EMPLOYMENT RELATIONS (AMENDMENT) BILL 2025
(BILL NO. 27 OF 2025)

CLAUSES

BILL NO. 27 OF 2025

A BILL

FOR AN ACT TO AMEND THE EMPLOYMENT RELATIONS ACT 2007 TO PROVIDE FOR EMPLOYMENT CONTRACTS, EMPLOYMENT DISPUTES, SEXUAL HARASSMENT, OFFENCES, CIVIL PENALTY PROVISIONS, FIXED PENALTY NOTICES, FUNCTIONS AND POWERS OF LABOUR OFFICERS, LABOUR INSPECTORS AND 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 2025.

(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".

PART 1—PRELIMINARY

Division 1—Amendments for Preliminary Matters

Long title amended

2. The long title of the Principal Act is amended in paragraph (B) by deleting "OR SOCIAL ORIGIN" and substituting "SOCIAL ORIGIN, TRADE UNION ACTIVITIES OR EMPLOYER ACTIVITIES,".

Section 2A inserted

3. The Principal Act is amended after section 2 by inserting the following new section—

"*Act to bind the State*

2A. This Act binds the State.".

Section 3 amended

4. Section 3 of the Principal Act is amended by—

(a) in subsection (1), after "entities,", inserting "in certain circumstances the Fiji Police Force and the Fiji Corrections Service,"; and

(b) in subsection (2), deleting ", the Fiji Police Force and the Fiji Corrections Service".

Section 4 amended

5.—(1) Section 4 of the Principal Act is amended by inserting the following new definitions—

""bargaining fee" means a fee payable in accordance with section 130A;";

""child labour" means work that is harmful to the physical or the mental development of a child;";

""civil penalty provision" means a provision specified in the table in section 257B to be a civil penalty provision;";

""corrections officer" has the same meaning as "officer and corrections officer" in the Corrections Service Act 2006;";

""Corrections Service" has the same meaning as in the Corrections Service Act 2006;";

""court" means the Employment Relations Court established under section 219;";

""dismissed" has the meaning given in section 35D;";

""domestic work" means work performed in or for a household;";

""domestic worker" means an individual who is engaged in domestic work under an employment contract;";

""Employment Relations Fund" means a trust fund for all moneys appropriated, payable into and out of the fund as established under section 20A for the purposes of this Act;";

""fisher" means an individual employed in any capacity on board a fishing vessel that is more than 20 metres in length and engaged in commercial fishing operations;";

""foreign worker" means an individual who is employed under an employment contract in Fiji, but does not include an individual who is a citizen of Fiji;";

““genuine redundancy” has the meaning given in section 35F;”;

““letter of offer” means an offer of employment given to a prospective worker in accordance with section 166B;”;

““police officer” has the same meaning as in the Police Act 1965;”;

““prospective worker” means an individual who may accept or refuse a letter of offer given by an employer under section 166B;”;

““seafarer” means any individual who is engaged on board a ship under an employment contract, but does not include—

(a) a pilot;

(b) a worker in a port declared or deemed to be a port for the purposes of section 5 of the Sea Ports Management Act 2005;

(c) a person temporarily employed on a ship during the period it is in a port declared or deemed to be a port for the purposes of section 5 of the Sea Ports Management Act 2005;”;

““summary dismissal” means the dismissal of a worker in accordance with section 35A;”;

““tribunal” means the Employment Relations Tribunal established under section 202;”;

““tripartite partner” means a party that is the State, an employer or a trade union;”;

““unfair dismissal” means the dismissal of a worker in accordance with section 35C;”; and

““workplace” means any place where an individual attends or resides for the purpose of carrying out any functions in relation to his or her employment, occupation, business, trade or profession and need not be an individual’s principal place of business or employment;”.

