

BILL NO. 10 OF 2015

A BILL

FOR AN ACT TO AMEND THE EMPLOYMENT RELATIONS PROMULGATION 2007 AND FOR RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Employment Relations (Amendment) Act 2015.
- (2) This Act shall come into force on a date or dates appointed by the Minister by notice in the *Gazette*.
- (3) In this Act, the Employment Relations Promulgation 2007 shall be referred to as the “Promulgation”.

Section 75 amended

2. The Promulgation is amended by deleting section 75 and substituting with the following—

“Prohibited grounds of discrimination

75. For the purposes of this Part, the prohibited grounds for discrimination whether direct or indirect are actual or supposed personal characteristics or circumstances, including race, culture, ethnic or social origin, colour, place of origin, sex, gender,

sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, HIV/AIDS status, disability, age, religion, conscience, marital status or pregnancy.”

Section 78 amended

2. The Promulgation is amended by deleting section 78 and substituting with the following—

“Unlawful discrimination in rates of remuneration

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

- (a) the actual or supposed personal characteristics or circumstances of that person, including race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, HIV/AIDS status, disability, age, religion, conscience, marital status or pregnancy; or
- (b) opinions or beliefs, except to the extent that those opinions or beliefs involve harm to others or the diminution of the rights or freedoms of others,

provided however that nothing in this Promulgation shall prevent an employer from prescribing or imposing different rates of remuneration to workers depending on productivity or quality of work or years of service or performance of duties and functions.”

Section 79 amended

4. Section 79 of the Promulgation is amended—

- (a) by deleting “gender” wherever it appears and substituting with “race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, HIV/AIDS status, disability, age, religion, conscience, marital status or pregnancy”; and
- (b) is amended in subsections (2) and (3) by deleting “male workers or female” and substituting with “the”.

Section 80 amended

5. Section 80 of the Promulgation is amended by deleting subsection (1) and substituting with the following—

“(1) If an instrument in force at the commencement of this Promulgation provides separate provisions for the remuneration of workers based on the race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, HIV/AIDS

status, disability, age, religion, conscience, marital status or pregnancy of workers, the parties must review the instrument to implement equal pay, by determining—

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

Section 119 amended

3. Section 119 of the Promulgation is amended by deleting subsection (2) and substituting with the following—

“(2) An application for registration as a trade union must be made to the Registrar in the prescribed form and signed by a minimum of 7 members of the trade union applying for registration provided that no member shall belong to more than one trade union in the same ~~occupation or industry~~ industry, trade or occupation concerning the same employer.”

Section 122 amended

4. Section 122 of the Promulgation is amended—

- (a) in subsection (1)(c) by deleting the word “undesirable” and substituting with “**offensive, insulting or** racially or ethnically discriminatory”; and
- (b) by inserting the following new subsection after subsection (3)—

“(4) In making a consideration under subsection (1), the Registrar may have regard to whether the proposed trade union’s name is offensive or insulting, can incite racial or ethnic hatred, or would contravene any other written law.”

Section 125 amended

5. Section 125 of the Promulgation is amended in subsection (1) by inserting the words “, after ~~good faith~~ consultation with those who are intending to register as a trade union,” before the word “may”.

Section 127 amended

6. Section 127 of the Promulgation is amended in subsection (1) by deleting—

- (a) “6” and substituting with “3” in paragraph (a); and
- (b) paragraph (b).

Section 128 amended

7. Section 128 of the Promulgation is amended in subsection (2) by deleting the words “or by a person authorised in writing by the Registrar” and substituting with “upon requisition of 10% of the voting membership.”

Section 169 amended

~~8. Section 169 of the Promulgation is amended in subsection (1) by inserting the following new paragraph after paragraph (b)—~~

~~“(c) an employer reporting a dispute with a worker who is not, or with workers who are not, a union member.”~~

Section 170 amended

9. Section 170 of the Promulgation is amended by—

(a) deleting subsection (1) and substituting with the following—

“(1) The Permanent Secretary must, within 30 days, accept all employment disputes ~~and employment grievances~~ reported to him or her, provided that—

- (a) the employment dispute ~~or employment grievance~~ is not vexatious or frivolous;
- (b) all existing internal procedures have been exhausted in resolving the employment dispute ~~or employment grievance~~; and
- (c) the employment dispute ~~or employment grievance~~ is reported within 3 months from the date in which the employment dispute ~~or employment grievance~~ arose except where the delay to report was caused by mistake or other good cause.”; and

(b) inserting the following new subsection after subsection (9)—

“(10) If an employment dispute ~~or employment grievance~~ reported to the Permanent Secretary is not accepted or is rejected by the Permanent Secretary within 30 days of it being reported, then the employment dispute ~~or employment grievance~~ shall be deemed to have been accepted.”

Section 177 amended

10. Section 177 of the Promulgation is amended—

- (a) in paragraph (c) by inserting the words “, or relates to any trade dispute lodged with **or referred to** the Arbitration Court under Part 19 **and is being processed in accordance with Part 19** ~~or relates to any matter over which collective bargaining, or negotiation or conciliation is taking place under Part 19~~” after the word “Promulgation”; and
- (b) in paragraph (e) by deleting “186, 187 or 191(2)” and substituting with “191BN, 191BO or 191BS(2)”.

Section 180 amended

11. Section 180 of the Promulgation is amended in subsection (2) by inserting the words “signed by the Minister **or and**” after the words “the order is”.

Section 181 amended

12. Section 181 of the Promulgation is amended in paragraph (c) by inserting the words “upon the request of a union or an employer” after the word “Minister”.

Section 241 amended

13. Section 241 of the Promulgation is amended in subsection (1) by deleting the words “or Part 19”.

Section 250 amended

14. Section 250 of the Promulgation is amended—

- (a) in subsection (1) by inserting the words “and is liable upon conviction to a fine not exceeding \$50,000” after the word “offence”;
- (b) in subsection (2) by inserting the words “and is liable upon conviction to a fine not exceeding \$20,000” after the word “offence”; and
- (c) in subsection (5) by inserting the words “and is liable upon conviction to a fine not exceeding \$10,000” after the word “offence”.

Section 264 amended

15. Section 264 of the Promulgation is amended—

- (a) in subsection (5) by deleting “subject to subsections (6) and (7)” and substituting with “other than Schedule 7 which shall be amended in accordance with section 191BU”; and
- (b) by deleting subsections (6) and (7).

