” means the act of an employer in –

- (a) closing the employer’s place of business, or suspending or discontinuing the employer’s business;

- (b) discontinuing the employment of employees employed by the employer in consequence of a dispute;
- (c) breaking any of the conditions of an employer's contract of employment; or
- (d) refusing or failing to engage employees for any work for which the employer usually employs the employee,

with a view of compelling an employee to accept certain terms or conditions of employment;

“Mediation Unit” means the unit of the Ministry that provides mediation services under Part XIV of this Act;

“Mediator” means a mediator appointed under Part XIV of this Act and includes the Chief Mediator;

“Ministry” means the Ministry responsible for Labour;

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

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

“party” with reference to a dispute, means –

- (a) an employee;
- (b) one or more trade unions; or
- (c) one or more employers;

“piece work” work which is paid for on the basis of a set monetary amount for each unit of work;

“public authority” for the purposes of this Act includes but is not limited to the following –

- (a) Ministry or a Department of the Government;
- (b) local authority;
- (c) public enterprise; or
- (d) government owned company;

“public holiday” means a public holiday under the Public Holidays Act;

“redundancy” means circumstances where an employer no longer requires an employee's job to be performed, for reasons of an economic, technological, structural or similar reason;

“registered medical practitioner” means –

- (a) a person registered under the Medical and Dental Practice Act; or
- (b) a medical or dental officer in the services of the Government;

“Registrar” for the purposes of this Act means the Registrar of Trade Unions and includes an assistant Registrar;

“remuneration” means wages 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. Emoluments include, but are not limited to the following –

- (a) piece rates, 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 a provident fund;
- (e) a travelling allowance or the value of a travelling concession;
- (f) a sum payable to the 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;

“ship” includes a boat, vessel, hovercraft or craft of any kind, but does not include a Tonga Defence Force ship;

“significant hazard” for the purposes of this Act means [any significant source of potential damage, harm or adverse health effect on an employee or at a workplace];

“spouse” means a person’s legally married wife or husband;

“strike” means the act of a group of employees who are or have been in the employment of the same employer or different employers in –

- (a) discontinuing their employment either wholly or partially, or in reducing the normal performance of it;
- (b) refusing or failing after such discontinuance to resume or return to their employment;
- (c) refusing or failing to accept engagement for work in which the employees are usually employed; or
- (d) reducing their normal output or their normal rate of work with the intention of disrupting their work, if the act is due to a combination, agreement, common understanding, expressed or implied, by employees,

but does not include a union meeting agreed to between a trade union and the employer;

“trade union” means the union of a group of not less than 7 employees, registered under this Act, with the principal objective to regulate the relationship between –

- (a) employees and employers for the conduct of collective bargaining on terms and conditions and related matters; or
- (b) employees, irrespective of whether such union would, if this Act had not been enacted, have been deemed to have been an unlawful union by reason of some one or more of its objects being in restraint of trade;

“week” means a period of seven consecutive days;

“workplace” for the purposes of this Act means any place, whether or not in a building or a structure, and includes a ship, vehicle or aircraft where employees work; and

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

3 Purpose

The purposes for this Act are to establish –

- (1) fair work conditions for employees in Tonga; and
- (2) a legal framework governing employment in Tonga.

4 Application

- (1) Subject to subsection (2) of this section, this Act shall apply to every employer and employee in a workplace in Tonga, including government and non-government entities.
- (2) Except where expressly stated in this Act, this Act shall be binding on the Government.
- (3) This Act shall not apply to members of His Majesty’s Armed Forces or the Tonga Police.

PART II – ADMINISTRATION

5 Administration

The Minister and the Chief Executive Officer shall be responsible for the administration of this Act.

6 Commission

- (1) The Cabinet may, on the recommendation of the Minister and the Employment Relations Advisory Committee, establish a Commission to consider and recommend particular matters set out in this Act, including but not limited to the following –
 - (a) establishing minimum wages for particular sectors or to apply nationally;
 - (b) establishing the minimum conditions for leave entitlements, including annual leave, maternity leave, sick leave, casual leave, and holiday pay;
 - (c) establishing rules governing the employment of children including recommendations on the Hazardous Child Labour List specifying the types of work that children under the age of 18 are prohibited from engaging in;
 - (d) establishing occupational safety and health standards to apply nationally or for specific sectors;
 - (e) establishing minimum occupational safety and health standards; and
 - (f) any other matter which is referred to the Commission under this Act.
- (2) Members of the Commission, including the chair, shall be appointed by the Cabinet based on the recommendations of the Employment Relations Advisory Committee, provided that –
 - (a) there shall be no less than three and no more than five members on the Commission;
 - (b) members of the Commission may change according to the nature of the issue being considered;
 - (c) members of the Commission shall be representative of Government, employer's organisations and workers organisations;
 - (d) due consideration be given to gender balance in the membership of the Commission; and

- (e) terms of reference for the Commission are clearly established by the Employment Relations Advisory Committee and approved by Cabinet.
- (3) The Commission shall consult widely with all relevant stakeholders when determining an issue under subsection (1) and shall allow for written and oral submissions.
- (4) When seeking to determine –
 - (a) minimum wages under subsection (1)(a); and
 - (b) minimum conditions for leave entitlement under subsection (1)(b),the Commission shall consult closely with relevant stakeholders to ensure that minimum wages and leave entitlements proposed are appropriate for Tonga.
- (5) Recommendations of the Commission that are approved by the Minister shall be formalised by regulations made under this Act.

7 Functions of the Ministry

- (1) Functions of the Ministry shall include but not be limited to –
 - (a) advise Cabinet through the Minister on policy matters pertaining to labour and employment relations;
 - (b) advise and assist employers and employees on a particular or general labour and employment relations matter under this Act;
 - (c) provide information, advice, awareness and training to –
 - (i) employers;
 - (ii) employees;
 - (iii) employer and employee organisations,on employment relations matters under this Act;
 - (d) ensure full compliance of employers and employees with respective obligations under this Act and regulations made under this Act;
 - (e) encourage and promote the principle of good faith and harmonious employment relationships; and
 - (f) consider applications from foreigners for employment in Tonga in close consultation with the Immigration Division of Government.
- (2) Functions of the Ministry shall be delivered through the Chief Executive Officer and the Labour Division.

8 Functions and powers of the Minister

- (1) Functions of the Minister are as specified in this Act.
- (2) Where the Minister considers it necessary or desirable to fulfil the Minister's functions under this Act, the Minister may, in writing, require a person to provide information, statistical data or documentation in relation to –
 - (a) the employment conditions of its employees; or
 - (b) procedures of the person or organisation in relation to its employees.
- (3) Information provided to the Minister under sub-regulation (1) shall be used specifically for discharging the functions of the Minister under this Act.

9 Delegation of powers

- (1) The Minister may from time to time, delegate one or more of his powers under this Act to the Chief Executive Officer.
- (2) Notwithstanding subsection (1), the Minister shall not delegate his powers in Part XVII of this Act.
- (3) A delegation under sub-regulation (1) shall be –
 - (a) made in writing;
 - (b) communicated to the person to whom the power is delegated;
 - (c) state clearly the functions and powers that are being delegated; and
 - (d) state clearly the effective date and end date for the delegation of powers.
- (4) A delegation shall be recorded in the register of the Ministry under Part XIX.
- (5) A delegation shall be revoked in writing by a Minister in office.

10 Functions and powers of the Chief Executive Officer

- (1) Functions of the Chief Executive Officer under this Act include the following –
 - (a) exercise of any functions delegated by the Minister under section 9(1);
 - (b) review and attest the contracts of employment for foreign employees in section 22;
 - (c) develop a Code of Ethics for the Division under section 100;

- (d) recommend to the Minister suitable officers for designation as labour officers under section 166;
 - (e) establish and maintain the registers of the Ministry under section 176 of this Act;
 - (f) carry out functions of chair of the Employment Advisory Committee in Part III;
 - (g) in consultation with the Public Service Commission, appoint public officers to the Mediation Unit and an independent mediator under Part XIV;
 - (h) carry out any other functions for which a Chief Executive Officer is responsible under the Public Service Act and in his contract of employment.
- (2) The Chief Executive Officer shall have such powers as provided under this Act for the discharge of his functions.

11 Establishment of the Labour Division

- (1) The Labour Division of the Ministry is hereby established.
- (2) The head of the Labour Division shall be a senior officer of the Ministry and the Division shall consist of such labour officers designated by the Minister under Part XVII of this Act.
- (3) Functions of the Labour Division are set out in section 11.

PART III – EMPLOYMENT RELATIONS ADVISORY COMMITTEE

12 Employment Relations Advisory Committee

An Employment Relations Advisory Committee is established.

13 Membership

- (1) The Committee shall consist of the following Members, appointed in writing by the Minister with the consent of Cabinet –
 - (a) Chief Executive Officer of the Ministry (chair);
 - (b) Chief Executive Officer of the Public Service Commission;
 - (c) three members nominated from registered organisations of employers; and

- (d) one member nominated from the Tonga Forum of Churches.
- (2) The Committee may, from time to time, co-opt one or more additional members with technical knowledge or local knowledge and expertise, to attend a meeting of the Committee as a co-opted member, provided that a co-opted member –
 - (a) shall not constitute the quorum of the Committee; and
 - (b) shall not be entitled to vote on any matter or issue considered by the Committee.
- (3) The Chair will ensure that a member of the Committee who is nominated under sub-section 1(c) or 1(d) meets the following criteria –
 - (a) is a natural person over the age of 18 years;
 - (b) has specific industry knowledge of at least 5 years;
 - (c) has a good working knowledge of commerce and trade in Tonga; and
 - (d) does not have a criminal record in Tonga or abroad.
- (4) The Cabinet shall consider the list of nominees provided in sub-sections (1)(c) and 1(d) to ensure that –
 - (a) they meet the criteria in subsection (3); and
 - (b) the members of the Committee are representative of employees and employers in Tonga; and
 - (c) due regard be given to gender balance in the Committee.
- (5) If a nominee does not fit the criteria in sub-section (3), the Cabinet shall request an alternative nominee from the relevant organisations in (1)(c) or 1(d).
- (6) If there is a vacancy in the membership of the committee, a transaction effected during the vacancy period is not invalidated by reason only of the vacancy, provided there is a quorum.

14 Functions of the Committee

- (1) Functions of the Committee include but are not limited to –
 - (a) consult on labour and employment policies referred to it by the Ministry and make recommendations to the Minister on it;
 - (b) considering any employment issue or matter referred to it by the Minister, any member of the Committee or the Secretariat and advising the Minister on it;
 - (c) providing recommendations to the Minister for the establishment of a Commission under section 6 of this Act;

- (d) consulting and discussing matters referred to it by the Ministry in relation to the International Labour Organisation, including advising the Minister, as necessary, on –
 - (i) ratification, implementation and denunciation of any Conventions and Recommendations of the International Labour Organization;
 - (ii) reports to the International Labour Office regarding ratified Conventions;
 - (iii) ratification of newly adopted Conventions and Recommendations of the International Labour Organization;
 - (iv) proposals or matters to be discussed at the International Labour Organization or resolutions or conclusions adopted by the International Labour Conference, or issues addressed by other tripartite regional or international conference;
 - (v) implementation and evaluation of technical cooperation activities of the International Labour Office;
 - (e) consult on programmes to promote the principles of good faith and harmonious employment relationships;
 - (f) consult and advise the Minister on any policy measures or programmes affecting the economic and social interests of employees and employers; and
 - (g) consider any other matter lawfully referred to it by the Minister or Ministry from time to time.
- (2) The Committee may from time to time and in writing, co-opt a person to the Committee to provide advice on any issue,
- Provided that a person who is co-opted to the Committee shall not be entitled to vote on any matter that is being considered by the Committee and shall not constitute the quorum.
- (3) The Committee may, from time to time, establish subcommittees for the purpose of undertaking its functions under subsection (1).

15 Secretariat

- (1) The Secretariat to the Committee shall be provided by the Ministry through the Head of the Labour Division or person acting on his behalf.
- (2) For the purposes of section 14(1)(b), the Secretariat shall be responsible for the initial assessment of issues or matters referred to the Secretariat for the consideration by the Committee.

16 Term of office

Except for the chair, a member of the Committee shall hold office for a term of up to three years and shall be eligible for reappointment for one further term.

17 Rules and procedures of the Committee

- (1) Rules and procedures of the Committee are outlined in Schedule 2.
- (2) The Committee may alter its rules and procedures, which shall be adopted when it has been approved by Cabinet.