(2) Section 4 of the Principal Act is amended by—

(a) in the definition of “birth”, after “dead,”, inserting “whose gestation period is at least 24 weeks”;

(b) in the definition of “collective agreement”, deleting “(wholly or in part)”;

(c) in the definition of “dismissal”, deleting “those under section 33” and substituting “summary dismissal and unfair dismissal”;

(d) in the definition of “dispute”, after “means a dispute”, inserting “including a dispute of right or a dispute of interest,”;

(e) in the definition of “employment dispute”, after “section 170”, inserting “or a dispute reported or declared under Part 19”;

(f) in the definition of "employment grievance" by—

(i) in paragraph *(d)*, deleting "or";

(ii) in paragraph *(e)*, after "union;", inserting "or";

(iii) after paragraph *(e)*, inserting the following new paragraph—

"*(f)* the worker has been made redundant in accordance with Part 12;";

(g) in the definition of "labour inspector", deleting "labour inspector designated for the purpose of" and substituting "a person who is appointed under section 18A";

(h) in the definition of "labour officer", deleting "labour officer designated for the purpose of" and substituting "a person who is appointed under section 18A";

(i) in the definition of "lockout", deleting paragraph *(c)* and substituting—

"*(c)* in breaching any term of a worker's employment contract;";

(j) in the definition of "sexual harassment" after "his or her workplace", inserting "or any individual in the workplace";

(k) deleting the definition of "registered trade union or trade union" and substituting the following—

""trade union" means—

(a) an organisation of workers;

(b) an association of workers that is registered or recognised as a trade union (however described) under the laws of Fiji;

(c) an association of workers a principal purpose of which is the protection and promotion of the workers' interests in matters concerning their employment;"; and

(l) deleting the definition of "worker" and substituting the following—

""worker" means—

(a) an individual who is employed under a contract of service; or

(b) an individual who is an apprentice, learner, domestic worker, part-time worker, casual worker, seafarer, fisher or a foreign worker—

but does not include an individual who is employed as—

(c) a corrections officer or as an employee of the Fiji Corrections Service; or

(d) a police officer or as an employee of the Fiji Police Force;".

Section 6 amended

6. Section 6 of the Principal Act is amended by—

(a) deleting subsection (5) and substituting the following—

"(5) A worker must voluntarily join a trade union and engage in collective bargaining;";

(b) after subsection (7), inserting the following new subsections—

"(8) A code (if any), may apply to any conduct involving—

(a) an employer and a worker;

(b) an employer and a trade union, including during any negotiation or entering into a collective agreement;

(c) parties to a dispute, employment dispute or an employment grievance.

(9) Any employer who employs a child in the workplace must endeavour to observe the best interests of the child principle, by providing a supportive workplace for the child's moral, mental, psychological, social and physical development.".

Division 2—Amendments for Employment Relations Advisory Board

Section 8 amended

7. Section 8 of the Principal Act is amended by—

(a) in subsection (1)—

(i) in paragraph *(c)*, deleting "; and" and substituting "."; and

(ii) deleting paragraph *(d)*.

(b) deleting subsection (3) and substituting the following—

"(3) In making appointments to the Board, the Minister—

(a) may take into account the principles of equality; and

(b) must ensure that employers and workers are represented by the same number of representatives that are required for the effective operation of the Board.".

(c) in subsection (4), deleting "bodies representing employers or workers" and substituting "organisations most representative of employers and workers".

Section 9 amended

8. Section 9 of the Principal Act is amended by—

(a) in subsection (1)—

(i) in paragraph *(e)*, deleting "and"; and

(ii) after paragraph *(e)*, inserting the following new paragraph—

"*(ea)* to request information from trade unions, employers and workers to advise on compliance with provisions of this Act and any International Labour Organization Standards; and"; and

(b) deleting subsections (3) and (4).

Section 12 amended

9. Section 12(2) of the Principal Act is amended by deleting paragraph *(a)* and substituting the following—

"*(a)* the Chairperson and at least half of all other members including at least one member of each tripartite partner constitutes a quorum; and".

Division 3—Amendments for Administration of Principal Act

Section 16 amended

10. Section 16 of the Principal Act is amended after "public officer" by inserting ", a labour officer or a labour inspector".