Part 19 substituted

16. The Promulgation is amended by repealing Part 19 and substituting with the following—

“PART 19—ESSENTIAL SERVICES AND INDUSTRIES

Division 1—General

Interpretation

185. Notwithstanding anything contained in section 4, in this Part, unless the context otherwise requires—

“Arbitration Court” means the Arbitration Court established under this Part;

“award” means an award made by the Arbitration Court;

“Bargaining Unit” means a Bargaining Unit, formed or established under the Decree or under this Part, comprising at least 25% of workers employed by the same employer, and whose officers, executives, representatives and members shall be made up of the workers who are part of the Bargaining Unit;

“Chair” means the Chair of the Arbitration Court appointed under this Part;

“collective agreement” means an agreement ~~as to disputes of interest~~; **made between a registered trade union of workers and an employer which—**

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

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

“Decree” means the Essential National Industries (Employment) Decree 2011;

“disputes of interest” means matters or disputes arising between employers and trade unions ~~or workers~~ out of collective bargaining and pertaining to the relations of employers and workers which are connected with the employment or non-employment or the terms of employment, or the conditions of work of any person, but shall not include matters concerning dispute of rights including the following—

- (a) dismissal or termination of any worker;
- (b) discrimination within the terms of Part 9;
- (c) duress in relation to membership or non-membership of a union;
- (d) sexual harassment in the workplace within the terms of section 76; or
- (e) worker’s employment, or one or more conditions of it, is or are affected to the worker’s disadvantage by some unjustifiable action by the employer;

“employer” means any person who employs another person in an essential service and industry under a contract of service and includes—

- (a) the Government;
- (b) a statutory authority;
- (c) a local authority, including a city council, town council or rural authority;
- (d) Government commercial company, as prescribed under the Public Enterprise Act 1996;
- (e) a duly authorised agent or manager of an employer; and

- (f) a person who owns, or is carrying on, or for the time being responsible for the management or control of a profession, business, trade or work in which a worker is engaged;

“employment grievance” means a grievance involving dispute of rights including the following matters—

- (a) dismissal or termination of any worker;
- (b) discrimination within the terms of Part 9;
- (c) duress in relation to membership or non-membership of a union;
- (d) sexual harassment in the workplace within the terms of section 76; or
- (e) worker’s employment, or one or more conditions of it, is or are affected to the worker’s disadvantage by some unjustifiable action by the employer,

but shall not include any dispute of interest;

“essential service and industry” or “essential services and industries” means a service listed in Schedule 7 and includes those essential national industries declared and designated corporations or designated companies designated under the Decree, and for the avoidance of doubt, shall also include—

- (a) the Government;
- (b) a statutory authority;
- (c) a local authority, including a city council, town council or rural authority;
- (d) Government commercial company, as prescribed under the Public Enterprise Act 1996;
- (e) a duly authorised agent or manager of an employer; and
- (f) a person who owns, or is carrying on, or for the time being responsible for the management or control of a profession, business, trade or work in which a worker is engaged;

“officer”, in relation to—

- (a) a trade union or a branch of a trade union, includes any member of the body, by whatever name called, to which the management of the affairs of the trade union or branch is entrusted; or
- (b) an employer, includes any worker employed by the employer;

“President” means the President of the Republic of Fiji;

“Secretary” means the Secretary of the Arbitration Court appointed under this Part and includes a Deputy Secretary and an Assistant Secretary;

“trade dispute” means a dispute (including a threatened, impending or probable dispute) as to disputes of interest;

“trade union” means a trade union of workers registered under this Promulgation and shall include a Bargaining Unit formed or established or registered under the Decree or under this Part;

“undertaking” includes any trade or business; and

“worker” means a person who has entered into or works under a contract of service with an employer in an essential service and industry, and includes an officer or servant of—

- (a) the Government;
- (b) a statutory authority or entity;
- (c) a local authority, including a city council, town council or rural authority;
- (d) Government commercial company, as prescribed under the Public Enterprise Act 1996;
- (e) a duly authorised agent or manager of an employer; and
- (f) a person who owns, or is carrying on, or for the time being responsible for the management or control of a profession, business, trade or work in which a worker is engaged.

Division 2—Essential Services and Industries

Application

186.—(1) This Part applies to all essential services and industries.

(2) For the avoidance of doubt, this Promulgation, including this Part, shall not apply to members of the Republic of Fiji Military Forces, Fiji Police Force and Fiji Corrections Service.

Application of other Parts

187.—(1) Notwithstanding anything contained in any other section of this Promulgation, all other Parts of this Promulgation shall not apply to essential services and industries, except to the extent provided in subsection (2).

(2) To the extent that there is no inconsistency with this Part, Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18, 21 and 22 shall apply to essential services and industries, provided however that—

- (a) if there is any inconsistency between those Parts and this Part, then this Part shall prevail and all procedures and matters prescribed in this Part shall prevail and over anything prescribed in those Parts; and

- (b) any reference in these Parts to the Employment Tribunal or the Employment Court shall mean the Arbitration Court established under this Part.

Jurisdiction over trade disputes and employment grievances

188.—(1) All trade disputes in essential services and industries shall be dealt with by the Arbitration Court in accordance with this Part.

(2) The Employment Tribunal and the Employment Court established under Part 20 shall not have any jurisdiction with respect to trade disputes in essential services and industries.

(3) For the avoidance of doubt, Part 20 shall not apply to essential services and industries, except as provided under subsection (4).

(4) Any employment grievance between a worker and an employer in essential services and industries that is a not a trade dispute ~~may be lodged by the worker or a by the worker's representative with the Employment Tribunal, and any such employment grievance shall be dealt with in accordance with~~ **shall be dealt with in accordance with** Parts 13 and 20, provided however that any such employment grievance must be lodged or filed ~~with the Employment Tribunal~~ within 21 days from the date when the employment grievance first arose, and—

- (a) where such an employment grievance is lodged **or filed** by a worker in an essential service and industry ~~with the Employment Tribunal~~, then that shall constitute an absolute bar to any claim, challenge or proceeding in any other court, tribunal or commission; and
- (b) where a worker in an essential service and industry makes or lodges any claim, challenge or proceeding in any other court, tribunal or commission, then no employment grievance on the same matter can be lodged by that worker under this Promulgation.

Bargaining Units and workers

189.—(1) Subject to subsection (2), a Bargaining Unit formed or established or registered under the Decree shall continue to operate under this Part and shall be deemed to be a trade union for the purposes of this Part and shall be entitled to engage in collective bargaining for the workers who are part of the Bargaining Unit and to lodge trade disputes to the Arbitration Court on behalf of those workers.

(2) If a majority of the workers in a Bargaining Unit formed or established or registered under the Decree decide, through secret ballot, to join a trade union established under this Promulgation, then that Bargaining Unit shall cease to exist and the workers shall, for the purposes of this Part, be represented by that trade union.

(3) A Bargaining Unit shall be entitled to register itself as a trade union under this Promulgation and shall, upon such registration, be entitled to all the rights, and shall be subject to all the liabilities, applicable to a trade union under this Promulgation.

(4) If 25% of workers employed by the same employer in an essential service and industry decide, through secret ballot, to form a Bargaining Unit, then the Bargaining Unit, after the conduct of the secret ballot, shall duly inform the Arbitration Court of the intention by those workers to form a Bargaining Unit and shall provide the Arbitration Court with the names of those workers who have chosen to be part of the Bargaining Unit, and the Arbitration Court shall then register that Bargaining Unit as a Bargaining Unit for the purposes of this Promulgation and shall also register those workers selected by workers who are part of the Bargaining Unit as officers, executives, representatives and members of the Bargaining Unit.

(5) Any Bargaining Unit formed by the workers pursuant to this section shall be deemed to be a trade union for the purposes of this Part and shall be entitled to engage in collective bargaining for the workers who are part of the Bargaining Unit and to lodge trade disputes to the Arbitration Court on behalf of those workers.