PART IV – CONTRACTS OF EMPLOYMENT**18 Contract of employment**

- (1) A contract of employment between an employer and an employee which is for a duration of more than two months shall be in writing.
- (2) A contract of employment between an employer and an employee which is for a duration of less than two months may be a verbal or written contract, provided that it is not required by this or any other Act, to be in writing.
- (3) Unless specifically stated, this Part applies to both a written and a verbal contract of employment.

19 Contract of employment to contain minimum conditions

- (1) A written contract of employment must be signed by an employer and an employee and must contain the minimum particulars prescribed in Schedule 1 of this Act.
- (2) If a condition of employment or process provided for –
 - (a) in a contract of employment;
 - (b) in an agreement; or
 - (c) in any other Act,is less favourable for an employee than the conditions and processes set out in this Act, the conditions and processes set out in this Act shall prevail.
- (3) Nothing in this Act shall prevent a contract of employment or agreement or the application of any Act that provides conditions of employment or

processes that are more favourable to an employee than those contained in this Act.

20 Duty of employer to provide work

- (1) An employer must provide an employee with work in accordance with an employee's contract, unless –
 - (a) the employee has broken the contract of employment;
 - (b) the contract is frustrated by an unforeseen economic situation which affects the employer's ability to employ the employee; or
 - (c) the contract is frustrated or its performance prevented by an act of God.
- (2) For the purposes of sub-section (1)(b), an unforeseen economic situation includes –
 - (a) bankruptcy of the employer;
 - (b) death of the employer, if he is a natural person and the sole proprietor of the business; or
 - (c) the business is seized by a bank pursuant to a bank loan.
- (3) If an employer fails to provide work to an employee in accordance with subsection (1), the employer must pay wages to the employee for each day on which the employer fails to provide work, at the same rate as if the employee had performed work each day.

21 Right of appeal

- (1) An employer may appeal a decision of the Ministry in relation to the application of section 19(2).
- (2) An appeal may be made in the first instance to the Employment Relations Advisory Committee, whose recommendations shall be provided to the Minister for a final decision.
- (3) An appeal under this section shall be considered in accordance with regulations made under this Act.

22 Foreign employees

- (1) Where a contract of employment is made between an employer in Tonga and a foreign employee, and the contract is to be performed in Tonga for a period of one year or more, the contract of employment shall be provided to the Labour Division, to be attested by the Chief Executive Officer.

- (2) In attesting a contract of employment under subsection (1), the Chief Executive Officer shall have due regard for the following –
- (a) contract of employment is in writing;
 - (b) contract of employment includes a provision for the repatriation of the foreign employee from Tonga;
 - (c) impact on the domestic labour market, including whether shortages or skills exist in the particular occupation or industry; and
 - (d) extent to which the contract of employment complies with this Act.

PART V – FUNDAMENTAL RIGHTS AND PRINCIPLES AT WORK

23 Forced labour prohibited

- (1) A person shall not exact, procure or employ forced labour.
- (2) A person who violates subsection (1) commits an offence and is liable to a penalty under this Act.

24 Freedom from discrimination

An employer shall not discriminate against any employee or prospective employee on the grounds specified in section 74 of this Act.

25 Equal remuneration for work of equal value

An employer must pay male and female employees equal rates of remuneration for work of equal value.

26 Freedom of association

Every employee or employer has a right to establish a trade union or employer's organisation in cooperation with others, without any discrimination, for the promotion and protection of economic and social interests and to join any such organisation of their choice.

27 Right to bargain collectively

An employee, trade union, employer or employer organisation has a right to bargain collectively.

28 Rules for trade unions

Rules for the registration of a trade union and the rights relating to sections s26 and 27 are set out in Part XV of this Act.

PART VI – HOURS OF WORK

29 Regular hours of work

- (1) The following general rules shall apply to an employee –
 - (a) regular hours of work each day shall be fixed at no more than eight hours;
 - (b) regular hours of work each week must be fixed at no more than 40 hours; and
 - (c) regular hours of work shall not take place on more than six days in a week.
- (2) Notwithstanding subsection (1), an employer may deviate from the general rule if the nature of the work is shift work in accordance with section 32.

30 Additional hours of work subject to overtime

- (1) An employee and employer may agree to overtime in addition to regular hours of work provided by section 29.
- (2) Overtime shall be paid at a rate no less than one and a quarter times the amount an employee would ordinarily be paid for undertaking the work to which overtime applies.

31 Total hours of work

- (1) An employee's total hours of work per week including ordinary hours and overtime must not exceed 48 hours except in special circumstances.
- (2) For the purposes of this section, special circumstances means -

- (a) having regard to the circumstances, the employer cannot be reasonably be expected to use to other measures to undertake the work; and
- (b) there is no risk to safety or health of the employee of working additional hours.

32 Special provisions applying to shift work

- (1) An employee who is engaged under a contract of employment in regular shift work may be required by the employer to work for more than the regular hours provided for in section 29(1), in which case the average number of hours worked over a period of one (1) month must not exceed 48 hours per week.
- (2) In relation to section 30, a shift employee who is scheduled to work in a regular shift on a Saturday or Sunday is considered to work on a normal working day and shall be paid at the ordinary rate of pay.
- (3) Section 68 shall apply to all employees under a contract of employment in regular shift work.

33 Rest breaks and weekly rest

- (1) Subject to subsection (2) every employee shall be entitled to an unpaid rest break of no less than half an hour for every continuous work period of four hours.
- (2) An employer may require an employee to delay a rest break if there are exceptional reasons requiring an employee to continue his duties.
- (3) An employee shall be entitled to no less than 24 consecutive hours rest each week.

34 Exemption for certain contracts of service

This Part, as it relates to the payment of overtime, does not apply to an employee who is paid an annual salary that includes compensation for the likelihood of working additional hours.

35 Penalty for non-compliance

An employer who breaches any provision of this Part is liable to a penalty.

PART VII – MINIMUM WAGES

36 Establishment of minimum wages

The Cabinet may, in accordance with section 6(1)(a) and through regulations made under this Act, prescribe minimum wages to be paid to –

- (a) all employees nationally;
- (b) employees in a particular occupation;
- (c) employees in a particular sector or industry; or
- (d) employees in a particular area in Tonga.

37 Review of minimum wages

The Cabinet shall ensure that the Commission carries out a review of minimum wages every three years.

38 Procedure for minimum wage reviews

- (1) In carrying out its functions under section 6(1)(a), the Commission shall –
 - (a) invite submissions from and consult with employee and employer representatives;
 - (b) invite submissions from any other interested parties as it thinks appropriate; and
 - (c) request relevant information and analysis from the Chief Executive Officer.
- (2) The Commission may engage technical experts or advisors to assist it to carry out this minimum wage review function.

39 Criteria for minimum wage reviews

In establishing minimum wages or carrying out a minimum wage review, the Commission shall consider the following –

- (a) needs of employees and their families, taking into account the general level of wages in the country, the cost of living, retirement benefits and the relative living standards of other groups;
- (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment; and

- (c) any other information, including information submitted by representatives of employees and employers relating to the reasonableness of wages relating to any occupation, sector, industry or area.

40 Minimum wage reports

The Commission shall submit a report to Cabinet following the conclusion of a minimum wage review under this Part, setting out its recommendations and the reasons for those recommendations.

41 Effect of a minimum wage order

- (1) Subject to subsection (2) of this section, if a contract of employment provides for the payment of wages that are less than a minimum wage order, the minimum wage order shall prevail.
- (2) An employer who fails to comply with a minimum wage order commits an offence and is liable to a penalty under this Act..

42 Notice of minimum wage

- (1) An employer shall display a written notice in the workplace for the purpose of informing employees of any minimum wage order affecting them.
- (2) An employer that fails to comply with subsection (1) commits an offence and is liable to a penalty under this Act..

PART VIII – EMPLOYMENT OF CHILDREN

43 Application of this Part

This Part applies whether or not a child is engaged under a contract of employment.

44 Definition under this Part

For the purposes of this Part -

“part-time work” refers to work that is not more than 15 hours per week.

45 Minimum age for employment

- (1) The minimum age for employment in Tonga is [14] years of age.
- (2) A child under the age of 14 must not be employed or work in any capacity, except in light work.
- (3) Work engaged in by a child under the age of 14 –
 - (a) in schools, as part of an authorised programme of education; or
 - (b) as part of an artistic performance or of a similar nature,is not a breach of this section.

46 Light work

- (1) A child under the age of 14 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 the prescribed minimum conditions for light work, set out in regulations under this Act.
- (2) On the recommendation of the Commission, the Minister may, in regulations made under this Act, prescribe the requirements for light work, including the permissible times and hours of work, the activities that may be carried out and the conditions under which these activities may be performed.

47 Hazardous work

- (1) A child under the age of 18 must not engage in any hazardous work or work that which by its nature or the circumstances under which it is carried out is likely to jeopardise the child's health, safety or morals.
- (2) On the recommendation of the Commission, the Minister shall prescribe in regulations made under this Act, a Hazardous Child Labour List specifying the types of work that children under the age of 18 are prohibited from engaging in.

48 Register of employed children

- (1) For each employee under the age of 18, an employer must –

- (a) keep a register of the child's name, date of birth, gender, occupation, employment status, hours of work, school or vocational training attendance, rate of pay, employment commencement date, and employment termination date (as appropriate); and
 - (b) produce the register for inspection when it is required by the Chief Executive Officer or labour officer.
- (2) An employer who breaches this section is liable to a penalty under this Act.

PART IX – PAYMENT AND PROTECTION OF WAGES

49 Wage periods

The payment of an employee's wages must be at intervals that are reasonably appropriate to the nature of the contract of employment, 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.

50 Authorised deductions

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 employment;
- (b) for the actual costs of meals or food 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.

51 Remuneration other than wages

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

52 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.

53 Wages statement

- (1) An employer shall, at the request of an employee and no later than 72 hours after the request, provide the employee with a written statement containing the following particulars, in respect to a relevant wage period under section 51 –
 - (a) employee's name;
 - (b) nature of employment or job classification;
 - (c) days or hours worked at normal rates of pay;
 - (d) rate of wages;
 - (e) wage period;
 - (f) any overtime worked during a wage period and the rate of wages payable for the overtime;
 - (g) 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 52; and
 - (j) net amount due to the employee after all deductions have been made in respect of each wage period.
- (2) At least one week prior to the pay period in which a change occurs, an employer must inform an employee, in writing, of any change to the conditions of the employee's wages.

54 Employment records

An employer, in relation to an employee who is engaged under a contract of employment, must keep employment records showing the following —

- (a) name, date of birth and address of the employee;

- (b) type of work and responsibilities for which the employee is engaged;
- (c) copy of the contract of employment or collective agreement under which the employee is engaged;
- (d) classification or designation of the employee according to which the employee is paid;
- (e) hours of work of the employee;
- (f) wages paid to the employee for each wage period and the method of calculation;
- (g) component of wages paid that is annual holiday pay, if section 58 applies;
- (h) overtime worked and the calculation of overtime pay;
- (i) employee's accrued annual holiday entitlements;
- (j) dates on which annual holiday leave and public holidays are taken;
- (k) amount paid to the employee for paid annual holidays and public holidays; and
- (l) any other information prescribed by regulations made under this Act.

55 Inspection of employment records

At the request of a labour officer, an employer must produce for inspection every employment record that is, or at any time during the preceding five years, was in use under this Act in respect of an employee engaged by that employer.

56 Non-payment of wages

- (1) An employer who –
 - (a) subject to subsection (2) of this section, fails to pay wages in accordance with an employee's contract of employment;
 - (b) upon demand in writing by the Chief Executive Officer or a labour officer, 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 rate of wages prescribed in the applicable contract of employment,
- commits an offence and is liable to a penalty under this Act.
- (2) Subsection (1)(a) will not constitute an offence where the employer proves that he or she acted in good faith or took reasonable steps to pay the employee's wages.

57 No wages on detention or imprisonment

- (1) Subject to subsection (2) of this section, an employer is not required to pay remuneration to an employee if the employee is detained or imprisoned in accordance with applicable law.
- (2) An employer must pay an employee any wage for work that has been carried out prior to the commencement of the term imprisonment.

58 Repatriation upon death of an employee

- (1) Subsection (2) of this section applies where an employee moves from a place in which he ordinarily resides, to another place of residence, for the purposes of his employment with an employer and pursuant to an employee's contract of employment.
- (2) Where an employee dies during the period of his employment, the employer shall pay the expenses of repatriating the employee to his original place of residence, immediately prior to the person's deployment.