Section 17 amended

11. The Principal Act is amended by deleting section 17 and substituting the following—

"*Permanent Secretary may compel information*

17.—(1) The Permanent Secretary, by written notice, may require the following persons to give the Permanent Secretary information—

(a) an employer; or

(b) an organisation, civil society organisation, private body, statutory body, Ministry or department.

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

(a) specify the nature of the information to be given, which must be information that—

(i) is prescribed information necessary for the effective administration of this Act held by an employer; or

(ii) is required to satisfy regional and international reporting or trade obligations and held by a person or body referred to in subsection (1)*(b)*; and

(b) set out a reasonable period of time within which the person or body must give the information to the Permanent Secretary.

(3) Any person who contravenes a notice given to them by the Permanent Secretary under subsection (1) without reasonable excuse commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $1,000;

(b) in the case of a body corporate, a fine not exceeding $10,000.".

Section 18 amended

12. Section 18 of the Principal Act is amended by—

(a) in paragraph *(a)*—

(i) deleting "subject to any directions by the Director of Public Prosecutions;"; and

(ii) after the "prescribed offences,", inserting "by the prescribed Form 9,"; and

(b) in paragraph *(b)*—

(i) deleting "of a worker or institute civil proceedings on behalf of a worker against the worker's employer" and substituting "of a worker, a corrections officer or a police officer or institute civil proceedings by the prescribed Form 9 on behalf of the worker, the corrections officer or the police officer against his or her employer"; and

(ii) deleting "the worker." and substituting "the worker, the corrections officer or the police officer.".

Section 18A inserted

13. The Principal Act is amended after section 18 by inserting the following new section—

"*Appointment of labour inspectors and labour officers*

18A.—(1) The Permanent Secretary may, employ a suitably qualified person and appoint him or her as a labour inspector or labour officer, subject to the terms and conditions that the Permanent Secretary considers fit.

(2) The Permanent Secretary may enter into agreements or arrangements for the use of the services of any staff of a Ministry, statutory authority or other public body to be appointed as labour inspectors or labour officers.

(3) The Permanent Secretary must issue a certificate of identity in accordance with section 15 that sets out the powers and functions under this Act that the labour inspector or labour officer is appointed to exercise.

(4) In this section, "suitably qualified person" means a person who the Permanent Secretary is satisfied holds relevant qualifications, training and experience in the area of labour standards, compliance and mediation of disputes.".

Sections 19 and 19A inserted

14. The Principal Act is amended by deleting section 19 and substituting the following new sections—

"*Powers and functions of Permanent Secretary and officers*

19.—(1) The Permanent Secretary for the purposes of this Act may—

(a) advise and assist employers and workers on particular or general employment relations and productivity matters;

(b) provide information, advice, awareness or training to employers and workers or their organisations;

(c) subject to the approval of the Board, formulate enterprise or national policies, codes and strategies on employment relations matters;

(d) assist workers and employers to resolve any potential or actual contravention of the requirements of this Act;

(e) regulate and require compliance of employers with the requirements for the employment of children;

(f) enter into agreements or arrangements with the Maritime Safety Authority of Fiji for the use of the services of any labour inspectors or labour officers under the Maritime Safety Authority of Fiji Act 2009;

(g) enter and inspect any place for the purpose of investigating compliance with the requirements of employment in accordance with this Act; and

(h) exercise any other power or function conferred on the Permanent Secretary under this Act or any other Act.

(2) The Permanent Secretary, a labour officer or a labour inspector for the purpose of ensuring compliance with this Act, may in the prescribed manner and prescribed form issue a demand notice or a fixed penalty notice.

Power of entry and inspection of a place or residence

19A.—(1) This section applies if, the Permanent Secretary, a labour officer or a labour inspector believes on reasonable grounds that it is necessary for the Permanent Secretary, the labour officer or the labour inspector to enter and inspect any place for the purposes of investigating compliance with this Act.