Freedom of association

190. All workers in an essential service and industry shall have the right to form and join a trade union or a Bargaining Unit, and shall be entitled to engage in collective bargaining in accordance with this Part, and to have their trade disputes adjudicated by the Arbitration Court in accordance with this Part.

Collective agreements under the Decree

191. Any collective agreement reached under the Decree and any terms and conditions existing with respect to any employee in any essential service and industry shall continue in force despite the repeal of the Decree, and may be amended, varied, interpreted, or re-negotiated under this Part.

Division 3—Arbitration Court

Arbitration Court

191A.—(1) This section establishes the Arbitration Court which shall be presided over by a Chair or such number of Deputy Chairs as determined by the President on the advice of the Prime Minister following consultation by the Prime Minister with the Chief Justice.

(2) The Chair and Deputy Chairs shall be appointed by the President on the advice of the Prime Minister following consultation by the Prime Minister with the Chief Justice.

(3) Except where otherwise provided by this Part, the Arbitration Court shall, in relation to a trade dispute of which the Arbitration Court has cognizance or any other matter with respect to which the Arbitration Court has jurisdiction under this Part, be constituted by—

- (a) the Chair or a Deputy Chair; and
- (b) 2 members selected for the purposes of the trade dispute or matter in the manner set out in this Part from the 2 panels constituted in accordance with this Part.

Chair and Deputy Chair

191B.—(1) The Chair and the Deputy Chairs shall have the same rights, privileges, protection and immunity as a Judge of the High Court.

(2) The Chair and Deputy Chairs shall be appointed for a term of 3 years and shall be eligible for re-appointment.

Acting Chair

191C.—(1) When the Chair is or is expected to be absent from duty, the President may, on the advice of the Prime Minister following consultation by the Prime Minister with the Chief Justice, appoint a person to be acting Chair during the absence of the Chair.

(2) A person so appointed under subsection (1) shall, notwithstanding that the Chair may no longer be absent, continue to be acting Chair for the purposes of completing the hearing and determination of a trade dispute or matter, the hearing of which had commenced during the absence of the Chair.

(3) An acting Chair shall in the performance of the functions and duties of the Chair have the same protection and immunity as the Chair.

Panels

191D.—(1) For the purpose of enabling the Arbitration Court to be constituted in accordance with this Part, two panels of persons (referred to in this Part as the Employer Panel and the Worker Panel) shall be appointed in the manner set out in this section.

(2) The Employer Panel and the Worker Panel shall each consist of not more than 20 persons appointed by the Minister whose names shall be notified in the *Gazette*.

(3) The Minister may from time to time invite—

(a) representative organisations representing employers to nominate for inclusion in the Employer Panel such number of persons as he or she may specify being persons eligible for appointment to that panel in accordance with section 191E; and

(b) representative organisations representing workers to nominate for inclusion in the Worker Panel such number of persons as he or she may specify being persons eligible for appointment to that panel in accordance with section 191E.

(4) Subject to subsection (5)—

(a) 10 of the members of the Employer Panel shall be persons nominated in reply to an invitation by the Minister under subsection (3) and 10 of the members of that panel shall be persons nominated by the Minister responsible for public service as nominees of the Government as an employer; and

(b) the members of the Worker Panel shall be persons nominated in reply to an invitation by the Minister under subsection (3).

(5) Where the Minister has invited nominations for inclusion in a panel from organisations of employers or workers as in the circumstances he or she considers appropriate and no suitable person is nominated or the number of suitable persons nominated is less than the maximum number which is required to be appointed in order that all vacancies in that panel may be filled, the Minister may, after filling as many vacancies as he or she is able to do by the appointment of suitable persons nominated in accordance with this section, appoint persons who have not been so nominated.

(6) For the purposes of subsection (5), a person shall be deemed to be a suitable person for appointment to a panel if he or she is eligible in accordance with section 191E and is in the opinion of the Minister a fit and proper person to be selected as a member of the Arbitration Court.

Eligibility for membership of panels

191E.—(1) Subject to subsection (2), a person who is a worker shall not be eligible to be a member of the Employer Panel.

(2) A person shall be eligible to be a member of the Employer Panel if he or she is nominated by the Minister responsible for public service.

(3) A person who is an employer or a director of a company which is an employer or is employed by an organisation of employers shall not be eligible to be a member of the Worker Panel.

(4) A person who—

- (a) is an undischarged bankrupt;
- (b) is mentally disabled and incapable of managing himself or herself or his or her affairs;
- (c) is not a citizen of Fiji; or
- (d) has within the previous 3 years been convicted of any offence under any law for which maximum penalty is a term of imprisonment of 12 months or more,

shall not be eligible for appointment to a panel.

(5) The Minister may exempt any person from subsection (1) or (3).

Duration of appointment

191F.—(1) A person appointed to a panel shall, subject to section 191G, be a member of the panel for a period of 2 years unless he or she sooner resigns but shall be eligible for reappointment.

(2) A panel member who resigns or whose appointment expires during the course of any proceedings of the Arbitration Court shall, for the purposes of such proceedings and until their determination, be deemed to remain a member of the Arbitration Court.

Removal from panel

191G.—(1) The Minister shall remove from a panel any person who—

- (a) ceases to be eligible as a member of that panel in accordance with section 191E;
- (b) accepts any relief afforded by law to bankrupts or insolvent debtors; or
- (c) has declined to constitute the Arbitration Court when selected to do so or has absented himself or herself, when selected, from the proceedings of the Arbitration Court unless he or she has shown reasonable cause for so declining or absenting himself or herself.

(2) The Minister may remove any person from a panel if he or she is of the opinion that the person—

- (a) has become permanently incapable of discharging the functions of a member of the Arbitration Court; or
- (b) is not a fit and proper person to be selected to constitute the Arbitration Court.

Vacancies in panels

191H. Where a person ceases to be a member of a panel, the Minister may take steps to fill the vacancy but the existence of any vacancy in either panel shall not invalidate the constitution of the Arbitration Court.

Constitution of Arbitration Court

191I.—(1) For the purpose of constituting the Arbitration Court in relation to a trade dispute or matter, the Chair shall determine who the parties to the trade dispute or matter are and shall invite—

- (a) the trade union representing the workers who is party to the trade dispute or matter to select one member of the Worker Panel; and
- (b) the employer or employers who are parties to the trade dispute or matter to select one member of the Employer Panel.

(2) If a trade union representing the workers who is party to the trade dispute or matter or the employer or employers who are parties to the trade dispute or matter unanimously selects a member of the Worker Panel or Employer Panel, as the case may be, the Chair shall declare that that person shall be a member of the Arbitration Court for the purposes of the trade dispute or matter.

(3) If a member of a panel is not selected in accordance with subsection (2), the Chair shall—

- (a) if he or she is of the opinion that a member of that panel has been selected by trade unions of workers who represent the majority of workers concerned in the trade dispute or matter or by the majority of the employers concerned

in the trade dispute or matter, as the case may be, declare that that person shall be a member of the Arbitration Court for the purposes of the trade dispute or matter; and

- (b) in any other case, notify the Minister and the Minister shall select a person from the panel and the Chair shall declare that such person shall be a member of the Arbitration Court for the purposes of the trade dispute or matter.