PART X – HOLIDAYS AND LEAVE

59 Holidays and leave entitlements

- (1) An employer must comply with the minimum conditions and entitlements established under this Part.
- (2) An employer who provides conditions and entitlements less favourable than this Part shall endeavour to provide employees with the minimum requirement under this Part, or else he commits an offence and is liable to a penalty under this Act..

60 Duration of paid annual holidays

- (1) Subject to sections 63 and 64, on the completion of each year of employment with an employer, an employee is entitled to at least 1 working day annual holiday per month, in addition to public holidays, and must be paid in respect of such holiday the wages the employee would have been paid for the time the employee would normally have worked during that period.
- (2) An employer must permit an employee to take his or her annual holiday in one unbroken period or, at the request of the employee, in two or more periods, one of which must be a continuous period of one week.

61 Proportionate paid annual holidays

- (1) Notwithstanding section 62, an employee is entitled to annual leave once he has completed a minimum of six months service with the employer.
- (3) An employer may include annual holiday pay as part of an employee's wages, at the normal pay rate, with the agreement of an employee, if the employee -
 - (a) has a fixed term contract of less than one year; or
 - (b) works intermittently as either a part-time or casual employee; and
 - (c) it is unreasonable and impracticable for the employer to provide 12 days paid annual holidays.

62 Holiday pay on termination of employment

- (1) If an employee's employment is terminated either by the employer, or by the employee in accordance with this Act, the employer shall pay the employee one day's wages for each completed month of service less any paid holiday leave that has already been taken during the year in which it has fallen due.
- (2) This section does not apply to an employee who receives annual holiday pay as part of his or her wages under section 63(2).

63 Continuity of employment

For the purpose of this Part, employment is deemed to continue as long as an employee continues to be employed by the employer and is deemed not to be discontinued by the termination of a contract of employment if, within one month of the termination, the employee is reemployed by the same employer.

64 Paid annual holiday to be given within a certain period

- (1) An employee is entitled to all paid annual holidays earned, and such leave shall only be forfeited –
 - (a) if a contract of employment provides for a reduction in an employee's annual leave entitlements upon the early termination of an employer's contract or lack of notice;
 - (b) in accordance with the rules of the organisation relating to the accrual of annual leave from one year to the next.
- (2) If an employer elects to close a section or sections of the employer's establishment for a fixed period in any year, all or part of the paid annual holiday may, by agreement between the parties, be taken before the completion of the year in respect of which the paid annual holiday may be due.
- (3) Notwithstanding subsection (1), an employer may agree in writing with all or any of the employees that paid annual holidays may be deferred and accumulated over a period not exceeding 18 months, provided that one week's leave must be taken after the completion of each year of service.

65 Wages for annual holidays to be paid in advance

Wages for a paid annual holiday must be paid in advance of, or on the pay day immediately preceding the holiday.

66 Public holidays

- (1) All public holidays provided by the Public Holidays Act (Cap. 22:26) applies to all workplaces.
- (2) Subject to subsection (2), an employee must be paid for each public holiday for the number of hours (exclusive of overtime) which the employee would normally have worked on that day had it not been a public holiday.
- (3) If an employee, other than a shift employee, works on a public holiday, the employee must be paid double time for the time worked during the public holiday or with the agreement of the employee, be given appropriate days off in lieu.

67 Sick leave

- (1) An employee who has completed more than 6 months continuous service with the same employer is entitled, for the subsequent year, to be paid sick leave of–

- (a) no more than seven days for sickness or injury relating to events where the employee is not hospitalised; and
 - (b) no more than 14 days for sickness or injury relating to events where the employee is hospitalised.
- (5) An employee's unused sick leave for each year automatically lapses in the following year.
- (6) To be entitled to sick leave, an employee must –
- (a) as soon as is reasonably practicable notify the employer of his or her absence and the reason for it; and
 - (b) produce, if requested by the employer, a written certificate signed by a registered medical practitioner, certifying the employee's incapacity for work.

68 Casual leave

An employee who has completed more than 6 months continuous service with the same employer is entitled to three days paid casual leave in the subsequent 12 months, in addition to any other leave entitlement, for reasons associated with a bereavement, community or church responsibilities, to care for a child, or with the approval of the employer.

69 Maternity leave

- (1) A female employee who expects to give birth to a child is entitled to maternity leave from her employment for a period of 30 consecutive working days, provided that the employee furnishes to her employer a certificate from a registered medical practitioner or registered nurse confirming the pregnancy and specifying the expected date of delivery of a child.
- (2) An employer and female employee may agree –
- (a) to a longer period of maternity leave; or
 - (b) that maternity leave is paid.
- (3) A female employee may take maternity leave at any time before or after the birth of a child provided that at least 15 days of the leave is taken after the birth of a child.
- (4) A female employee who returns to her employment after maternity leave –
- (a) must be appointed to the same or equivalent position held prior to taking maternity leave, without any loss of salary, wages, benefits or seniority; or

- (b) may be appointed to a higher position.

70 Nursing breaks

- (1) For the purpose of nursing a child during working hours, an employer shall allow a female employee nursing breaks of half an hour for every four hours worked where a child is aged up to 12 months.
- (2) Nursing breaks shall be counted as hours worked for the purposes of calculating an employee's remuneration.

71 Restriction on termination

- (1) An employer shall not terminate a female employee's employment by reason of her –
 - (a) being of child bearing age;
 - (b) intending to become pregnant;
 - (c) being pregnant;
 - (d) giving birth to a child; or
 - (e) nursing a child.
- (2) If a female employee's employment is terminated and it is alleged in a dispute that any of the reasons in subsection (1) applies, the burden of establishing that the termination was not related to any of these reasons lies with the employer.
- (3) An employer shall not dismiss a female employee who is absent as a result of an illness arising out of pregnancy or childbirth that is certified by a medical practitioner rendering her unfit to work, provided that such absence shall not exceed one month.
- (4) If a female employee's employment is terminated subsequent to a period of maternity leave she is deemed to have been employed up to and including the period of her maternity leave for the purpose of determining her period of employment under this Act.

PART XI – EQUAL EMPLOYMENT OPPORTUNITIES

72 Prohibited grounds of discrimination

A person must not be discriminated or excluded from employment on the grounds prescribed in regulations made under this Act.

73 Discrimination in employment

An employer or a person acting or purporting to act on behalf of an employer, must not refuse or omit to offer or afford a person the same rate of remuneration as is made available for a person who –

- (a) holds the same or substantially similar qualifications; or
- (b) is employed in the same or substantially similar circumstances of work of that description,

due to the gender of a person.

74 Sexual harassment

(1) An employee has been sexually harassed in the course of his or her employment if an employer, a representative of the employer, or another employee –

(a) directly or indirectly makes a request of the employee for sexual intercourse, sexual contact or any other form of sexual activity which contains an implied or overt –

(i) promise of preferential treatment in that employee's employment;

(ii) threat of detrimental treatment in that employee's employment; or

(iii) threat about the present or future employment status of that employee; or

(b) directly or indirectly uses words (whether written or spoken), physical behaviour, visual material or any other actions of a sexual nature, which is unwelcome or offensive to an employee,

and either through repetition or being of a significant nature has a detrimental effect on an employee's employment, job performance, or job satisfaction.

(2) Where a complaint of sexual harassment has been made by an employee under this section, the employee's previous sexual experience or reputation must not be taken into account by the employer or the Court.

75 Employer liability in certain circumstances

(1) If a representative of the employer or another employee in the workplace sexually harasses another employee and, a complaint of sexual harassment is made to the employer, the employer shall take reasonable steps to prevent the repetition of the sexual harassment.

- (2) If an employer fails to take the reasonable steps necessary to prevent the repetition of sexual harassment against an employee referred to in subsection (1), the employee is entitled to raise a dispute against the employer under this Act.

76 Policies to eliminate sexual harassment

- (1) An employer must develop and implement a policy to prevent sexual harassment in the workplace, consistent with any National Code of Practice developed under subsection (2).
- (2) The Minister shall direct the development of a National Code of Practice for eliminating sexual harassment in the work place and a model policy applicable to work places.

PART XII – OCCUPATIONAL SAFETY AND HEALTH

77 Duties of employers

- (1) An employer shall provide and maintain so far as is practicable, a working environment for employees that is safe and without risk to health.
- (2) An employer must develop an Occupational Safety and Health Policy to apply within the workplace and must ensure that such policy meets the minimum conditions set out in this Part.
- (3) An employer shall –
 - (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 steps as far as is practicable to eliminate each significant hazard in the workplace, and if the hazard remains significant –
 - (i) take steps as far as practicable to isolate the hazard from employees at the workplace;
 - (ii) 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
 - (iii) 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

- (4) An employer who –
 - (a) knowing that any action, or a failure to take action, is reasonably likely to cause serious harm to an employee; and
 - (b) commits an action or fails to take action, which causes serious harm to an employee,commits an offence and is liable to a penalty under this Act.

78 Duties of employees

- (1) While at work, an employee shall –
 - (a) take reasonable care for his own health and safety and for the health and safety of any other employee who may be affected by his acts or omissions in the workplace; and
 - (b) co-operate with his employer, with respect to any action taken by the employer to comply with a requirement of this Part.
- (2) An employee shall not –
 - (a) wilfully or recklessly interfere with, or misuse anything provided by the employer for the purpose of protecting the health and safety of employees in the workplace; or
 - (b) wilfully place at risk the health or safety of himself or any person in the workplace.
- (3) An employee who fails to comply with subsection (2) commits an offence and is liable to a penalty under this Act.

PART XIII – TERMINATION OF EMPLOYMENT

79 Probationary period

- (1) An employer may appoint an employee to a position for a probationary period of no more than 6 months at the commencement of an employee's employment.
- (2) Despite anything to the contrary in this Part, an employer may terminate an employee's employment during the probationary period either by providing one weeks' notice, or if section 85 applies, with no notice.
- (3) Grounds for termination during a probation period may be due to –
 - (a) the employee's capacity or conduct and sections 86 and 87 have been complied with; or

- (b) serious misconduct by the employee and section 86 has been complied with,
- and it is not for an unlawful reason under section 85.

80 Termination by an employer

- (1) Subject to subsection (2), a contract of employment is conclusively presumed to be for an indefinite duration.
- (2) Subsection (1) does not apply to a contract —
- (a) for a fixed period, which is presumed to terminate at the end of the fixed period;
 - (b) for a fixed task, which is presumed to terminate upon completion of the fixed task; or
 - (c) engaging a casual employee on a casual basis, which is presumed to terminate at the end of each working period.
- (3) A contract of employment 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 justified on reasonable grounds.
- (4) The termination of an employee's employment is justified on reasonable grounds if it —
- (a) relates to the employee's capacity or conduct and sections 86 and 87 have been complied with;
 - (b) is due to serious misconduct by the employee and section 85 has been complied with; or
 - (c) was due to redundancy and sections 87 and 90 have been complied with,
- and it is not for an unlawful reason under section 85.

81 Further provisions relating to unlawful termination

- (1) The termination of a contract of employment by an employer is unlawful if it relates to —
- (a) discrimination pursuant to section 74;
 - (b) an employee's authorised absence from work due to illness or injury;
 - (c) an employee seeking office as, or acting or having acted in the capacity of an employees' representative;

- (d) an employee's trade union membership or participation in trade union activities outside working hours, or with the employer's consent, during working hours;
 - (e) an employee's non-membership of a trade union;
 - (f) an employee's filing of a complaint or participation in proceedings against an employer, involving alleged breach of laws or regulations or recourse to competent administrative authorities; and
 - (g) an employee's authorised absence from work during maternity leave.
- (2) In any employment dispute under Part XIV, if an employee alleges that his contract of employment was terminated on one or more of the grounds in subsection (1), the burden of proving the existence of a valid reason for the termination shall lie with the employer.

82 Summary dismissal

- (1) An employer may dismiss an employee without notice for serious misconduct if the employee's conduct is of such a nature that it would be unreasonable to require the employer to permit the employee to continue in his employment during the notice period, due to a breakdown in the mutual trust and confidence between the employer and employee.
- (2) Serious misconduct in the course of employment includes, but is not limited to the following circumstances—
- (a) embezzlement, theft or fraud;
 - (b) violence or the assault of another person or threats of violence;
 - (c) deliberate falsification of skills or qualifications for the purpose of obtaining employment or a promotion; or
 - (d) being under the influence of intoxicating liquor or a drug, except a drug administered by, or taken in accordance with the directions of a person lawfully authorised to administer the drug or a registered medical practitioner.
- (3) The employer must document in writing the reason for the summary dismissal, and must upon request by the employee, provide this to the employee within 48 hours of the request.