(2) Subject to subsection (3), for the purpose of determining compliance with this Act, the Permanent Secretary, the labour officer or the labour inspector with any assistance he or she thinks necessary, may do all or any of the following—

(a) enter, without consent, any place at any time during the working hours of that place;

(b) inspect any place occupied by any person who is a worker or there is reason to believe is a worker;

(c) require an employer to produce any worker employed by the employer;

(d) require a person to produce any document that he or she reasonably requires for ascertaining whether this Act is being complied with—

(i) to examine the document; or

(ii) to make copies of it or take extracts from it; or

(iii) to remove the document for as long as is reasonably necessary to make copies or take extracts;

(e) take or remove for examination samples of or from any thing at any place, to determine compliance with the requirements of the Act;

(f) submit any sample or specimen taken in accordance with this Act to a laboratory or place approved by the Permanent Secretary for examination and testing; and

(g) the giving of any notice required under this Act.

(3) The Permanent Secretary, a labour officer or a labour inspector—

(a) may enter any place that is used as a residence—

(i) with the consent of the occupier; or

(ii) without the consent of the occupier, if he or she hold a reasonable belief that that the residence is a place of work and that a child is engaged in child labour; and

(b) must not enter any place under this section unless before that entry, he or she—

(i) has produced the labour officer's or the labour inspector's certificate of identity, as the care requires, to the occupier or the apparent occupier of the place for inspection; and

(ii) has taken all reasonable steps to notify any employer, or any employer's representative or any occupier or apparent occupier of the residence, as the case requires, of the entry.

(4) If the Permanent Secretary, a labour officer or a labour inspector who exercises a power under subsection (2)*(d)*(iii) or *(e)* must immediately give the employer, the employer's representative or the occupier of the place as the case requires—

(a) notice of the sample or the thing taken or removed; and

(b) notice of the prescribed procedure for the return of the sample or thing no later than 60 days from the date of the inspection.

(5) The Permanent Secretary, a labour officer or a labour inspector must not exercise any powers or functions under this section if the Permanent Secretary, the labour officer or the labour inspector fails to produce his or her certificate of identity for inspection on request by the occupier of any place.".

Sections 20A, 20B, 20C and 20D inserted

15. The Principal Act is amended after section 20 by inserting the following new sections—

"*Employment Relations Fund*

20A. There must be established a trust fund to be known as the Employment Relations Fund.

Payments into the Fund

20B. There must be paid into the Employment Relations Fund—

(a) all money that is appropriated by Parliament for the purposes of the Fund; and

(b) all money that is received from the investment of the money in the Fund; and

(c) all money directed or authorised to be paid into the Fund by or under this or any other written law.

Payments out of the Fund

20C.—(1) There must be paid out of the Employment Relations Fund—

(a) amounts authorised by the Minister to fund the payment of compensation to workers in accordance with this Act; and

(b) amounts authorised by the Minister to fund the payment to workers of amounts determined by the tribunal or courts in relation to unpaid wages and other entitlements; and

(c) amounts authorised by the Minister to fund the cost of unforeseen events in relation to any other loss or detriment to a worker.

(2) There must be paid out of the Employment Relations Fund amounts authorised by the Minister for the payment of costs and expenses incurred in—

(a) administering this Act; and

(b) monitoring and reporting on the financial operations and financial position of the Employment Relations Fund.

Delegation of power to authorise payments

20D. The Minister may, by instrument, delegate the Minister's power to authorise payments under section 20C to the Permanent Secretary.".

PART 2—AMENDMENTS FOR CONTRACTS OF SERVICE AND EMPLOYMENT CONTRACTS

Section 22 amended

16.—(1) Section 22 of the Principal Act is amended after subsection (2) by inserting the following new subsections—

"(3) Subject to subsection (2), an agreement between the parties is void if that agreement—

(a) relates to the employment of a worker under a contract of service on terms and conditions that purport to have the effect of excluding more favourable terms and conditions under this Act, restricting or modifying a provision of this Act; or

(b) amounts to an unreasonable restraint of trade of any party.

(4) An employer who is reckless with respect to entering into an agreement with a worker that contravenes subsection (3) commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $10,000;

(b) in the case of a body corporate, a fine not exceeding $20,000.".