(4) When the Chair has declared that a person shall be a member of the Arbitration Court for the purposes of a trade dispute or matter, that person shall, subject to section 191K, be a member of the Arbitration Court for the purposes of that trade dispute or matter notwithstanding that in the proceedings relating to the trade dispute or matter parties may be joined or struck out.

(5) Such declaration shall not be challenged or called in question on the ground that the selection may not have been in accordance with this section.

Continuation of hearing

191J.—(1) Where the Arbitration Court has been constituted in relation to a trade dispute or matter and before the trade dispute or matter has been determined, the Chair or a member constituting the Arbitration Court has become unable to hear or to continue to hear or to determine the trade dispute or matter or has ceased to be the Chair or a member, as the case may be, whether by death or otherwise, the Arbitration Court shall be reconstituted in accordance with section 191I.

(2) The Arbitration Court as reconstituted shall hear and determine the trade dispute or matter or so much of the trade dispute or matter as has not been determined and in so hearing may have regard to the evidence given, the arguments adduced and any interim award made during the previous hearing.

(3) For the purpose of this section, a member who has withdrawn from the hearing of a trade dispute or matter shall be deemed to have become unable to hear or to continue to hear the trade dispute or matter.

Protection and immunity of members of Arbitration Court

191K.—(1) A member of the Arbitration Court shall, in the performance of his or her functions and duties under this Part, have the same protection and immunity as the Chair.

(2) The members of the Arbitration Court shall take the oath of allegiance and the judicial oath.

Allowances

191L. A member of a panel who is a member of the Arbitration Court for the purposes of a trade dispute or matter may, in respect of each day on which the Arbitration Court is engaged in the hearing and determining of the trade dispute or matter, be paid such allowances as may be prescribed.

Secretary and officers of Arbitration Court

191M.—(1) There shall be appointed a Secretary of the Arbitration Court and such other officers as the Chair considers necessary.

(2) The duties of the Secretary and other officers of the Arbitration Courts shall, subject to this Part, be as the Chair directs.

Division 3 4—Collective Bargaining

Application of Part 16

191N. To the extent that it is not inconsistent with this Division, Part 16 of this Promulgation shall apply to essential services and industries under this Part provided however that—

- (a) if there is any inconsistency between Part 16 and this Part, then this Part shall prevail and all procedures and matters prescribed in this Part shall prevail over any provision prescribed in Part 16; and
- (b) any reference in Part 16 to the Employment Tribunal or the Employment Court shall mean the Arbitration Court established under this Part.

Invitation to negotiate

191O. A trade union may serve on an employer or an employer may serve on a trade union a notice in the prescribed form—

- (a) setting out proposals for a collective agreement in relation to any disputes of interest; and
- (b) inviting the employer or trade union, as the case may be, to negotiate with it in relation to those matters with a view to arriving at a collective agreement.

Acceptance of invitation to negotiate

191P. An employer or a trade union upon whom a notice under section 191O has been served may accept the invitation to negotiate.

Non-acceptance of invitation to negotiate

191Q.—(1) Where, within 21 days after service of a notice under section 191O, a trade union or employer upon whom it was served has not accepted the invitation to negotiate under section 191P, the employer or trade union by whom the notice was served may notify the Secretary.

(2) Upon receipt of a notification under subsection (1), the Secretary shall consult, or direct an officer of the Arbitration Court to consult, with the employer or trade union which has not accepted the invitation to negotiate with a view to persuading that employer or trade union to accept the invitation.

(3) Where, after consultation with an employer or trade union on whom an invitation to negotiate has been served, the Secretary is satisfied that the employer or trade union refuses to negotiate, he or she shall notify the Minister and the Chair that a trade dispute exists.

Conciliation

191R.—(1) If after the expiration of 90 days from the date of service of a notice under section 191O or, where the notice has been served on more than one employer or trade union on different dates, from the latest of those dates, a collective agreement has not been reached between all the trade unions and employers by whom and upon whom the notice was served as to all the matters set out in the invitation, any party to the negotiations may notify the Secretary.

(2) Upon receiving a notification under subsection (1), the Secretary may consult, or direct a mediator to consult, with the employers and trade unions concerned in an endeavour to assist them to reach agreement through mediation.

Notification of trade disputes

191S. Where the Secretary is of the opinion—

- (a) at any time after the expiration of 14 days after consultation has begun under section 191R that the negotiations are unlikely to lead to a collective agreement registered under this Part as to all the disputes of interest which are the subject of the negotiations; or
- (b) upon receiving a notification under section 191R that it is unlikely that mediation will assist the parties to the negotiations to reach agreement,

the Secretary shall notify the Minister and the Chair that a trade dispute exists.

Compulsory conferences

191T.—(1) The Minister may, where he or she considers it appropriate that any trade dispute may be settled by conciliation or further conciliation, direct a person, whether engaged in or connected with the trade dispute or not, to attend at a time and place specified in the direction a conference presided over by the Minister or such person as the Minister directs.

(2) A direction under this section shall be given in writing signed by the Minister.

(3) Except as otherwise directed by the Minister or presiding person, a conference shall be held in private.

(4) A person who—

- (a) on being directed under subsection (1), fails without lawful excuse to attend a conference; or
- (b) on being directed to continue his or her attendance at a conference by the Minister or presiding person, fails without lawful excuse to do so,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 for the first offence; and shall be liable for the second offence to a fine not exceeding \$50,000.

Procedure as to notification

191U.—(1) A notification by the Secretary under this Part that a trade dispute exists shall contain—

- (a) a statement of the parties to the trade dispute;
- (b) the matters in dispute so far as they are known to the Secretary; and
- (c) where the trade dispute is notified to the Secretary in accordance with section 191Q, the reasons for the refusal to negotiate so far as they are known to the Secretary.

(2) The Secretary shall immediately bring the notification to the attention of the Chair, who shall then constitute the Arbitration Court.

Collective agreements

191V.—(1) If a collective agreement is arrived at, a memorandum of its terms shall be—

- (a) made in writing and signed by or on behalf of the parties to the collective agreement; and
- (b) delivered within one week thereof to the Secretary who, upon receiving it, shall immediately bring it to the notice of the Arbitration Court for certification.

(2) The Arbitration Court may in its discretion—

- (a) refuse to certify a memorandum delivered under subsection (1) if it is of the opinion that it is not consistent with any written law or if it is of the opinion that the memorandum does not set out satisfactorily or adequately the terms of the collective agreement between the parties and shall refuse to do so if the collective agreement does not comply with subsection (5); and
- (b) before certifying a memorandum delivered under subsection (1), require that such part or parts thereof be amended satisfactorily or adequately in any manner which the Arbitration Court considers expedient to comply with other provisions of this Part or any other written law or with any direction of the Arbitration Court.

(3) If any party to the collective agreement refuses to carry out such request, the Arbitration Court may, notwithstanding any other power exercisable under this Part, amend the memorandum in the manner required under subsection (2)(b) before proceeding to certify the memorandum.