83 Termination for reasons relating to capacity or conduct

A termination of an employee's employment under section 80(4)(a) is justified if the employer has –

- (a) formally warned the employee in writing about any unsatisfactory capacity or conduct;
- (b) provided the employee with an opportunity and reasonable assistance to improve their capacity or conduct;
- (c) given the employee a reasonable opportunity to respond to any issues raised about their capacity or conduct;
- (d) afforded the employee a reasonable opportunity for a representative to be present or to represent the employee's interests at one or more meetings relating to the employee's performance;
- (e) notified the employee of the reason for the termination; and
- (f) provided the employee with a notice of termination in accordance with section 87.

84 Provision of notice

- (1) Subject to this Part, an employer or employee who terminates a contract of employment, in the absence of a specific written agreement as to notice between the parties to the contrary, shall give at least –
 - (a) one week's notice in writing if the employee has been employed for less than one year;
 - (b) two weeks' notice in writing if the employee has been employed for more than one year but less than three years;
 - (c) three weeks' notice in writing if the employee has been employed for more than three years but less than five years; or
 - (d) four weeks' notice in writing if the employee has been employed for more than five years.
- (3) In determining whether or not a particular conduct constitutes serious misconduct under subsection (2)(a), an employer shall have due regard to the following –
 - (a) whether there is credible evidence of the alleged conduct;
 - (b) nature and seriousness of the alleged offence;
 - (b) level of damage or harm to the employer or other employees;
 - (c) willingness of the employee to provide reparation for damages; and
 - (d) whether the employee has been warned to refrain from similar conduct in the past.
- (4) If the termination of a contract of employment is at the employer's initiative under this section, the payment of wages in lieu of notice may be provided at the employer's discretion.

85 Further requirements as to termination of contracts

- (1) On the termination of a contract of employment, the employer must pay to the employee all wages and benefits - including any accrued but untaken annual leave due to the employee, as soon as practicable but not less than 14 days from the date of termination.
- (2) If payment is made in lieu of notice, the payment must include the wages and benefits that would have been payable to the employee if the employee had worked during the period of notice.
- (3) Upon termination of an employee's contract or dismissal of an employee, if requested by the employee, the employer must provide a certificate to the employee stating the nature of the employee's employment and his period of service.

86 Termination for reasons of redundancy

- (1) Before an employee's contract of employment is terminated by reason of redundancy, an employer must –
 - (a) comply with the requirements for the provision of information and consultation set out in section 90; or
 - (b) comply with any requirements with respect to redundancy under any applicable collective agreement or under any contract of employment.
- (2) Termination of a contract of employment for reasons of redundancy will not constitute a justified termination for the purpose of 83(4)(c), if it would have been reasonable in all of the circumstances for the employee to be re-deployed to a similar or equivalent position within the employer's enterprise.
- (3) If the employer has terminated the employment of a person due to a redundancy, the employer cannot subsequently re-employ the same person or other person, to the same or similar position, within a period of 12 months from the date of termination.

87 Provision of information

If an employer contemplates the termination of one or more employee positions by reason of redundancy, the employer must –

- (a) subject to the notice period for termination in an employee's contract; and
- (b) not less than 30 days before the proposed date on which the terminations take place,

provide the employees, their representatives and the Chief Executive Officer –

- (i) with relevant information including the reasons for the terminations contemplated;
- (ii) the number and categories of employees likely to be affected; and
- (iii) the period over which the terminations are intended to be carried out.

88 Redundancy pay

- (1) If an employer terminates an employee's employment by reason of redundancy in accordance with this Part of the Act, the employer must pay to the employee no less than one week's wages for each complete year of service, in addition to the employee's other entitlements.
- (2) An employee is not entitled to a redundancy payment under subsection (1) unless he or she has completed one year of service with the employer.

89 Transfer of contract

The transfer of an employee's contract of employment from one employer to another employer may only be done with the written consent of the employee.

PART XIV – EMPLOYMENT DISPUTES

90 Workplace dispute resolution

- (1) This Part shall not apply to a public service employee who is employed under the Public Service Act. A public service employee shall be subject to dispute resolution procedures in applicable laws, regulations and policies of the Public Service Commission.
- (2) The parties to a contract of employment may agree in writing to different procedures for the resolution of disputes in the workplace that are, in overall effect, no less favourable than the procedures in this Part.
- (3) An aggrieved party who considers that they have grounds of dispute, prior to accessing mediation services under this Act or the Court, must first attempt to seek to resolve the dispute in the workplace either –
 - (a) according to the procedures for the resolution of disputes contained in an applicable law, contract of employment or collective agreement; or

- (b) if there are no procedures pursuant to subsection (2)(a), according to the procedures set out in this Part.
- (4) If an aggrieved party raises a dispute relating to dismissal or sexual harassment, that party is not required to attempt dispute resolution under subsection (2) and may seek mediation services from Mediation Unit directly.

91 Time limit for raising a dispute

- (1) A party to a dispute must, subject to subsection (2) and (3), raise the dispute to the other party within a period of [three months] from the date on which the matter giving rise to the dispute is alleged to have occurred or came to the notice of the party, whichever is later.
- (2) An employer may consent to extend the period of the submission of dispute under subsection (1).
- (3) If an employer does not consent to extending the period of the submission of a dispute under subsection (1), the Chief Mediator may extend the period, upon a written application, if the Chief Mediator is satisfied that there are good reasons for the delay.

92 Meeting of the parties

- (1) Upon receiving a notice under section 94 and within 10 working days of the notice being received, the parties shall meet at the workplace or an agreed location outside the workplace to discuss the dispute.
- (2) A party may appear personally or be represented by a person who has the authority to act on behalf of the absent party, but no legal practitioner shall be allowed to represent a party at the meeting.

93 Written statement

If a dispute is not settled by the parties at their meeting in section 95, the aggrieved party must, within 14 working days, give to the other party a written statement outlining the following –

- (a) nature of the dispute;
- (b) facts giving rise to the dispute; and
- (c) remedy sought.

94 Written response

If the other party does not grant the remedy sought, and the parties have not otherwise settled the dispute, the other party must, no later than the 14 working days of receiving the aggrieved party's written statement, provide a written response setting out –

- (a) the party's view of the facts; and
- (b) the reasons why the party is not prepared to grant the solution sought.

95 Reference to mediation services

If one or more parties to a dispute is of the view that efforts to resolve a dispute at a workplace level have failed, either party may, within 15 working days, seek mediation services from the Mediation Unit.

Subject to sections 99 and 100, the mediator must seek to facilitate the resolution of a dispute within 20 working days of the matter being referred to it.

96 Mediation services

- (1) The Ministry must establish a Mediation Unit to provide mediation services in accordance with this Act, consisting of the following suitably qualified public officers, who shall be appointed by the Chief Executive Officer in consultation with the Public Service Commission –
 - (a) a Chief Mediator responsible for the daily management of the Mediation Unit; and
 - (b) other advisors as necessary.
- (2) The Chief Executive Officer may, in special circumstances, appoint a suitably qualified person, not being a public officer, as a Mediator, subject to terms and conditions prescribed in regulations made under this Act.
- (3) For the purposes of this section, "suitably qualified" means a person who satisfies the requirements for relevant qualification, mediation training and experience prescribed in regulations made under this Act.
- (4) Functions of the Mediation Unit includes, but is not limited to –
 - (a) the provision of general information about employment rights and obligations;
 - (b) the provision of information about what services are available relating to the dispute;
 - (c) services that assist the smooth conduct of employment relationships;
 - (d) services that promptly and effectively, resolve disputes; and

- (e) services to resolve any problems relating to contract of employments associated with the fixing of new terms and conditions of employment.
- (5) Functions of the Chief Mediator include, but are not limited to –
- (a) listening to the grievances of the parties;
 - (b) obtaining further information from the parties as appropriate;
 - (c) facilitating discussions with and between the parties, with a view to resolving the matter in dispute; and
 - (d) providing recommendations to the parties as to the way forward for the resolution of the dispute.

97 Procedures for mediation services

- (1) Where mediation services are provided, the mediator who provides the services decides what services are appropriate to the particular case in accordance with regulations made under this Act.
- (2) The mediator, in providing mediation services may –
- (a) have regard to the object of this Act and the needs of the parties, follow such procedures, or do such things he or she considers appropriate to resolve the employment dispute promptly and effectively; and
 - (b) receive any information, statement, admission, document, or other material he considers necessary.
- (3) A party to proceedings before a mediator may appear personally or be represented by a person whom the mediator is satisfied has the authority to act in proceedings, but no legal practitioner shall be allowed to represent a party during mediation.
- (4) The Mediation Unit may request that the parties attempt further dispute resolution under section 90 if it is satisfied that the parties have not made sufficient efforts to resolve the dispute prior to seeking mediation services.

98 Notice to attend mediation

- (1) Where a matter is referred to the Mediation Unit, a notice shall be issued to all parties to appear before the mediator at a place and time specified in the notice.
- (2) A party that fails to appear before the mediator as required, without reasonable excuse, under subsection (1) is liable to a penalty.

99 Independence of mediation personnel

- (1) A mediator shall, at all times, act independently in deciding how to handle or deal with a dispute or any aspect of it.
- (2) The Chief Executive Officer shall ensure that a mediator is independent of, and does not have a conflict of interest, in relation to any of the parties to whom mediation services are being provided in a particular case.
- (3) Where an employee employed in the Ministry is a party to a dispute, the fact that another officer of the Ministry is engaged as the mediator is not a ground for challenging the independence of that officer.
- (4) Where the Chief Executive Officer is a party to any matter in respect of which a person employed or engaged by the Chief Executive Officer in providing mediation services, that fact is not a ground for challenging the independence of that order.

100 Code of ethics

The Chief Executive Officer shall, in consultation with relevant stakeholders, develop a Code of Ethics to guide mediators in performing their duties and functions under this Act.

101 Settlements

- (1) Where an employment dispute is resolved through mediation, the mediator must –
 - (a) ensure that the parties to the settlement sign the terms of the settlement;
 - (b) witness the terms of settlement and certify that it is a true account of the terms of the settlement; and
 - (c) ensure that both parties receive a copy of the terms of settlement within 3 working days of the settlement being reached.
- (2) Where the terms of settlement is signed and witnessed under subsection (1), the settlement is deemed to be final and binding.

PART XV – TRADE UNIONS [UNDER REVIEW]

DIVISION ONE – REGISTRATION OF TRADE UNIONS

102 Definitions in this Part

For the purposes of this Part, a reference to –

“**President**” means the President of the Trade Union; and

“**Secretary**” means the Secretary of the Trade Union.

103 Registrar and other officers

- (1) Within three months of the commencement of this Act, the Minister shall, in consultation with the Public Service Commission appoint –
 - (a) a public officer as a Registrar of Trade Unions;
 - (b) one or more Assistant Registrars of Trade Unions; and
 - (c) such other offices as may be necessary for the implementation of this Part.
- (2) The Registrar of Trade Unions shall be responsible for the performance of the duties and functions of the Registrar provided under this Part.
- (3) The Registrar may, in writing, delegate one or more of his powers or functions under this Act to one or more of his Assistant Registrars.
- (4) The Registrar and all Assistant Registrars must act independently and shall not be subject to the direction or control of any other body in discharging their functions under this Act.

104 Register of trade unions

- (1) The Registrar must keep a register of trade unions in a prescribed form containing –
 - (a) the prescribed particulars relating to every registered trade union;
 - (b) any alteration or change in the name, constitution, officers, location or postal address of a registered trade union; and
 - (c) any other matters required to be contained in the register by this Act or regulations made under this Act.
- (2) A copy of an entry in the register certified by the Registrar is, unless the contrary is shown, proof of the facts contained in the copy.

105 Application for registration

- (1) An application for registration as a trade union must be made to the Registrar in the prescribed form and signed by no less than seven members of the trade union applying for registration,

Provided that no member shall belong to more than one trade union.

- (2) An application under this section must be accompanied by two copies of the Constitution of the proposed trade union which have been authenticated by the President and the Secretary, and shall be accompanied by a statement of the following particulars –
 - (a) name, occupation and address of each member making the application;
 - (b) name, of the trade union or proposed trade union; and
 - (c) title, name, age, occupation and address of each officer of the trade union or proposed trade union.

