

# BILL NO. 27 OF 2023

## A BILL

FOR AN ACT TO AMEND THE EMPLOYMENT RELATIONS ACT 2007

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 2023.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

(3) In this Act, the Employment Relations Act 2007 is referred to as the “Principal Act”.

*Section 185 amended*

2. Section 185 of the Principal Act is amended by deleting the definition of “essential service and industry” and “essential services and industries” and substituting the following—

““essential service and industry” or “essential services and industries” means a service listed in Schedule 7 and, for the avoidance of doubt, only includes any other service that is part of any of the following, if it has been designated as an essential service and industry after the date of commencement of the Employment Relations (Amendment) Act 2023—

(a) the Government;

- (b) a statutory authority;
- (c) a local authority, including a city council, town council or the Central Board of Health;
- (d) a company that is a public enterprise as defined in section 2 of the Public Enterprises Act 2019;
- (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 is responsible for the management or control of a profession, business, trade or work in which a worker is engaged;”.

*Section 188 amended*

**3.** Section 188 of the Principal Act is amended by—

- (a) in subsection (4), deleting “21 days” and substituting “6 months”; and
- (b) after subsection (4), inserting the following new subsection—

“(5) Subsection (4) does not have retrospective effect and only applies to actions filed after the date of commencement of the Employment Relations (Amendment) Act 2023.”.

November 2023

## **EMPLOYMENT RELATIONS (AMENDMENT) BILL 2023**

### **EXPLANATORY NOTE**

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

#### **1.0 BACKGROUND**

- 1.1 The Employment Relations Act 2007 (**‘Act’**) has been the focus of considerable Government, social partner and International Labour Organization (**‘ILO’**) interest over several years because of amendments to the Act from 2011 onwards, which did not comply with fundamental ILO Conventions, including the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Abolition of Forced Labour Convention, 1957 (No. 105).
- 1.2 When the Act was promulgated in 2007, an “essential service” was defined in section 4 as being “a service listed in Schedule 7.” The original Schedule 7 is still contained in the Act.
- 1.3 The Essential National Industries (Employment) Decree 2011 (**‘ENI Decree’**) and the Essential National Industries & Designated Corporations Regulations 2011 (**‘ENI Regulations’**) introduced provisions which significantly undermined workers’ organisations and impacted workers’ freedom of association.
- 1.4 The ENI Regulations:
- (a) removed civil servants and employees of “designated corporations” within “essential national industries” from the scope of protection of the Act; and
  - (b) widened the scope of essential industries to include the financial industry (listed banks), the telecommunications industry (Fiji International Telecommunications Limited, Telecom Fiji Limited and Fiji Broadcasting Corporation Limited), the civil aviation industry (Air Pacific Limited) and the public utilities industry (Fiji Electricity Authority and Water Authority of Fiji).

- 1.5 There was widespread criticism of the ENI Regulations in Fiji by the Fiji Trades Union Congress (FTUC) and the Fiji Islands Council of Trade Unions and internationally by the International Trade Union Confederation (ITUC), Australian Council of Trade Unions and the Commonwealth Trade Union Group. ILO's Committee of Experts on the Application of Conventions ('CEACR') in its Observation of Convention No. 87 in 2012, urged the Fiji Government to take the necessary measures to amend the ENI Decree without delay, in full consultation with social partners, so as to bring it into conformity with Convention No. 87.
- 1.6 In 2013, two sets of regulations under the ENI Decree were made which extended the coverage of the ENI Decree and increased the number of industries and entities that were designated as essential services to include the Fiji National Provident Fund, Airports Fiji Limited, Pine and Mahogany Industries, the Fire Prevention Services Industry and Local Government Industry including all city and town councils in Fiji.
- 1.7 The Employment Relations (Amendment) Act 2015 (Act No. 4 of 2015) made the following significant amendments to the Act:
- (a) the Employment Relations (Amendment) Act 2015 repealed the provisions of the ENI Decree 2011; and
  - (b) a new Part 19 was introduced which, among other matters legislated:
    - (i) a new interpretation section 185 which defined "essential service and industry" and "essential services and industries" very widely to include the Government, a statutory authority, a local authority, a Government commercial company (as prescribed under the Public Enterprise Act 1996), a duly authorised agent or manager of an employer and a person who owns, manages or controls a business in which a worker is engaged. The new definition in section 185 also included "those essential national industries declared and designated corporations or designated companies designated under the ENI Decree..." and extended application of Part 19 of the Act to such industries and workers. The definition of "essential service and industry and essential services and industries" preserved the extended, comprehensive list of industries that had been designated under the ENI Regulations in 2011 and 2013; and
    - (ii) a new section 188(4) which provided that "any employment grievance between a worker and an employer in essential services and industries that is not a trade dispute.... must be lodged or filed within 21 days from the date when the employment grievance first arose...".