(4) The Arbitration Court may in its discretion afford the parties an opportunity to be heard before proceeding to amend the memorandum under subsection (3).

(5) A collective agreement shall—

- (a) specify the period during which it shall continue in force and shall be not less than 2 years or more than 3 years from the date on which it is expressed to commence, unless the Arbitration Court decides that a lesser period is appropriate; and
- (b) unless the Arbitration Court considers such provision inappropriate, make provision for the settlement of disputes between the parties to the collective agreement while the collective agreement is in force arising out of the operation of the collective agreement including provision for the reference of such disputes to a mediator.

(6) The memorandum when certified by the Arbitration Court shall be deposited with and registered by the Secretary.

(7) Any person or any employer who or any trade union which—

- (a) delivers to the Secretary a memorandum which does not contain all the terms of the collective agreement entered into by him or her or it; or
- (b) fails or neglects to bring a collective agreement or any of the terms of such collective agreement entered into by him or her or it to the notice of the Arbitration Court in accordance with the provisions of this Part,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000.

Collective agreement deemed to be award

191W. A collective agreement, a memorandum of which has been certified by the Arbitration Court, shall be deemed to be an award for the purposes of this Part and shall be binding on—

- (a) the parties to the collective agreement;
- (b) any successor to, or any transferee, assignee or transmittee of, the undertaking of an employer bound by an agreement, including any corporation which has acquired or taken over the undertaking of such an employer; and
- (c) any successor to a trade union of workers which was a party to the collective agreement.

Representation in negotiations

191X. Notwithstanding the provisions of any other written law, a person may not in negotiations under this Part—

- (a) make, offer or receive any proposal on behalf of or purport to act on behalf of a trade union or employer; or

(b) be present at any meeting at which employers or trade unions negotiate, unless he or she is a person who is an officer or representative of the trade union or of the employer, and shall not include any legal practitioner.

Mediators

191Y. The Minister shall appoint such persons as he or she thinks fit to be mediators for the purposes of this Part and shall from time to time publish in the *Gazette* a list of the names of officers so appointed.

Negotiations otherwise than under this Part

191Z. Any person or any employer who or any trade union subject to this Part which enters into negotiations otherwise than in accordance with the provisions of this Part shall be guilty of an offence.

Division 5—Arbitration

Arbitration Court to have cognizance of trade disputes

191AA. The Arbitration Court shall have cognizance of a trade dispute where—

- (a) all the trade unions and employers who are parties to a trade dispute jointly make a request in writing to the Secretary that the trade dispute be submitted to arbitration;
- (b) a trade union or an employer who is a party to a trade dispute makes a request in writing to the Secretary that the trade dispute be submitted to arbitration; or
- (c) the Minister directs that the trade dispute be submitted to arbitration.

Arbitration Court to arbitrate

191AB. The Arbitration Court shall carefully and expeditiously hear, inquire into and investigate every trade dispute of which it has cognizance and all matters affecting the trade dispute and the just settlement of the trade dispute and shall determine the trade dispute by arbitration.

Arbitration Court to have regard to certain matters

191AC. In determining a trade dispute, the Arbitration Court may have regard not only to the interests of the persons immediately concerned but to the interests of the community as a whole and in particular the condition of the economy of Fiji.

Power to make awards

191AD. The Arbitration Court shall have power in relation to a trade dispute of which it has cognizance to make an award (including an interim award) relating to all or any of the matters in dispute.

*Division 6—Awards**Form of award*

191AE. An award shall be framed in such a manner as best to express the decision of the Arbitration Court and to avoid unnecessary technicalities.

Operation of award

191AF. An award shall not derogate from any right or privilege which a worker has under the provisions of any written law and any term of an award shall, to the extent to which it would so derogate, be null and void.

Commencement and continuance of award

191AG.—(1) An award shall have effect from the date of the award unless all parties to the trade dispute who appear or are represented before the Arbitration Court otherwise agree or the Arbitration Court otherwise directs.

(2) An award shall, subject to this Part, continue in force for a period to be specified in the award.

On whom award binding

191AH. An award determining a trade dispute shall be binding on—

- (a) all parties to the trade dispute who appeared or were represented before the Arbitration Court;
- (b) all parties to the trade dispute who were summoned or notified, either personally or as prescribed, to appear as being parties to the trade dispute;
- (c) all trade unions and persons who, having been notified either personally or as prescribed, of the trade dispute and of the fact that they were alleged to be parties to the trade dispute, did not, before the conclusion of the hearing of the trade dispute, satisfy the Arbitration Court that they were not parties to the trade dispute;
- (d) any successor to, or any transferee, assignee or transmittee of, the undertaking of an employer who was a party to the trade dispute or of an employer bound by the award, including any corporation which has acquired or taken over the undertaking of such an employer;
- (e) any successor to a trade union which was a party to a trade dispute; and
- (f) all members of a trade union bound by the award.

Contents of award

191AI. In making an award in relation to a trade dispute, the Arbitration Court—

- (a) shall not be restricted to the specific relief claimed by the parties or to the demands made by the parties in the course of the trade dispute but may, upon hearing the parties, include in the award any matter or thing

which it thinks expedient for the purpose of settling the trade dispute or of preventing further trade disputes and may in fixing wages, salaries, allowances or other remuneration give effect to its decision by prescribing time rates, piecework rates, salary scales, bonus payments, severance pay, or retirement allowances or by such other prescription as it considers appropriate; and

- (b) may include provisions requiring an employer bound by the award to keep records relating to workers entitled to the benefit of the award and prescribing the form of such records and the information to be recorded.

Award to provide for mediator

191AJ.—(1) The Arbitration Court shall, unless it is of the opinion that it would be inappropriate to do so, include in every award a provision for the settlement of disputes between persons and trade unions bound by the award while the award is in force arising out of the operation of the award including provision for the reference of those disputes to a mediator.

(2) The mediator mentioned in subsection (1) shall be a person to be chosen in a manner provided by the award from among the persons referred to in section 191Y.

(3) If the mediator is not able to resolve any dispute referred to the mediator under this section, then the mediator shall refer any such dispute to the Arbitration Court for the Arbitration Court to adjudicate on any such dispute.

Interpretation of award

191AK.—(1) The Arbitration Court may, upon application made by a trade union or person bound by an award, give an interpretation of the award.

(2) An interpretation given by the Arbitration Court shall be final and conclusive and shall be binding on all trade unions and persons bound by the award who have been given an opportunity of being heard by the Arbitration Court.

Setting aside and variation of award

191AL.—(1) Subject to subsections (2) and (3), the Arbitration Court may, upon application by any person or trade union bound by an award, by order vary or set aside any of the terms of an award and shall vary any of the terms of an award if it considers it desirable to do so for the purpose of removing ambiguity or uncertainty.

(2) During the period for which an award is in force, the Arbitration Court shall not, except for the purpose of removing ambiguity or uncertainty, vary or set aside any of the terms of an award except where the Chair certifies that by reason of exceptional circumstances it is desirable to do so.

(3) No award of the Arbitration Court determining a trade dispute shall be varied or set aside except for the purpose of removing ambiguity or uncertainty.