106 Registration

- (1) The Registrar shall register a trade union, unless -
 - (a) the grounds in section 107(a) or 107(b) apply; or
 - (b) the grounds in section 110(1) apply.
- (2) Subject to sections 107 and 108, upon the receipt of an application under section 105, the Registrar must, within 21 days of receipt of the application, decide on the application to register the trade union.

107 Registrar's power to require further information

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

the Registrar shall require the applicant to change the name of the trade union stated in the application and must not register the trade union until the change has been made.

- (2) An application for a change of name of a trade union shall be in the prescribed manner.

- (3) The Registrar shall, upon receiving an application by a registered trade union, change the name of the registered trade union if the change is made according to the Constitution of the trade union.
- (4) A change of name under subsection (3) –
 - (a) does not affect the rights, obligations or legal proceedings in respect of the registered trade union; and
 - (b) such rights, obligations or legal proceedings shall continue as if it were done in respect of the re-named trade union.

108 Amalgamation of trade unions

- (1) Where two or more trade unions wish to amalgamate, the trade unions shall, in the prescribed manner, apply to the Registrar for amalgamation.
- (2) The amalgamation must be determined according to the Constitutions of the trade union concerned.
- (3) The Registrar shall refuse an application for amalgamation if –
 - (a) the proposed Constitution of the trade union to be formed by the amalgamation will not make adequate provision for all the matters specified in Schedule 6; or
 - (b) any of the purposes of the trade union would be unlawful.
- (4) Upon amalgamation, a notice of dissolution must be –
 - (a) signed by the Secretary of each dissolved trade union and no less than seven voting members of each trade union at the date of dissolution; and
 - (b) sent to the Registrar for registration of the dissolution of each trade, at which time each trade union ceases to be a body corporate.
- (5) Upon amalgamation, all deeds, bonds, agreements and instruments that are effective against or in favour of a registered trade union that has been amalgamated and which are subsisting at that time will be effective against or in favour of the trade union formed by the amalgamation.
- (6) Any proceedings or cause of action which existed or was pending against a trade union that has been amalgamated will continue to be effective against or in favour of the trade union formed by the amalgamation.

109 Affiliation to federation of trade unions

If a registered trade union wishes to affiliate with any other trade union or trade union federation, the affiliation must be carried out according to the Constitution of the trade union.

110 Refusal of registration

- (1) The Registrar shall refuse to register a trade union if the Registrar is satisfied that –
 - (a) a principal object of persons seeking registration are not in accordance with those set out in the definition of a trade union;
 - (b) the trade union is used for unlawful purposes;
 - (c) the trade union has not complied with requirements for the registration of trade unions;
 - (d) any of the objects in the Constitution of the trade union are unlawful or conflict with this Act;
 - (e) the proposed rules of the trade union will not make adequate provision for the matters to be specified in Schedule 6; or
 - (f) the trade union is under the domination of an employer, whether by financial or other means, with the purpose of placing the trade union under the control of an employer.
- (2) If the Registrar refuses to register a trade union, the Registrar must notify the applicants in writing of the grounds of the refusal.
- (3) A trade union may appeal a decision of the Registrar in accordance with section 123.
- (4) It is not an offence for a person to act on behalf of a non-registered trade union for the purposes of –
 - (a) any proceedings brought by or against the union; or
 - (b) dissolving the union and disposing of its funds and property in accordance with its Constitution.

111 Certificate of registration

- (1) The Registrar, on registering a trade union under section 106 must issue to the trade union a certificate of registration in the prescribed form.
- (2) A certificate of registration, unless proved to have been cancelled or withdrawn, is conclusive evidence that the trade union is a duly registered trade union.

112 Officers of a trade union

A trade union may appoint officers in accordance with its Constitution.

113 Annual returns

- (1) A trade union must provide to the Registrar annually audited statement of accounts relating to its activities.
- (2) A statement provided under subsection (1) must be prepared in the prescribed form and accompanied by a copy of the auditor's report.
- (3) A trade union that breaches this section is liable to a penalty.

114 Constitution of a trade union

- (1) The Constitution of a registered trade union must provide for all the matters specified in Schedule 6.
- (2) Where a Constitution of a registered trade union is subsequently amended, two copies of the revised Constitution must be sent to the Registrar within 14 calendar days of the making of the amendment and shall, subject to subsection (3), be registered by the Registrar upon payment of the prescribed fee.
- (3) An amendment to the Constitution of a registered trade union shall not be registered by the Registrar if the new rule or alteration is in conflict with this Act.
- (4) An amendment to the Constitution of a registered trade union takes effect from the date of registration of the amended Constitution by the Registrar, unless some later date is specified in the Constitution.

115 Members right to access Constitution

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

116 Registered office and postal address

- (1) A registered trade union must have an office and a postal address.
- (2) The notice of the location of the office and of the postal address of the trade union must be given to the Registrar upon registration of the trade union.
- (3) A trade union must, within a reasonable period of time notify the Registrar of any change of the office or postal address of a registered trade union.
- (4) A registered trade union which –

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

is liable to a fixed penalty under this Act.

117 Cancellation or suspension of registration

- (1) The Registrar shall, at the request of the trade union upon its dissolution, cancel the registration of a trade union.
- (2) The Registrar must cancel the registration of a registered trade union if one or more of the following has occurred –
 - (a) registration was obtained by fraud or misrepresentation;
 - (b) one or more objects of the trade union are unlawful and have not been rectified within a reasonable period specified by the Registrar;
 - (c) trade union has wilfully (after prior notice from the Registrar) contravened this Act, or allowed a rule or its Constitution to continue in force which is inconsistent with this Act, or has rescinded a rule providing for a matter for which provision must be made under this Act; or
 - (d) trade union has ceased to exist.
- (3) The Registrar may suspend the registration of a trade union if the –
 - (a) accounts of the trade union are not being kept in accordance with this Act;
 - (b) registration was obtained by mistake;
 - (c) trade union has been or is being used for an unlawful purpose or for a purpose inconsistent with its Constitution; or
 - (d) officers of the trade union have persistently and wilfully failed to comply with provisions of this Act.
- (4) If the registration of a trade union is suspended under subsection (3) the Registrar must, before the end of 4 calendar months after the date of the suspension, either restore the registration or cancel the registration.

118 Notice of cancellation or suspension of registration

- (1) Except for circumstances under section 117(1), the Registrar must give a trade union not less than 2 months' notice in writing specifying the

grounds on which the Registrar proposes to cancel or suspend its registration and inviting the trade union to show cause in writing within 2 months why the registration should not be cancelled or suspended.

- (2) The notice to be served on a trade union under subsection (1) must be served on any two officers from among the secretary, the president and the treasurer of the trade union, and the Registrar must, in addition, advertise the intention to suspend or cancel the registration of the trade union in the Gazette and in at least one newspaper circulated in Tonga.
- (3) The period of 2 months to show cause specified in subsection (1) commences from the date of publication in the Gazette under subsection (2).
- (4) If cause is shown by the trade union under subsection (1), the Registrar may hold an inquiry as the Registrar considers necessary in the circumstances.
- (5) Where the Registrar is satisfied that there is no cause as to why the registration should be suspended or cancelled, the Registrar must make an order to the effect that the registration should not be suspended or cancelled.
- (6) Where the Registrar is satisfied that the registration of the trade union should be suspended or cancelled, the Registrar must make the order in the following manner –
 - (a) specify date on which it was made;
 - (b) specify briefly the grounds for suspension or cancellation; and
 - (c) served the order immediately on the trade union.

119 Consequence of suspension of registration

- (1) If the registration of a trade union is suspended under section 117 during the period of such suspension -
 - (a) the trade union ceases to enjoy the rights, immunities or privileges of a registered trade union;
 - (b) its officers and members do not enjoy the rights or privileges accorded to the officers and members of a registered trade union; and
 - (c) liabilities incurred by the trade union may be enforced against the trade union and its assets.
- (2) If a trade union lodges an appeal under section 123 against the decision to suspend its registration to the Court, the decision to suspend the trade union is deemed to have been stayed until the determination of the appeal by the Court.

120 Effect of cancellation of registration

- (1) Subject to subsection (2), if a trade union's registration is cancelled under this Act, in addition to any other disability, it shall -
 - (a) cease to exist as a body corporate, and the Registrar may, notwithstanding its Constitution, appoint one or more persons to be liquidators of it;
 - (b) cease to enjoy any of the rights, immunities or privileges of a registered trade union, but without prejudice to any liability incurred by the trade union which may be enforced against the trade union and its assets, whether the liability is incurred before, on or after the date of cancellation of registration; and
 - (c) be dissolved, and no person may after such cancellation take part in its management or organisation or act or purport to act as an officer of the trade union except for the purpose of defending proceedings against the trade union or of dissolving it and disposing of its funds or property in accordance with its Constitution and this Act.
- (2) The cancellation of registration of a trade union takes effect as follows -
 - (a) on the date of expiry of the right to appeal to the Court under section 123; or
 - (b) the date of determination of an appeal to the Court, if the appeal is not upheld.

121 Powers of liquidator and Registrar in winding up

- (1) If a liquidator is appointed under section 120 any property (including books and documents) belonging to the trade union vests in the liquidator by his or her official name from the date of the appointment of the liquidator.
- (2) After giving any indemnity as the Registrar may direct, the liquidator may -
 - (a) bring or defend an action or other legal proceeding that relates to the property of the union or that is necessary for the purpose of effectively winding up the trade union and recovering its property;
 - (b) take possession of any books, documents or property belonging to the trade union;
 - (c) sell the real and personal property and rights in action of the trade union by public auction or private contract;
 - (d) appoint a legal practitioner to assist in the duties of the liquidator;
 - (e) pay any creditors of the trade union in full or in part;

- (f) satisfy any debts or liabilities of the trade union and any liabilities capable of resulting in debts, and any claims, present or future, on the terms as may be agreed, and take security of a debt, liability or claim and give a complete discharge in respect of it;
 - (g) make a settlement with creditors of the trade union or persons claiming to be creditors of the trade union; and
 - (h) prepare a proposal for the distribution of the assets of the trade union and, subject to the approval of the Registrar, distribute the assets accordingly.
- (3) The exercise by the liquidator of the powers conferred by this section is subject to the control of the Registrar, and a creditor or a member of the trade union may apply to the Registrar with respect to an exercise or proposed exercise of those powers.
- (4) Without limiting subsection (2), the Registrar may –
- (a) rescind or vary an order made by a liquidator or substitute anew order for it;
 - (b) remove a liquidator from office;
 - (c) make an order upon the assets of the trade union for the remuneration of a liquidator;
 - (d) call for and inspect the books, documents or assets of a trade union;
 - (e) by order in writing limit or restrict the powers of a liquidator; at any time require accounts to be rendered to the Registrar by a liquidator;
 - (f) refer a subject of dispute between a liquidator and a third party to the Court, subject to the consent in writing of the third party; or
 - (g) summon meetings of the members of the trade union as may appear to the Registrar convenient for the purpose of winding up the affairs of the trade union.
- (5) The Registrar or a liquidator appointed under section 120, may summon and enforce the attendance of parties and witnesses and compel the production of documents in the same manner as is provided in the rules of the Mediation Services.

122 Closure of original liquidation on appointment of liquidator

Notwithstanding the Constitution of a trade union, if a liquidator has been appointed under section 120 -

- (a) all of the funds and assets of the trade union must be realised and converted into money and applied first to the following matters in priority order –

- (i) cost of the liquidation, then to the following matters in priority order –
 - (ii) discharge of the liabilities of the trade union;
 - (iii) payment of share capital, if any; and
 - (iv) in such manner as may be provided by the Constitution of the trade union or, failing such provision, in the manner as the Registrar directs; and
- (b) when the liquidation of the trade union has been closed and a creditor has not claimed or received what is due to the creditor under the proposed distribution, notice of the closing of the liquidation must be published in the Gazette and any claims against the funds of the trade union will be disallowed when two years have elapsed from the date of the publication.

123 Appeals against decisions of the Registrar

A party aggrieved by a decision of the Registrar under this Part may, within 28 days of the date of the decision, appeal the decision to the Court.

124 Certain Acts do not apply

Subject to this Act, the following Acts do not apply to any registered trade union –

- (a) Co-operative Societies Act (Cap 40.04);
- (b) Companies Act (Cap 40.06); and
- (c) Incorporated Societies Act (Cap 40.12).