Section 23 amended

17. Section 23 of the Principal Act is amended after subsection (4) by inserting the following new subsection—

"(5) An employer must provide a worker with a copy of his or her employment contract.".

Section 23A inserted

18. The Principal Act is amended after section 23 by inserting the following new section—

"*Contract of service and probation period*

23A.—(1) Subject to subsection (2), a contract of service for a period of 12 months or more may include a probation period not exceeding 3 months.

(2) The employer may extend a probation period specified in a contract of service for one further period that does not exceed 3 months.

(3) A worker on probation under a contract of service is entitled—

(a) to notice in writing if an employer extends the probation period under subsection (2); and

(b) to the minimum entitlements under this Act, including any leave entitlements on a pro rata basis; and

(c) to a notice in writing providing reasons for a decision to terminate his or her employment.".

Section 24 amended

19. Section 24 of the Principal Act is amended after subsection (1) by inserting the following new subsections—

"(1A) An employer commits an offence if he or she—

(a) without reasonable excuse—

(i) fails to provide work to a worker during the period of a contract of service; or

(ii) fails to pay a worker wages in respect of every day on which the employer fails to provide work in accordance with this section, at the same rate as if the worker had performed a day of work; and

(b) does so knowing that—

(i) the worker has not broken his or her contract of service; and

(ii) the contract of service is not frustrated; and

(iii) the performance of the contract of service is not prevented by an act of God.

(1B) An employer who contravenes subsection (1A) is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $10,000;

(b) in the case of a body corporate, a fine not exceeding $20,000.".

Section 24A inserted

20. The Principal Act is amended after section 24 by inserting the following new section—

"*Offence to publish or disclose personal information of a person who was a worker*

24A.—(1) An employer commits an offence if he or she—

(a) publishes or discloses the personal information of a person who was a worker employed by the employer; and

(b) does so knowing that the person has not provided his or her consent to the publication or disclosure of the personal information.

(2) An employer who contravenes subsection (1) is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $5,000;

(b) in the case of a body corporate, a fine not exceeding $10,000.

(3) In this section, "personal information" means information or opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about a person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.".

Section 25 amended

21. The Principal Act is amended by deleting section 25 and substituting the following—

"*Duty of employer on the death of a worker*

25.—(1) If a worker dies during an employment contract, the employer must on receipt of the notice of death pay or deliver any wages or remuneration due to the worker, and the personal belongings of the worker (if any)—

(a) to the beneficiaries of the worker's final will and testament; or

(b) to the worker's next of kin determined in accordance with the Succession, Probate and Administration Act 1970.

(2) In this section, "notice of death" means a notice of a worker's death that is in the form of a medical certificate or a certificate of death.".

Section 26 amended

22. The Principal Act is amended by deleting section 26 and substituting the following—

"*Wages, leave and entitlements during detention or imprisonment of a worker*

26. If a worker is lawfully detained or imprisoned during the period of a contract of service the employer—

(a) must pay to the worker any leave entitlements owing to the worker under Part 7 or Part 11; and

(b) is not required to pay the worker any wages during that period of detention or imprisonment.".

Section 28 amended

23. Section 28(2) of the Principal Act is amended by—

(a) deleting paragraph *(a)* and substituting the following—

"*(a)* to a contract for a fixed period which is not renewable;";

(b) in paragraph *(b)*, deleting "; or" and substituting".."; and

(c) deleting paragraph *(c)*.

Section 29 amended

24. Section 29 of the Principal Act is amended by

(a) in subsection (1)—

(i) deleting "Subject to subsection (2), a" and substituting "A"; and

(ii) after "party", inserting "giving notice in writing";

(b) deleting subsection (2) and substituting the following—

"(2) An employer who gives notice in accordance with subsection (1) *(d)* must give the worker in that notice written reasons for the termination of the contract of service.

(3) An employer commits an offence if he or she, without reasonable excuse, fails to give a worker a notice in accordance with subsection (2) and is liable on conviction to—

(a) in the case of a natural person, for a first offence a fine not exceeding $5,000 and for a second or subsequent offence a fine not exceeding $25,000;

(b) in the case of a body corporate, for a first offence a fine not exceeding $10,000 and for a second or subsequent offence a fine not exceeding $50,000.".