(4) Where an application for an order to vary or set aside any of the terms of an award has been made under subsection (1), by any person or trade union bound by an award with the prior agreement of the other party affected by the application, the powers of the Arbitration Court under this section shall be exercisable by the Arbitration Court constituted by the Chair alone.

Variation of collective agreement to conform with award

191AM. Upon application made to the Arbitration Court by a party to a collective agreement, the Arbitration Court may order that the collective agreement be varied so that it may be in conformity with the terms of any award made after the commencement of the collective agreement.

Award to be final

191AN.—(1) Subject to the provisions of this Part, an award shall be final and conclusive.

(2) No award or decision or order of the Arbitration Court or the Chair shall be challenged, appealed against, reviewed, quashed, or called in question in any court or tribunal and shall not be subject to any Quashing Order, Prohibiting Order, Mandatory Order or injunction in any court or tribunal on any account.

Award and order to be available at office of Secretary

191AO. Every award and every order varying an award or affecting the operation of an award shall be deposited with and registered by the Secretary, and shall be open to inspection at the office of the Secretary.

Evidence of award

191AP. An office copy of an award or order of the Arbitration Court certified to be true under the hand of the Secretary shall be received in all courts as evidence of the award or order without proof of the signature of the Secretary.

Exhibition of award

191AQ.—(1) An employer bound by an award shall cause true copies of the award and of all orders varying the award, or true copies of the award as varied from time to time, to be **made available to the workers upon request.** ~~exhibited and kept exhibited—~~

~~(a) at or near the entrance to any premises in or upon which workers bound by the award are employed by him or her; and~~

~~(b) at such other place to which workers employed by him or her have access as may be specified in the award,~~

~~in such a position as to be conspicuous to and easily read by them.~~

(2) An employer who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 **\$5,000.**

Contracts contrary to award

191AR. An employer or a person acting as an agent for an employer who makes a contract or agreement for the employment of a worker on terms and conditions less favourable to the worker than the terms and conditions of an award binding on the employer and worker shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000.

Penalties for breach of award

191AS.—(1) Any trade union or person bound by an award who has committed any breach or non-observance of any term of an award shall be guilty of an offence and shall be liable on conviction to a fine not exceeding—

- (a) in the case of a trade union or an employer, \$50,000;
- (b) in the case of an officer of a trade union, \$20,000; and
- (c) in any other case, \$10,000.

(2) Where in any proceedings against an employer under this section it appears to a court that a worker employed by that employer has not been paid an amount which he or she is entitled to be paid by way of wages or otherwise in accordance with an award, the court may—

- (a) order that the employer shall pay to the worker the amount due to him or her either in a lump sum or by instalments; and
- (b) fix the date or dates on which the lump sum or instalments shall be paid.

(3) Where an amount or instalment ordered to be paid under subsection (2) is not paid on the date fixed by the order, the amount or so much thereof as then remains unpaid shall immediately be recoverable as if it were a fine and the amount so recovered shall be paid to the worker entitled under the order.

Recovery of wages under award

191AT. A worker bound by an award may recover in any court of competent jurisdiction any amount which he or she is entitled to be paid by way of wages or otherwise in accordance with the award.

Powers of Arbitration Court

191AU. The Arbitration Court shall have power to—

- (a) order compliance with an award proved to have been broken or not observed; and
- (b) enjoin a trade union or an employer or any person from committing or continuing a contravention of any provision of this Part or a breach or non-observance of an award.

Contempt of court

191AV.—(1) The Arbitration Court shall have the same power to punish as contempt of court a failure to comply with an order of the Arbitration Court made under section 191AU as is possessed by the High Court in respect of a failure to comply with an order of the High Court.

(2) The maximum penalty which the Arbitration Court is empowered to impose under this section shall be—

- (a) where the contempt was committed by a trade union or employer, a fine of \$50,000; and
- (b) in any other case, a fine of \$10,000.

(3) The Arbitration Court shall have power to punish an act or omission as contempt of the Arbitration Court although a penalty is provided in respect of that act or omission under some other provision of this Part or under any other written law.

(4) For the purposes of enforcing the payment of any fine imposed or giving effect to any order of imprisonment, the Chair shall have the powers of a Judge of the High Court.

Suspension or cancellation of award

191AW. No award may be suspended or cancelled by any party unless directed by the Arbitration Court.

Exercise of jurisdiction under certain sections

191AX.—(1) The powers of the Arbitration Court under sections 191V, 191AC, 191AJ, 191AK, 191AU, 191AV, and 191AW and 191BT shall be exercisable by the Arbitration Court constituted by the Chair alone.

(2) An application to the Arbitration Court for an order under section 191AU, 191AV or 191AW may be made by any trade union or person interested or by the Secretary or the Attorney-General.

*Division 7—Procedure and Powers of Arbitration Court**Procedure of Arbitration Court*

191AY.—(1) In the hearing and determination of a trade dispute or in any other proceedings before the Arbitration Court—

- (a) the procedure of the Arbitration Court shall, subject to the provisions of this Part, be within the discretion of the Arbitration Court;
- (b) the Arbitration Court shall not be bound to act in a formal manner and shall not be bound by the rules of evidence but may inform itself on any matter in such manner as it thinks just; and
- (c) the Arbitration Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

(2) The Arbitration Court may determine the periods which are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to the trade dispute or other proceedings and require that those cases be presented within the respective periods so determined.

(3) The Arbitration Court may require evidence or argument to be presented in writing and may decide the matters on which it will hear oral evidence or argument.

Particular powers of Arbitration Court

191AZ. The Arbitration Court may in relation to a trade dispute of which it has cognizance or any other matter before it—

- (a) take evidence on oath or affirmation;
- (b) summon before it the parties to the trade dispute or matter and witnesses and compel the production before it of books, papers, documents and things;
- (c) hear and determine the trade dispute or matter in the absence of a party who has been summoned or served with notice to appear;
- (d) conduct its proceedings or any part of its proceedings in private;
- (e) refer a matter to an expert and accept his or her report as evidence;
- (f) direct parties to be joined or struck out;
- (g) dismiss the trade dispute or matter or part thereof if it appears that it is trivial or that further proceedings are not necessary or desirable in the public interest; and
- (h) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the trade dispute or matter.

Exclusion of evidence as to certain matters

191BA.—(1) Where a trade dispute relates to matters as to which negotiations have taken place in accordance with this Part, the parties to the dispute may agree upon and present to the Arbitration Court a written statement relating to the negotiations but except for such statement no evidence shall be given in proceedings in the Arbitration Court as to the negotiations.

(2) In proceedings before the Arbitration Court, evidence shall not be given with regard to any offer made without prejudice by any person or trade union without the consent of that person or trade union.

Intervention by Attorney-General

191BB.—(1) Where the Attorney-General is of the opinion that a dispute of which the Arbitration Court has cognizance relates to a matter of public importance, the Attorney-General may intervene in those proceedings by causing a notice to be served on the Secretary.

(2) Where the Attorney-General has intervened in proceedings before the Arbitration Court, the Arbitration Court may grant leave to any trade union or person to intervene in those proceedings.