DIVISION TWO – RIGHTS AND LIABILITIES OF TRADE UNIONS

125 Trade unions not unlawful

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

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

126 Immunity from civil suit

No civil proceedings may be instituted and maintained in the Court against a trade union or an officer or member of the trade union in respect of an act done in contemplation or in furtherance of a dispute relating to the negotiation of terms and conditions of employment.

127 Registered trade union as corporate body

- (1) The registration of a trade union renders it a body corporate by the name under which it is registered, and, subject to this Act, confers on it perpetual succession.
- (2) A registered trade union may –
 - (a) hold real or personal property;
 - (b) enter into contracts;
 - (c) sue and be sued;
 - (d) do any other thing a person can legally do; and
 - (e) do any other thing necessary for the purpose of its Constitution.

128 Access to workplaces

- (1) Subject to subsection (2), a representative of a registered trade union has the right to enter a workplace for the purpose related to the union's business to –
 - (a) discuss union business with union members;
 - (b) recruit employees as union members; or
 - (c) provide information on the union and union membership to any employee on the premises.
- (2) The representative in subsection (1) –
 - (a) must be authorised in writing by the trade union, prior to carrying out the functions stated in subsection (1); and
 - (b) when entering a work place, must not disrupt the work arrangements of an employer

129 Liability in contract

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

- (2) Nothing in this Act shall enable a Court to entertain legal proceedings instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements –
- (a) an agreement between members of a trade union concerning the conditions on which members of the trade union are or are not permitted to sell their goods, transact business, employ or be employed;
 - (b) an agreement for the payment by a person of any subscription or penalty to a trade union;
 - (c) an agreement for the application of the funds of a trade union to provide –
 - (i) benefits to members other than benefits under a contributory Provident Fund or Pension Scheme;
 - (ii) contributions to an employer or employee who is not a member of the trade union, in consideration of the employer or employee acting in conformity with the Constitution or resolutions of the trade union;
 - (iii) an agreement made between one trade union and another; or
 - (iv) a bond to secure the performance of an agreement.
- (3) Nothing in this section renders unlawful any agreement listed in subsection (2).

130 Proceedings against trade unions

- (1) An order by the Court for money to be paid by a trade union may be recovered by the sale of property belonging to the trade union, other than the property of a benevolent or Provident Fund of a trade union.
- (2) Subject to subsection (3), a fine ordered to be paid by a trade union may be recovered by distress and sale of property belonging to the trade union in accordance with the provisions of the Criminal Offences Act (Cap. 18).
- (3) No distress may be levied under subsection (2) on a benevolent or Provident Fund kept by the union unless the Court so orders.
- (4) A notice or other document required to be served on a trade union under this Act is duly served if it is –
 - (a) sent by registered mail or courier to the registered office of the trade union; or
 - (b) served personally on the president, treasurer or secretary of the trade union.

DIVISION THREE – COLLECTIVE BARGAINING**131 Good faith bargaining**

- (1) The parties to collective bargaining have a duty of good faith.
- (2) The duty of good faith requires a trade union and an employer bargaining for a collective agreement to do, at a minimum, the following -
 - (a) union and the employer must use their best endeavours to enter into an arrangement, as soon as possible after the initiation of bargaining, that sets out a process for conducting the bargaining in an effective and efficient manner;
 - (b) union and the employer must meet each other, from time to time, for the purposes of the bargaining;
 - (c) union and the employer must consider and respond to proposals made by each other;
 - (d) union and the employer must –
 - (i) recognise the role and authority of any person chosen by each to be its representative or advocate;
 - (ii) not, directly or indirectly, bargain about matters relating to terms and conditions of employment with persons whom the representative or advocate are acting for, unless the union or the employer agree otherwise; and
 - (iii) not undermine or do anything that is likely to undermine the bargaining or authority of the other in the bargaining; and
 - (e) union and the employer must provide to each other, on request and in accordance with section 133, information that is reasonably necessary to support or substantiate claims or responses to claims made for the purposes of the bargaining.
- (3) A union and employer may continue to meet each other in good faith on the following matters –
 - (a) provisions of a code of good faith that are relevant to the circumstances of the union and the employer which is consistent with the code of good faith developed under section 134;
 - (b) provisions of any agreement about good faith entered into by the union and the employer;
 - (c) proportion of the employer's employees who are the members of the union and to whom the bargaining relates; and
 - (d) any other matter considered relevant by the union or the employer.

- (4) A party to collective bargaining that engages in a sustained breach of good faith under this section is liable to a penalty.

132 Concluded collective agreement not required

The duty of good faith does not require a union and an employer bargaining for a collective agreement to-

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

133 Provision of information during bargaining

For the purposes of section 131, a request by a union or an employer to the other for information must –

- (a) be in writing;
(b) specify the nature of the information requested;
(c) specify the claim or the response to a claim in respect of which information is requested; and
(d) specify a reasonable time within which the information is to be provided.

134 Code of good faith

The Minister may direct the Commission to develop a code of good practice to provide guidance on the application of the duty of good faith in relation to collective bargaining for the purposes of this Act.

135 Initiation of bargaining

- (1) Bargaining for a new collective agreement or the variation of an existing collective agreement may be initiated by –
(a) one or more unions with one or more employers; or
(b) one or more employers with one or more unions.
- (2) A union or employer initiates bargaining for a collective agreement by giving the necessary notice to the intended party or parties to the agreement.
- (3) A notice for the purposes of subsection (2) must –
(a) be in writing and signed by the union or the employer giving the notice;

- (b) identify the intended parties to the collective agreement; and
- (c) identify the intended coverage of the collective agreement.

136 Bargaining where no collective agreement

Where there is no applicable collective agreement in force between a union and an employer -

- (a) one or more unions; or
- (b) one or more employers,

may initiate bargaining for a collective agreement at any time.

137 Bargaining for collective agreements with expiry dates

- (1) If there is only one applicable collective agreement in force, a union or employer must not initiate bargaining for a new collective agreement earlier than 60 days before the date on which the collective agreement expires.
- (2) If there is more than one applicable collective agreement in force that binds more than one union or more than one employer or both, that are intended to be parties to the bargaining, the union or employer must not initiate bargaining –
 - (a) 120 days before the date on which the last applicable collective agreement expires; or
 - (b) 60 days before the date on which the first applicable collective agreement expires, whichever is the later date.
- (3) For the purposes of this section, an applicable collective agreement is in force between a union and an employer if the agreement binds employees whose work is intended to come within the coverage clause in the collective agreement being bargained for.

138 Form and content of collective agreements

- (1) A collective agreement has no effect unless the agreement is –
 - (a) in writing;
 - (b) signed by each union and employer who is a party to the agreement; and
 - (c) registered by the Registrar.
- (2) A collective agreement may contain such provisions as the parties to the agreement mutually agree, but must include the following provisions -

- (a) coverage clause;
- (b) clause relating to disciplinary procedures;
- (c) procedures relating to settlement of disputes at appropriate levels;
- (d) clause dealing with the rights and obligations of the employees and the employer if the work of any of the employees are to be contracted out or the business or part of the business of the employer concerned were to be transferred or sold for the purpose of protecting employees bound by the agreement from being disadvantaged;
- (e) services available for the resolution of disputes;
- (f) clause providing how the agreement can be varied; and
- (g) clause providing the date the agreement expires, if applicable.

139 When a collective agreement comes into effect

- (1) Subject to section 138, a collective agreement comes into force on the date specified in the agreement as the date on which it comes into force or, if no such date is specified, the date on which the last party to the agreement signs the agreement.
- (2) A collective agreement may provide that one or more of its provisions come into effect on different dates.
- (3) Where a collective agreement provides for an expiry date, it expires on the date specified in the agreement.
- (4) A collective agreement that would otherwise expire as provided in subsection (3) continues in force for a period not exceeding 12 months if the union initiates collective bargaining before the collective agreement expires and for the purpose of renegotiating the collective agreement.

140 Application of collective agreements

- (1) A collective agreement that is in force binds and is enforceable by -
 - (a) the union and the employer that are the parties to the agreement; and
 - (b) an employee, who is employed by an employer that is a party to the agreement and who is a member of a union that is a party to the agreement.
- (2) If the registration of a union that is a party to a collective agreement is cancelled or suspended, the collective agreement continues to bind the employer or employers who are parties to the agreement, and the

employees who are members of the union bound by the collective agreement.

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

141 Registration of collective agreement

- (1) The parties to a collective agreement must, within 28 days after it is made, lodge a signed copy of the agreement with the Registrar for registration.
- (2) A collective agreement lodged for registration must include any document referred to in the agreement, unless the documents are publicly available.
- (3) A collective agreement in force at the commencement of this Act is deemed to have been made and registered under this Act.
- (4) Subject to subsection (5), on receipt of the collective agreement, the Registrar shall issue a certificate of registration in the prescribed form and must notify the parties that the agreement has been registered.
- (5) The Registrar shall only refuse to register a collective agreement where there is an error or procedural flaw relating to the collective agreement.
- (6) A certificate of registration is proof of the fact that the collective agreement is binding and enforceable.

142 Deduction of union fees

- (1) Subject to subsection (2) collective agreement is to be treated as if it contains a provision that requires an employer who is a party to the agreement to deduct union member's union membership fee from the member's salary or wages on a regular basis.
- (2) A collective agreement may exclude or vary the effect of subsection (1).
- (3) Union membership fees deducted from a member's salary or wages must be paid to the union concerned in a manner agreed to by the union.

DIVISION FOUR – STRIKES AND LOCKOUTS

143 Prerequisites for strikes

- (1) No strike shall take place unless:
 - (a) mediation has failed to resolve the dispute;

- (b) it is supported by more than 50 percent of all union members entitled to vote in a secret ballot that is undertaken in accordance with section 144; and
 - (c) the employer has been notified in accordance with section 144.
- (2) No employee shall participate in a strike unless that employee is or would be bound by a collective agreement that is the subject of the dispute giving rise to the strike.

144 Procedures

- (1) This section applies to –
- (a) a union that is bound by a collective agreement or would be bound by a proposed collective agreement; and
 - (b) members of a union who are employees who are, or have been, in the employment of the same employer or of different employers and who are or were bound by a current collective agreement or would be bound by a proposed collective agreement.
- (2) Procedures to be followed for a secret ballot for the purpose of section 143 are as follows –
- (a) ballot paper must state all the issues on which a strike mandate is sought;
 - (b) secret ballot must be supervised by the Registrar; and
 - (c) unions must, as soon as possible and in writing, notify the Registrar of the result of the ballot.
- (3) A secret ballot for a strike is valid for six months from the date of the declaration of the results.
- (4) For the purposes of section 143, if strike action is intended following a secret ballot, the employer and the Chief Executive Officer must be notified in writing of the strike the subject matter giving rise to the strike.
- (5) A notice for the purposes of subsection (4) is valid for six months from the date of the notice.

145 Prerequisite for lockouts

- (1) A lockout shall not take place unless –
- (a) mediation has failed to resolve the dispute; and
 - (b) the employer gives 28 days written notice to the Chief Executive Officer, affected trade unions and employees.

- (2) An employee shall not be locked out unless that employee is or would be bound by a collective agreement that is the subject of the dispute giving rise to the lockout.

146 Unlawful strikes and lockouts

- (1) Participation in a strike or lockout is unlawful under this Act if the strike or lockout -
- (a) occurs while a collective agreement binding the employees participating in the strike or affected by the lockouts is in force, unless it—
 - (i) was an aspect of a collective agreement that a right to strike or lockout was provided; or
 - (ii) relates to a matter which is not covered by the existing collective agreement or variation to the collective agreement;
 - (b) occurs during the bargaining for a collective agreement or variation of a collective agreement that will bind the employees participating in the strike or affected by the lockout, unless –
 - (i) at least 21 days have passed since the bargaining was initiated;
 - (ii) on the date bargaining was initiated, the employees were bound by the same collective agreement and that collective agreement has expired; or
 - (iii) on that date the employees were bound by different collective agreements, and at least one of those collective agreements has expired;
 - (c) takes place in contravention of section 143 or 144 (procedures);
 - (d) takes place in contravention of a settlement by the Mediator or a decision of the Court.
- (2) A trade union or an employer that is engaged in an unlawful strike or lockout in contravention of a mediation settlement under this Act or an order of the Court commits an offence.
- (3) A person who in connection with an unlawful strike or lockout under subsection (2), causes, procures, counsels or in any way persuades or influences others to take part in an unlawful strike or lockout is liable to a penalty.

147 Effect of a lawful strike or lockout

The participation by a person in a lawful strike or lockout under this Act does not give rise to an action in the Court –

- (a) founded in tort;
- (b) for a breach of contract,
- (c) for a penalty under the Act; or
- (d) for the grant of a compliance order.