- 1.8 ILO's CEACR, in its Observation of Convention No. 87 in 2020, stated that "...while some essential industries are defined in line with the Convention, namely those which had been initially included in Schedule 7 of the ERP, other industries where strikes may now be prohibited due to the inclusion of the ENI Decree in the ERA do **not** fall within the definition of essential services in the strict sense of the term, including: statutory government authorities; local, city, town or rural authorities, workers in managerial positions; the financial sector; radio, television and broadcasting services; civil aviation industry and airport services (except air traffic control); public utilities industry in general; pine, mahogany and wood industry; metal and mining sector; postal services; and public enterprises in general." ILO's CEACR urged the Government to engage in tripartite consultation to review the list of essential services so as to restrict limitations on the right to strike to essential services in the strict sense of the term and public servants exercising authority in the name of the State.
- 1.9 In those and other comments, ILO indicated that in line with International Labour Standards, the original Schedule 7 to the Act contains an appropriate list of essential services and that the current extended list of essential services (preserved because of the current definition of "essential service and industry" in section 185) does not fall within the strict definition of the term "essential services." In general terms, the interpretation of "essential services" may endanger the life, personal safety or health of the whole or part of the population.
- 1.10 The main purpose of amending the definition of "essential services and industries" in section 185 of the Act is to revert to the original list of essential services, contained in Schedule 7 and bring Fiji's list of essential services in compliance with Convention No. 87.
- 1.11 The proposed definition of "essential service and industry" and "essential services and industries" includes only services listed in Schedule 7 and other services and industries specifically designated by the Minister after the date of commencement of the amending legislation (which may include a service that is part of the list, including some services provided by the Government). Under section 191BV of the Act, the Minister of Employment, Productivity and Industrial Relations has the power "...following consultations with the Board... by notice published in the Gazette, to make amendments or revisions to Schedule 7 or to essential national industries declared under the Act or to designated corporations or designated companies designated under the Act."
- 1.12 The proposed amendment to section 188(4) of the Act is to ensure that workers in essential services are treated consistently with other workers generally and to provide workers in essential services with reasonable access to the machinery provisions in the Act. The amendment to section 188(4) of the Act increases the time limit for workers in essential services to lodge or file an employment grievance within a 6-month time limit (from the date when the grievance first arose), rather than within a 21-day limit.

- 1.13 A new subsection has been included at the end of section 188 which provides that the new 6-month time limit does not have retrospective effect and only applies to actions filed after the date of commencement of the amending legislation.
- 1.14 The amendments to sections 185 and 188 of the Act are being prioritised because ILO’s supervisory bodies (including those at the International Labour Conferences in 2022 and 2023) have continued to express grave concerns on the need for Fiji to have its national legislative framework in conformity with fundamental Conventions including Convention No. 87 and Convention No. 105, so as to allow trade unionists to exercise their rights to free assembly, freedom to organise their activities and formulate their programmes and free speech.

## **2.0 CLAUSES**

- 2.1 Clause 1 of the Employment Relations (Amendment) Bill 2023 (**‘Bill’**) makes provision for the short title and commencement. If passed by Parliament, the amending legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.
- 2.2 Clause 2 of the Bill amends section 185 of the Act by introducing a new definition for “essential service and industry or essential services and industries” in order to revert to the original list of essential services in Schedule 7 by deleting reference to essential national industries designated under the ENI Decree. The new definition provides that additional essential services and industries may be designated after the date of commencement of the amending legislation and may include a service which is part of the listed service providers, including services provided by the Government.
- 2.3 Clause 3 of the Bill amends section 188 of the Act to increase the time limit for workers in essential services to lodge or file an employment grievance from 21 days to 6 months from the date on which the grievance arose and provides that the new time limit for filing an employment grievance does not have retrospective effect and only applies to actions filed after the date of commencement of the amending legislation.

## **3.0 MINISTERIAL RESPONSIBILITY**

- 3.1 The Act comes under the responsibility of the Minister responsible for employment.

S. D. TURAGA  
Attorney-General