Representation before Arbitration Court

191BC.—(1) In proceedings before the Arbitration Court, a trade union or an employer may be represented by an officer or representative of the trade union or of the employer but shall not be represented by a legal practitioner except in proceedings under section 191AV or by leave of the Arbitration Court in proceedings in which the Attorney-General has intervened.

(2) In this section, “officer”, in relation to a trade union, includes for the purposes of any proceedings before the Arbitration Court a person appointed by the body, by whatever name called, to which the management of the affairs of the trade union is entrusted, to represent the trade union in those proceedings.

Questions of law

191BD.—(1) The Arbitration Court may ~~refer a~~ **seek a legal opinion on any** question of law arising in relation to any trade dispute or matter to the Solicitor-General **unless it is a trade dispute or matter that involves Government.** ~~for his or her opinion.~~

(2) Before referring a question of law to the Solicitor-General in accordance with subsection (1), the Arbitration Court shall inform the parties to the trade dispute or matter, in relation to which the question arises, of the question which it proposes to refer and allow the parties a reasonable opportunity to make written submissions relating to the question.

(3) Submissions made in accordance with subsection (2) shall be referred to the Solicitor-General and the Solicitor-General shall, after considering those submissions, furnish his or her opinion to the Arbitration Court.

(4) Notwithstanding a reference of a question of law to the Solicitor-General (not being a question as to whether the Arbitration Court may exercise powers under this Part in relation to a trade dispute or matter), the Arbitration Court may make an award or order in relation to the trade dispute or matter in which the question arose.

(5) Upon receiving the opinion of the Solicitor-General, the Arbitration Court **may**—

- (a) ~~may~~, if it has not made an award or order in the trade dispute or matter in which the question arose, make an award or order not inconsistent with the opinion; or
- (b) ~~shall~~, if it has made an award or order in the trade dispute or matter, vary the award or order in such a way as will make it consistent with the opinion.

Authorised person to take evidence

191BE. The Arbitration Court may authorise a person to take evidence on its behalf, with such limitations (if any) as the Arbitration Court directs, in relation to a trade dispute of which it has cognizance and that person shall have all the powers of the Arbitration Court to secure the attendance of witnesses and to take evidence on oath or affirmation.

Powers of inspection

191BF.—(1) Where the Arbitration Court has cognizance of a trade dispute, the Chair, a member who constitutes the Arbitration Court in relation to the trade dispute or a person authorised by the Chair, may at any time during working hours—

- (a) enter any building, ship, vessel, place or premises in which work is being or has been done or commenced, or a matter or thing is taking or has taken place, to which the trade dispute relates; and
 - (b) to the extent and for the purposes named in the authority, inspect or view any work, material, machinery, appliance, article or thing therein and interview any worker engaged therein.
- (2) A person who—
- (a) hinders or obstructs a person in the exercise of the power conferred by subsection (1); or
 - (b) makes to a person exercising a power conferred by that subsection a statement either orally or in writing which is false or misleading in any particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000.

Decisions of Arbitration Court

191BG.—(1) Where the Arbitration Court constituted otherwise than by the Chair alone is divided in opinion on a question, the question shall be decided according to the decision of the majority of those constituting the Arbitration Court or, if there is no such majority decision, according to the decision of the Chair.

(2) A decision of the Arbitration Court shall be signed by the Chair and shall be delivered by him or her or by the Secretary at the direction of the Chair.

(3) The decision of the Arbitration Court upon a trade dispute or matter shall be given within 2 weeks after the completion of the hearing of the trade dispute or matter or within such extended time as in special circumstances the Arbitration Court considers to be required for the proper consideration of the trade dispute or matter.

Offences in relation to Arbitration Court

191BH.—(1) A person who—

- (a) creates a disturbance or takes part in creating or continuing a disturbance in or near any place in which the Arbitration Court is sitting;
- (b) interrupts the proceedings of the Arbitration Court;
- (c) wilfully insults or disturbs the Chair or a member constituting the Arbitration Court when exercising powers or functions under this Part; or

- (d) by writing or speech uses words calculated—
- (i) to influence improperly the Chair or a member constituting the Arbitration Court in the exercise of his or her powers and functions under this Part; or
 - (ii) to bring the Arbitration Court into disrepute,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 12 months, or to both.

(2) A reference in subsection (1) to the Arbitration Court or to the Chair shall be read as including a reference to a person authorised in accordance with section 191BE to take evidence on behalf of the Arbitration Court.

Contempt by witness

191BI.—(1) A person who has been summoned to appear, or who has appeared, before the Arbitration Court as a witness and who without just cause, proof whereof shall be upon him or her—

- (a) disobeys the summons to appear;
- (b) refuses or fails to be sworn as a witness;
- (c) refuses or fails to answer any question which he or she is required by the Arbitration Court to answer; or
- (d) refuses or fails to produce any book, paper, document or thing which he or she is required by the Arbitration Court to produce,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ~~\$20,000~~ **\$10,000** or to imprisonment for a term not exceeding 12 months, or to both.

(2) A reference in subsection (1) to the Arbitration Court shall be read as including a reference to a person authorised in accordance with section 191BE to take evidence on behalf of the Arbitration Court.

Trade secrets, etc., tendered in evidence

191BJ.—(1) In any proceedings before the Arbitration Court, objection may be taken that any information or any book, paper or document tendered as evidence relates to a trade secret or to the profits or financial position of a witness or party by that witness or party or the person entitled to the trade secret.

(2) Where after considering any objection under subsection (1), the Arbitration Court directs that information so relating shall be given in evidence—

- (a) that information shall not except with the permission of the Chair be disclosed or published in any media or otherwise; and
- (b) that evidence shall, if the witness or party or the person entitled to the trade secret so requests, be taken in private and no person who is not expressly authorised by the Arbitration Court to be present shall be present during the taking of that evidence.

(3) Where evidence is taken in private, a person representing a party to the proceedings shall have the right to be present unless the Arbitration Court otherwise orders.

(4) Where after considering any objection under subsection (1), the Arbitration Court directs that any book, paper or document relating to any trade secret or the profits or financial position of a witness or party or person entitled to the trade secret shall be produced before it—

- (a) the Chair shall have the custody of such book, paper or document and may retain it for such reasonable period as he or she thinks fit;
- (b) the Arbitration Court may refer such book, paper or document to an accountant appointed by the Arbitration Court who may report to the Arbitration Court whether or not his or her examination of it supports the evidence given but shall not otherwise disclose the contents thereof;
- (c) the Chair shall not without the consent of the witness or party or person entitled to the trade secret permit such book, paper or document to be inspected by any person other than the members of the Arbitration Court; and
- (d) a person who inspects such book, paper or document shall not disclose or publish the contents of such book, paper or document.

(5) The Arbitration Court may direct that any evidence given in proceedings before it or the contents of any book, paper or document produced before it shall not be published.

(6) Any person who discloses or publishes any information in contravention of this section or of any direction or order given or made thereunder shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 12 months, or to both.

Inspection of books, etc.

191BK. Subject to section 191BJ, all books, papers, documents and things produced in evidence before the Arbitration Court may be inspected by the Arbitration Court or by such parties as the Arbitration Court allows.