Section 32 amended

25. Section 32 of the Principal Act is amended by deleting paragraph *(b)* and substituting the following—

"*(b)* under a contract, where by agreement or custom, wages are paid at intervals not exceeding one week in accordance with the agreement or custom and where the contract is terminated and no new contract is entered into or presumed or deemed to have been entered into prior to the time at which wages are due and payable, at the time when such contract is terminated; or".

Section 33 amended

26. The Principal Act is amended by deleting section 33.

Division 1A inserted

27. The Principal Act is amended after section 35 by inserting the following new Division—

"*DIVISION 1A—DISMISSAL OF A WORKER*

Summary dismissal

35A.—(1) No employer may dismiss a worker without notice except in the following circumstances—

(a) where a worker is guilty of gross misconduct;

(b) for wilful disobedience to lawful orders given by the employer;

(c) for lack of skill or qualification which the worker expressly or by implication warrants to possess;

(d) for habitual or substantial neglect of the worker's duties; or

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

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

(3) An employer commits an offence if he or she dismisses a worker without notice and does so reckless as to the existence of circumstances for the dismissal.

(4) An employer who contravenes subsection (3) without reasonable excuse is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $5,000;

(b) in the case of a body corporate, a fine not exceeding $10,000.

Right to wages on summary dismissal for lawful cause

35B. If a worker is summarily dismissed for lawful cause, the worker must be paid on dismissal the wages due up to the time of the worker's dismissal.

Unfair dismissal

35C. A worker has been unfairly dismissed if the tribunal or the court is satisfied that—

(a) the worker has been dismissed; and

(b) the dismissal was harsh, unjust or unreasonable; and

(c) the dismissal was not a case of genuine redundancy.

Meaning of dismissed

35D. A worker has been dismissed if—

(a) the worker's employment with his or her employer has been terminated on the employer's initiative; or

(b) the worker has resigned from his or her employment, but was forced to do so because of conduct, or a course of conduct, engaged in by his or her employer.

Criteria for considering harshness etc.

35E. In considering whether it is satisfied that a dismissal was harsh, unjust or unreasonable, the tribunal or the court must take into account—

(a) whether there was a valid reason for the dismissal related to the worker's capacity or conduct (including its effect on the safety and welfare of other workers); and

(b) whether the worker was notified of that reason prior to the worker's dismissal; and

(c) whether the worker was given an opportunity to respond to any reason related to the capacity or conduct of the worker prior to the worker's dismissal; and

(d) any unreasonable refusal by the employer to allow the worker to have a support person present to assist at any discussions relating to dismissal; and

(e) if the dismissal is related to unsatisfactory performance by the worker, whether the worker had been warned about that unsatisfactory performance and given an opportunity to improve before the dismissal; and

(f) any other matters that the tribunal or the court considers relevant.

Meaning of genuine redundancy

35F.—(1) A worker's dismissal was a case of genuine redundancy if the employer no longer required the worker's job to be performed by anyone because of changes in the operational requirements of the employer's enterprise.

(2) A worker's dismissal was not a case of genuine redundancy if it would have been reasonable in all the circumstances for the worker to be redeployed within—

(a) the employer's enterprise; or

(b) the enterprise of an associated entity of the employer.

Application for employment grievance procedure

35G. A worker who believes he or she has been unfairly dismissed may pursue an employment grievance procedure in accordance with Part 13 of this Act.

Application for unfair dismissal – employment grievance procedure

35H. A worker who has been dismissed and has completed an employment grievance procedure may make an application to the court for an order under section 35I.

Unfair dismissal remedy by court order

35I.—(1) The court on being satisfied of an application by a worker who has been dismissed and has exhausted all procedures under Part 13 to resolve the matter may make an order granting a remedy.

(2) The application under subsection (1) must be—

(a) accompanied by any fee prescribed by the regulations; and

(b) made within 21 days after the dismissal took effect; or

(c) made within such further period as the court allows under subsection (3).