148 Injunctions

Where a strike or lockout takes place under this Act-

- (a) a union, in the case of a lockout; or
 - (b) an employer, in the case of a strike,
- may apply to the Court for an injunction to discontinue the strike or lockout.

149 Employer liability for remuneration

- (1) An employee is not entitled to any remuneration in respect of the period of any lawful lockout, except where the lockout is unlawful under this Act.
- (2) On the resumption of work by an employee, his services must be treated as continuous, despite the period of the lockout, for the purposes of rights and benefits that are conditional on continuous service.

150 Records of strikes or lockouts

If a strike or lockout occurs under this Act, the employer of the employees participating in the strike or affected by the lockout must –

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

151 Expulsion of union members

- (1) A person refusing to take part in an unlawful strike or lockout, which under this Act is unlawful, must not under the Constitution of a trade union, be –
 - (a) expelled from a union;

- (b) liable to a fine or penalty;
 - (c) deprived of a right or benefit to which he or she was entitled; or
 - (d) directly or indirectly disadvantaged.
- (2) A law must not limit the proceedings which may be entertained by the Court, and nothing in the Constitution of an organisation requiring the settlement of a disputes in any manner shall apply to a proceeding for enforcing a right or exemption secured by this section.
- (3) In proceedings under subsection (2), the Court may, instead of ordering a person who has been expelled from membership of trade union to be restored to membership, order that the person be paid compensation or damages out of the funds of the organisation.

DIVISION FIVE – PROTECTION OF ESSENTIAL SERVICES

152 Essential services

An employee or employer engaged in an essential service listed in Schedule 5 must comply with the requirements of this Part in undertaking a strike or lockout.

153 Strikes in essential services

A union shall not undertake a strike in an essential service, except where the following conditions exist –

- (a) the strike is not deemed unlawful under section 146; and
- (b) the union has complied with the requirements of sections 143 and 144; and
- (c) the union has given at least 28 days written notice of the strike to the employer and the Chief Executive Officer in accordance with section 154.

154 Notice by union

- (1) A notice for the purpose of section 153 must comply with the following –
- (a) signed by [an authorised representative of] the trade union;
 - (b) state the date and time on which the strike is contemplated;
 - (c) state the place or places where the contemplated strike or strikes will occur;
 - (d) state the category of employees who will strike; and

- (e) state the estimated duration of the strike.
- (2) A notice must be served on the employer and the Chief Executive Officer by hand.
- (3) Where the notice of a strike under this section does not comply with the requirements of this section or the strike does not take place as notified under subsection (1), the notice is deemed to have not been made and any strike that is undertaken under the notice shall be deemed to be unlawful.

155 Lockouts in essential services

An employer who provides an essential service shall not lock out its employees in that essential service, except where the following conditions exist –

- (a) the lockout is not considered unlawful under section 146;
- (b) mediation according to processes under this Act has failed to resolve the dispute; or
- (c) the employer has provided 28 days' notice to the Registrar, trade union and employees affected by the lock out in accordance with section 156.

156 Notice by employer

- (1) The notice required by section 155 must be signed by or on behalf of the employer and must specify the following –
 - (a) nature of the proposed lockout, including whether or not it will be continuous;
 - (b) place or places where the proposed lockout will occur;
 - (c) date and time on which the lockout will begin; and
 - (d) names of all employees who will be locked out.
- (2) A notice must be displayed in the workplace in a place that it can read by persons affected by the lockout.

157 Requirement for mediation services

Where a notice of an intention to hold a strike or lockout in an essential service is provided to the Chief Executive Officer, the Chief Executive Officer must ensure that the Mediation Unit provides mediation services as soon as possible to the parties involved, for the purpose of assisting the parties to avoid the need for a strike or lockout.

158 Ministers power to refer a strike or lockout to the Court

If –

- (a) there is a lawful strike or lockout in an essential service;
- (b) neither party is willing to settle the employment dispute; and
- (c) the Minister is satisfied that the continuance of the strike or lockout is not in the public interest or will jeopardise or is likely to jeopardise the life or livelihood of the Kingdom, economy or public safety,

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

PART XVI – PROCEEDINGS**159 Proceedings where mediation fails**

- (1) If the mediator is of the opinion that the provision of further mediation services is unlikely to resolve a dispute, he may terminate the mediation proceedings by written notice to the parties.
- (2) Mediation may be terminated and proceedings may be lodged in the Court to hear and determine a dispute by –
 - (a) an employee, prospective employee, former employee who is a party to the dispute;
 - (b) an employer who is a party to the dispute;
 - (c) a registered trade union that is a party to the employment dispute or is representing member in the employment dispute; or
 - (d) an employer organisation that is a party to the employment dispute or is representing an employer in the employment dispute.
- (3) Proceedings must be lodged within 20 working days from the date that the mediation has failed settle a dispute.

160 Jurisdiction of the Court

- (1) The Court has exclusive jurisdiction to make determinations about one or more of the following —
 - (a) a dispute between an employee or one or more trade unions and one or more employers connected with the employment, non-employment, or the terms and conditions of employment for one or more employees under this Act;

- (b) a dispute relating to whether a person is an employee;
 - (c) a breach of a settlement agreement;
 - (d) actions for the recovery of penalties;
 - (e) objections to demand notices;
 - (f) objections to penalty notices;
 - (g) challenges to the decision of the Chief Executive Officer;
 - (h) actions for the recovery of wages, holiday pay or any other money owing to an employee under this Act;
 - (i) hear and determine offences under this Act;
 - (j) questions of law arising during the course of proceedings; or
 - (k) such other matters conferred on it by this Act.
- (2) The Court shall make a final determination in relation to the dispute within 25 working days of the matter first being lodged with the Court.

161 Determination of whether a person is an employee

For the purpose of determining whether a person is an employee within the meaning of this Act, a mediator or the Court shall have regard to all relevant matters including whether the person engaged to work –

- (a) carries out the work under the direction and control of another person
- (b) is integrated into the organisation of the enterprise;
- (c) performs the work solely for the benefit of another person;
- (d) carries out the work personally;
- (e) has specified working hours or a working duration;
- (f) has a specified workplace;
- (g) has tools, materials, machinery and work related travel expenses paid by the person requesting the work;
- (h) receives regular or periodic remuneration;
- (i) has entitlements to leave; or
- (j) has absence of financial risk from the work.

162 Remedies

- (1) The Court may grant one or more of the following remedies–
- (a) reimbursement of wages or other money by the employer to an employee as a result of a dispute;

- (b) the payment of compensation to an employee by the employer for –
 - (i) humiliation, loss of dignity, and injury to the feelings of the employee; or
 - (ii) loss of any benefit, whether or not of a monetary kind, which the employee might reasonably have been expected to obtain if the dispute had not arisen;
 - (c) reinstatement of an employee to the employee's former position or an equivalent position.
- (2) If an employee's employment is terminated and the termination is not justified, the Court may in determining the nature and extent of the remedies to be granted to an employee, consider the extent to which the employee contributed to the situation and reduce the remedies accordingly.

163 Compliance orders

If a person has not complied with –

- (a) a provision in this Act;
- (b) one or more provisions in a contract of employment or collective agreement; or
- (c) a demand notice issued by a labour officer,

the Court may, at its own motion, or by the application of a party, by order, require a party to do or cease to do a specified thing or activity, for the purpose of preventing further non-compliance with the provision, contract, collective agreement or demand notice.

164 Injunctions

Where there is a strike or lockout, the Court may on the application of –

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

grant an injunction ordering the discontinuance of the strike or lockout.

165 Terms and conditions void if inconsistent with Act

The Court may on the application of a party or at its own motion, make an order that a term or condition of a contract of employment is void for non-compliance with this Act.

PART XVII – ENFORCEMENT

166 Designation of a labour officer

- (1) The Minister shall, on the recommendation of the Chief Executive Officer, designate a person as a labour officer under this Act.
- (2) Notwithstanding any other provision to the contrary, the Chief Executive Officer and the head of the labour division shall be deemed to be labour officers under this Act.
- (3) A person who is recommended by the Chief Executive Officer under sub-regulation (1) shall be a person –
 - (a) who has displayed skills, qualities and work ethics which show that he will undertake his duties efficiently, effectively and honestly; and
 - (b) who has undertaken relevant training facilitated by the Ministry for labour officers under this Act.
- (4) A person who is recommended under sub-regulation (1) must not –
 - (a) be a director, shareholder or agent of any company in Tonga; or
 - (b) hold any convictions for an offence in Tonga or abroad.
- (5) Once a designation is approved by the Minister, the Chief Executive Officer shall ensure that the officer is issued with a certificate of identity as evidence of being a designated labour officer.
- (6) A designation by the Minister must be made in writing, on the instrument of designation specified in Schedule 3 and the officer shall be issued with a certificate of identity in the form prescribed in Schedule 4.
- (7) A designation is valid for the period specified on the instrument of designation.
- (8) Prior to the expiration date of a designation under this regulation, the Minister may, on the recommendation of the Chief Executive Officer, revoke a designation by providing a letter in writing to the officer stating, among other things, the following –
 - (a) the reason for the revocation;
 - (b) effective date for the revocation; and
 - (c) an instruction to return the certificate of identity and any other property of the Ministry issued to the officer in the course of his duties.
- (9) Notwithstanding the revocation of an officer's designation under this Act., if the officer is a public servant who has been appointed under the Public

Service Act, he may continue in his employment as an employee of the Ministry or any other Ministry, unless or until the Public Service Commission directs otherwise to the officer's Minister in writing.

167 Powers and functions of a labour officer

- (1) A labour officer may at all reasonable times –
 - (a) enter, inspect and examine a workplace where an employee is employed or where there is reason to believe that an employee is employed;
 - (b) require an employer to provide access to any employee under the direction or control of the employer for the purposes of interviewing the employee on a matter connected with that person's employment or this Act;
 - (c) require an employer to produce any documents, employment records or register of children, which the employer is required to keep under this Act or any other documents or records relating to the employment of an employee;
 - (d) interview an employer or employee on a matter connected with employment or this Act, and may seek information from any other person whose evidence is considered to be necessary; or
 - (e) make inquiries to an employer or a person acting on his or her behalf on matters connected with compliance with this Act.
- (2) A labour officer must notify the employer or the employer's representatives of his presence as soon as practicable on the entry and inspection of a workplace, unless there are reasonable grounds for believing that such notification may be prejudicial to the performance of his duties.
- (3) A labour officer may –
 - (a) copy or make extracts from a document or records in the possession of an employer which relates to an employee;
 - (b) advise and assist employers and employees on a particular or general employment relations matter under the Act;
 - (c) provide information, advice, awareness or training to employers, employees, trade unions or employer organisations on employment relations matters under this Act; and
 - (d) in a prescribed form established by regulations, issue a demand notice if the officer believes on reasonable grounds that an employer is failing, or has failed to comply with any provision of this Act and in such cases a demand notice must state –

- (i) the relevant section or sections of this Act that the officer believes on reasonable grounds that the employer is failing, or has failed to comply with; and
 - (ii) the reasons for the labour officer's belief that the employer is failing or has failed to comply with the relevant section or sections of this Act; and
 - (iii) the steps the employer must take to comply; and
 - (iv) the date on which the employer must comply.
- (4) An employer may, within 28 days of the demand notice being issued, lodge an objection to the notice in the Court.

168 Interests and confidentiality

A labour officer must –

- (a) act impartially at all times in the discharge of their powers or functions under this Act;
- (b) not disclose confidential information of a financial or personal nature provided by an employer, employee, union or employer organisation unless such information must be made known for the purposes discharging their duties under this Act; and
- (c) not disclose any confidential work process, formula, trade secret, ingredient or business practice made known to him in the course of discharging his functions under this Act, except as required by law.

PART XVIII – OFFENCES AND PENALTIES

169 General offences and penalties

- (1) A person who commits an offence under this Act shall, on conviction, be liable to a fine of up to [***] or a term of imprisonment of up to [*** years], or both.
- (2) A person who breaches a provision of this Act that imposes a penalty, is liable —
 - (a) in the case of an individual, to a penalty not exceeding [***]; or
 - (b) in the case of a company or other corporation, to a penalty not exceeding [***].

170 Offence to delay or obstruct an officer

A person who –

- (a) wilfully delays or obstructs the Chief Executive officer, Registrar, mediator or labour officer exercising a power or performing a duty conferred by the Act;
- (b) fails to comply with a direction, requirement, request, demand or inquiry of the Chief Executive Officer, Registrar, mediator or labour officer made or given in accordance with the powers conferred by this Act; or
- (c) conceals or prevents a person from appearing before or being examined by such officer,

commits an offence and is liable to a penalty under this Act.