Division 8— Strikes and Lockouts in Essential Services and Industries

Object of this Division

191BL. The object of this Part is to prescribe the circumstances in which workers or employers engaged in essential services and industries may undertake a strike or lockout.

Application of Part 18

191BM. Subject to this Division, Part 18 shall apply to essential services and industries, provided however that any reference to the Employment Court or the Employment Tribunal shall mean the Arbitration Court established under this Part.

Strikes in essential services

191BN.—(1) If a strike is contemplated by a trade union in respect of workers in or in control of, an essential service and industry in pursuance of a dispute between the workers and their employer, the trade union must—

- (a) conduct a secret ballot in accordance with section 175; and
- (b) in writing, give at least 28 days notice of strike to the employer and serve a copy of the notice to the Arbitration Court.

(2) The notice of strike must—

- (a) be signed by the secretary of the trade union;
- (b) state the date and time on which the strike is contemplated and the place or places where the contemplated strike will occur;
- (c) state the category of workers who propose to go on strike;
- (d) state the estimated duration of the strike; and
- (e) be served by hand, registered mail or courier.

(3) If—

- (a) the notice of strike does not comply with this section; or
- (b) the strike does not take place as notified under subsection (2),

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

Lockouts in essential services

191BO.—(1) No employer engaged in an essential service and industry may lockout workers in that essential service and industry unless—

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

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

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

Notices

191BP.—(1) An employer in an essential service and industry must display in a conspicuous place in all premises used for the purposes of that essential service and industry, copies of section 191BQ where such copies may conveniently be read by persons employed in that essential service and industry.

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

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

Offences for breaches of service affecting essential services

191BQ.—(1) A person who breaks his or her employment contract in respect of that person's performance in essential service and industry a knowing or having reasonable cause to believe that the probable consequences of breaking such employment contract, either alone or in combination with others, will be to—

(a) deprive the public, or a section of the public wholly or to a great extent of an essential service and industry, or substantially to diminish the enjoyment of that service by the public or by a section of the public; or

(b) endanger human life or cause serious bodily injury or to expose valuable property whether real or personal, to destruction, deterioration or serious damage,

commits an offence.

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

Requirements for Mediation Services

191BR. Where a notice of intention for a strike or lockout in an essential service and industry is given, the Arbitration Court must ensure that mediation services are provided as soon as possible to the parties to the proposed strike or lockout for the purpose of assisting the parties to avoid the need for the strike or lockout.

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

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

(a) neither party is willing to settle the trade dispute;

(b) neither party reports the dispute to the Arbitration Court or to the Secretary;
or

(c) the Minister is satisfied that the continuance of the strike or lockout is not in the public interest or will jeopardise or is likely to jeopardise the life or livelihood of the nation, economy or public safety,

the Minister may refer the trade dispute to the Arbitration Court.

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

Appeals from the Minister under this Part

191BT.—(1) An appeal from a decision of the Minister under this Part lies as of right to the Arbitration Court.

(2) An appeal from a decision of the Minister must be lodged or filed with the Secretary within 28 days from the date the proposed appellant received the decision.

Division 9—Miscellaneous

Annual reports

191BT. The Chair shall, once in each year, furnish to the Minister for presentation to Parliament a report on the working of the provisions of this Part relating to the Arbitration Court, to arbitration and to the registration of collective agreements and of any other provision of this Part in relation to which he or she considers it appropriate to report, and in particular the extent to which the objects of this Part have been achieved and any considerations or circumstances which have prevented or hindered the achievement of those objects.

Amendment to Schedule 7, etc.

191BU. The Minister, following consultations with the Board, may, by notice published in the *Gazette*, make amendments or revisions to Schedule 7 or to essential national industries declared under the Decree or to designated corporations or designated companies designated under the Decree.

Regulations

191BV. The Minister may, following consultations with the Board, make regulations generally for carrying out the provisions of this Part and in particular providing for all matters stated or required by this Part to be prescribed and for prescribing penalties for any contravention of any provision of any regulations made under this section, but so that no such penalty shall exceed \$20,000.

Repeals

191BW. Except to the extent saved by this Part, the following laws are repealed—

- (a) Essential National Industries (Employment) Decree 2011;
- (b) Employment Relations (Amendment) Decree 2011; and
- (c) Public Service (Amendment) Decree 2011.”

EMPLOYMENT RELATIONS (AMENDMENT) BILL 2015

EXPLANATORY NOTE

(This note is not part of the Bill and is only intended to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Employment Relations (Amendment) Bill 2015 (**'Bill'**) seeks to amend the Employment Relations Promulgation 2007 (**'Promulgation'**).

2.0 CLAUSES

- 2.1 Clause 1 provides the short title of the Bill. It also states that the amendments to the Promulgation are intended to come into force on a date or dates appointed by the Minister by notice published in the *Gazette*.
- 2.2 Clause 2 amends the Promulgation by deleting section 78 and substituting a new section 78.
- 2.3 Clause 3 amends section 119 of the Promulgation by deleting subsection (2) and substituting a new subsection (2).
- 2.4 Clause 4 amends section 122 of the Promulgation by deleting the word "undesirable" in subsection (1)(c) and substituting the words "racially or ethnically discriminatory". It also deletes subsection (4) of section 122 and substitutes a new subsection (4).
- 2.5 Clause 5 amends section 125 of the Promulgation by inserting the words "after good faith consultation with those who are intending to register as a trade union" before the word "may" in subsection (1).
- 2.6 Clause 6 amends section 127 of the Promulgation by deleting the number "6" and substituting the number "3"
- 2.7 Clause 7 amends section 128 of the Promulgation by deleting the words "or by a person authorised in writing by the Registrar" and substituting the words "upon requisition of 10% of the voting membership".

- 2.8 Clause 8 amends section 169(1) of the Promulgation by inserting a new paragraph (c) after paragraph (b).
- 2.9 Clause 9 amends section 170 of the Promulgation by deleting subsection (1) and substituting a new subsection (1). Clause 9 also inserts a new subsection (10) after subsection (9).
- 2.10 Clause 10 amends section 177 of the Promulgation by amending the references to sections 186, 187 and 191(2) and substituting references to sections 191BN, 191BO, 191BS(2). This is an editorial effect of clause 16.
- 2.11 Clause 11 amends section 180 of the Promulgation by inserting the words “signed by the Minister” after the words “the order is” in subsection (2).
- 2.12 Clause 12 amends section 181 of the Promulgation by inserting the words “upon the request of a union or an employer” after the word “Minister” in paragraph (c).
- 2.13 Clause 13 amends section 241 of the Promulgation by deleting the words “or Part 19” in subsection (1).
- 2.14 Clause 14 amends section 250 of the Promulgation by inserting the words “and is liable upon conviction to a fine not exceeding” \$50,000, \$20,000 and \$10,000 for offences in subsection (1), (2) and (5) respectively.
- 2.15 Clause 15 amends 264 of the Promulgation by deleting subsections (6) and (7).
- 2.16 Clause 16 amends the Promulgation by deleting Part 19 and substituting a new Part 19.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Promulgation comes under the responsibility of the Minister for Employment, Productivity and Industrial Relations.

A. SAYED-KHAIYUM
Attorney-General