171 Fixed penalties

- (1) A labour officer, Registrar or other public officer authorised in writing by the Chief Executive Officer may issue a penalty notice where a breach of this Act has taken place.
- (2) The fixed penalty notice must be issued in a form prescribed by regulations made under this Act.
- (3) An employer may, within 28 days of a notice being issued under subsection (2) lodge an objection to the notice with the Court.

172 Recovery of penalties

An action for the recovery of a penalty may be brought —

- (a) in the case of a breach of contract of employment, by party to the contract of employment; or
- (b) in the case of a breach of this Act, at the suit of any person in relation to whom the breach is alleged to have taken place; or
- (c) directly to the Court by the Registrar, Chief Executive or a labour officer.

PART XIX – MISCELLANEOUS

173 Protection against civil or other criminal proceedings

No action or proceeding, civil, or criminal, lies against the Chief Executive Officer, labour officer or Committee, for anything done or omitted in good faith

in the lawful exercise or purported exercise of a function under this Act by the Chief Executive Officer, labour officer or Committee.

174 Time for instituting proceedings for other offences

Notwithstanding anything in any other written law, proceedings for an offence against this Act may be instituted within the period of 12 months after the act or omission alleged to constitute the offence except that the Court may grant leave to extend such period for a further 6 months.

175 Regulations

The Minister, with the consent of Cabinet, may make regulations not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act or advancing its objects.

176 Chief Executive Officer to keep registers

The Chief Executive Officer shall establish and maintain a register which contains the following information –

- (a) names and contact details of all employers and employees in Tonga;
- (b) list of all persons who are delegated with responsibilities under this Act and the effective date and duration;
- (c) names of all labour officers, including their date of appointment, powers and duration of appointment;
- (d) any conflict of interest declared by members of the Committee and the nature of those conflicts;
- (e) complaints lodged under this Act and outcomes;
- (f) prosecutions initiated under this Act and outcomes;
- (g) level and nature of fines issued under this Act and outcomes; and
- (h) any other information that the Chief Executive Officer deems necessary for the efficient and effective discharge of the Ministry's functions.

177 Amendments to other Acts

The following Acts are hereby amended as follows –

- (a) [insert]; and
- (b) [insert].

178 Repeals

The Trade Unions Act (Cap. 22.34) is hereby repealed.

179 Savings

A contract of employment or collective agreement that is valid and in force at the commencement of this Act continues to be in force after the commencement of this Act and, to the extent that it is not in conflict with this Act, is deemed to be made under this Act and the parties to the contract are subject to and entitled to the benefits of this Act.

SCHEDULE 1*(Section 19(1))***MINIMUM PARTICULARS OF AN INDIVIDUAL'S WRITTEN CONTRACT OF EMPLOYMENT**

The following minimum particulars shall be included in an individual's written contract of employment –

1. Name of employer
2. Name of employee
3. Nature of work
4. Place of work
5. Hours of work
6. Wages/salary
7. Holidays and leave
8. Disciplinary procedure
9. Entitlements
10. Signed by Employer
11. Signed by Employee
12. Date

SCHEDULE 2*(Section (17)(1))***RULES AND PROCEDURES OF THE EMPLOYMENT RELATIONS
ADVISORY COMMITTEE**

The Employment Relations Advisory Committee shall have the following rules and procedures –

1 Meetings of the Committee

- (1) Meetings of the Committee shall take place at such time and at such place at the Chair directs from time to time, but not less than once per quarter.
- (2) The Secretary shall provide at least 48 hours written notice of each meeting and distribute the agenda and materials for the meeting together with such notice.

2 Quorum for meetings

- (1) The quorum for a meeting of the Committee shall be 5 members, including at least 1 employer's organisation representative and 1 worker's organisation representative.
- (2) For ensuring that meetings are not constituted without a quorum –
 - (a) each member shall advise the Secretary at least a day in advance of the meeting whether or not he is able to attend a planned meeting of the Committee; and
 - (b) the Secretary must ensure that the Chair is available to attend the meeting, as well as 1 employer's organisation and 1 worker's organisation representative.

3 Responsibilities of Chair

- (1) Responsibilities of the Chair are as follows –
 - (a) chair the meetings of the Committee;
 - (b) ensure that nominations for membership in the Committee are in accordance with section 13 of this Act;
 - (c) ensure that decisions and recommendations of the Committee are consistent with objectives in this Act; and

- (d) ensure that the Committee provides an annual report to the Minister, who shall inform Cabinet of the Committee's activities and recommendations.
- (2) No decision of the Committee, and no proceeding before the Committee, shall be held bad for want of form, or be void or in any way vitiated by reason of any informality or error of form.

4 Term of office

- (1) Except for the Chair, a member of the Committee shall be appointed for a term of up to 3 years and may be re-appointed for one further term.
- (2) When the term of office for a member under section 13(1)(c) and 13(1)(d) of the Act has ended, the relevant organisation that nominated such member shall nominate new names to the Ministry and Cabinet for consideration of membership.
- (3) Notwithstanding that a relevant organisation was represented on the Committee in a prior term, the Cabinet may consider representatives from new or alternative organisations to become members of the Committee.
- (4) Unless a member sooner vacates his office under article 5 of this Schedule, a member of the Committee shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

5 Extraordinary vacancies

- (1) A member may, on the recommendation of the Committee, be removed from office by the Minister for –
 - (a) failing to attend 2 consecutive meetings in a calendar year without formally advising the Secretariat;
 - (b) resigning from their employment and/or ceasing membership in the organisation of which they are a representative;
 - (c) engaging in activities that are not befitting of the reputation of the Committee, and which is considered as serious misconduct; or
 - (d) conviction of a criminal offence in Tonga or abroad.
- (2) A member of the Committee may at any time resign his office by giving written notice to that effect to the Chair of the Committee.
- (3) If a member of the Committee dies, or resigns, or is removed from office, the vacancy created shall be deemed to be an extraordinary vacancy and shall be filled by the appointment of a member by Cabinet in the same manner as if a new member is to be appointed.

6 Co-opted members

Subject to the Act, the Committee may from time to time and in writing, invite any person it considers appropriate to act in an advisory capacity to the Committee and to assist with its deliberations, provided that –

- (a) a person who acts in an advisory capacity shall not be entitled to vote on any matter that is being considered by the Committee; and
- (b) a co-opted member shall be bound by the same duties and responsibilities of a full member and shall be entitled to the same meeting fees as a full member.

7 Delegation of powers

- (1) Except for his position as Chair, the Chair may from time to time, delegate one or more of his functions to a member of the Committee.
- (2) The Secretary shall keep a register of the names of each person to whom a power or function is delegated under this article.

8 Members and officers to maintain confidentiality

- (1) Every member of the Committee and every person engaged or employed in connection with the work of the Committee shall maintain and assist in maintaining the confidentiality of all matters which are considered by the Committee.
- (2) The breach of confidentiality may, after due deliberation and consideration by the Committee, constitute serious misconduct under article 5(1)(c) of this Schedule.

9 Functions of the Secretary

Functions of the Secretary shall include but not be limited to –

- (a) keeping proper minutes of meetings of the Committee;
- (b) notifying members of meetings of the Committee within the prescribed time, and overseeing the timely distribution of meeting materials;
- (c) liaising between the Ministry and members of the Committee as necessary on matters relevant to the Committee, and for effective communication between the Ministry and the Committee;
- (d) liaising between the Committee and the public, key stakeholders and the media as is required from time to time;

- (e) ensuring that confidential information of the Committee are kept in secure storage and released only according to the instructions of the Committee; and
- (f) complying with any other lawful directions of the Chair of the Committee.

10 Functions of the Secretariat

Functions of the Secretariat shall include but not be limited to –

- (a) preparing and distributing meeting materials of the Committee under the supervision of the Secretary;
- (b) keeping proper filing systems of reports, documents, accounts and other records of the Committee;
- (c) carrying out any administrative or financial functions of the Committee as directed by the Chair; and
- (d) following the lawful directions of the Chair and Secretary pursuant to this Act.

11 Members not personally liable

No member of the Committee shall be personally liable for any act done or default made by the Committee in good faith in pursuance or intended pursuance of the powers, duties and functions of the Committee under this Act.

12 Meeting fees

- (1) A non-government member of the Committee shall be entitled to receive a meeting fee for each meeting of the Committee. The meeting fee and process for payment shall be set out in regulations made under this Act.
- (2) A government employee who is a member of the Committee shall not be entitled to receive a meeting fee under this Act.

SCHEDULE 3

(Section 166(6))

DESIGNATION OF A LABOUR OFFICER: FULL POWERS



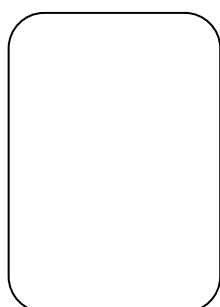
Pursuant to section 166 of the Employment Relations Act, I hereby designate [OFFICER’S NAME] of [MINISTRY NAME] as a labour officer under the Act.

You are hereby authorised to act as a labour officer on behalf of the Ministry, holding full powers of a labour officer under Part XVII of the Act, but subject to all provisions in the Act and regulations made under it.

The duration of this designation is a period of [NO. OF YEARS]. At the end of this period, your designation will automatically lapse until a further designation is issued in writing by the Minister in office.

Issued at Nuku’alofa on this day of[month],
20..... [year].

.....
Honourable Minister responsible for Labour

SCHEDULE 4*(Section 166(6))***FORM OF IDENTIFICATION OF A LABOUR OFFICER**FRONT:

Name:

Designation:

Ministry:

Expiration:

ID No.:

FULL POWERS / LIMITED POWERSBACK:

THIS ID IS THE PROPERTY OF THE
MINISTRY RESPONSIBLE FOR
LABOUR.

You are hereby required to carry this identification at all times when you are exercising your powers under the Employment Relations Act. You must show this ID if you are requested by any person.

At the expiration of your designation, please immediately return your identification card to the Chief Executive Officer of the Ministry responsible for Labour.

SCHEDULE 5*(Section 2 and 152)***LIST OF ESSENTIAL SERVICES**

1. Air transport
2. Air/Sea rescue services
3. Air traffic control services
4. Civil aviation
5. Telecommunication services
6. Customs services
7. Electricity services
8. Emergency services in times of natural disaster
9. Fire services
10. Health services
11. Hospital services
12. Water services
13. Quarantine services of the Government
14. Mediation and Judicial services

SCHEDULE 6

(Section 103(3)(a), 111(1)(e), 115(1))

REQUIRED PROVISIONS IN CONSTITUTION OF A TRADE UNION

The following provisions must be included in the Constitution of a trade union as a pre-requisite for registration under this Act -

- (1) name of the union and the location and postal address of its registered office;
- (2) persons eligible for membership of the trade union;
- (3) objects for which the trade union is established;
- (4) list of officers of the trade union and the functions of each office;
- (5) list of officers empowered to operate bank accounts;
- (6) establishment of the executive committee and secretary, treasurer, and other officers of the trade union;
- (7) manner of making, altering and rescinding rules;
- (8) the keeping of a register of members of the trade union;
- (9) requirement for registration of collective agreements by the Registrar and including all amendments;
- (10) convening and conducting annual general meetings and extraordinary general meetings or annual delegates' conferences whichever are more convenient, and the matters to be presented to the members of the trade union at such meetings, such as the presentation of audited accounts;
- (11) annual or periodical audit of the accounts;
- (12) provisions for keeping in a separate fund all money received or paid by the trade union in respect of any contributory provident fund or pension fund scheme;
- (13) manner of the dissolution of the trade union and the disposal of the funds at the same time of such dissolution;
- (14) taking of a decision by secret ballot for voting members of the trade union on the following matters -
 - (a) election of officers of the trade union;
 - (b) alteration of the rules of the trade union;
 - (c) all matters relating to strikes and lock-outs;
 - (d) dissolution of the trade union;

- (e) amalgamation of the trade union with any other trade union;
 - (f) federation of the trade union with any other union or with a trade union federation; and
 - (g) imposition of levies;
- (15) right of any member, who is not disqualified from voting, to a reasonable opportunity to vote;
- (16) amount of subscriptions and fees payable by members; and
- (17) requirement that at any meeting of the trade union or branch a quorum consists of not less than 20% of the voting members of the union or branch.