(3) The court may allow a further period for the application to be made by a worker under subsection (1) if the court is satisfied that there are exceptional circumstances, taking into account—

(a) the reason for the delay; and

(b) whether the worker first became aware of the dismissal after it had taken effect; and

(c) any action taken by the person to dispute the dismissal; and

(d) prejudice to the employer (including prejudice caused by the delay); and

(e) the merits of the application; and

(f) fairness as between the worker and other workers in a similar position.".

Section 37 amended

28. Section 37 of the Principal Act is amended by—

(a) in subsection (1)—

(i) paragraph *(b)*, deleting "or";

(ii) in paragraph *(c)*, deleting "," and substituting "; or";

(iii) after paragraph *(c),* inserting the following new paragraph—

"*(d)* is a contract between a worker and an employment agency or a third party,";

(iv) deleting "writing. For the purposes of this subsection, a collective agreement is deemed to be a written contract" and substituting "writing, and for the purposes of this section a collective agreement is deemed to be a written contract.";

(b) deleting subsection (3);

(c) renumbering subsection (4) as subsection (3);

(d) after subsection (3), inserting the following new subsection—

"(4) If an employer or an employment agency propose to employ a child under a contract of service for employment in Fiji or overseas, the employer or the employment agency shall submit the contract of service to the Permanent Secretary for attestation, before the contract of service is signed by the child and the child's parent or guardian."; and

(e) deleting subsection (5) and substituting the following—

"(5) An employer or an employment agency who enters into a foreign contract of service with a citizen of Fiji in Fiji and does so knowing that the contract of service has not been submitted to the Permanent Secretary for attestation in accordance with subsection (2) commits an offence and is liable on conviction to—

(a) in the case of a natural person, for a first offence a fine not exceeding $5,000 for a second or subsequent offence a fine not exceeding $25,000; and

(b) in the case of a body corporate, for a first offence a fine not exceeding $10,000 for a second or subsequent offence a fine not exceeding $50,000.".

Section 39 amended

29. Section 39 of the Principal Act is amended by deleting section 39 and substituting the following—

"*Transfer to other employer*

39. The transfer of a written contract of service from one employer to another must—

(a) be done with the consent of the worker; and

(b) if the worker is a member of a trade union, take place after active consultations between the employer and the trade union on the drafting and finalisation of the documents for the transfer of the worker to the other employer.".

Section 40 amended

30. Section 40 of the Principal Act is amended by—

(a) in subsection (1), deleting "a written contract" and substituting "a written contract of service"; and

(b) deleting subsection (3) and substituting the following—

"(3) Repatriation of a deceased worker from the place of employment to the place where the worker was engaged in Fiji, is the responsibility of the employer and at the employer's cost if—

(a) the worker was not a seafarer; and

(b) subsection (1)*(b)* applies to the worker.".

Section 41 amended

31. The Principal Act is amended by deleting section 41 and substituting the following—

Termination of contract in other circumstances

"41.—(1) Subject to subsection (2), a written contract of service may be terminated by the employer if—

(a) the employer is unable to fulfil the contract; or

(b) the worker has been incapacitated because of an illness, disability or an accident for at least 90 days and the worker is unable to fulfil the contract.

(2) An employer who terminates a written contract of service in accordance with subsection (1) must—

(a) give the worker a written notice that includes the reasons for the termination of the contract;

(b) pay the worker any wages or entitlements earned on or before the day of the termination of the contract;

(c) pay the worker any compensation or entitlements due to the worker as a result of the illness, disability or accident that is the cause of the termination of the contract; and

(d) in the case of a worker who is not a citizen of Fiji or a seafarer, pay for the repatriation of the worker to the place outside Fiji where the worker was engaged.

(3) An employer who intentionally fails to make any payment to a worker in accordance with subsection (2) commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $5,000; and

(b) in the case of a body corporate, a fine not exceeding $10,000.".

PART 3—AMENDMENTS FOR SEAFARER EMPLOYMENT CONTRACTS

Division 3 inserted

32. The Principal Act is amended after section 41 by inserting the following new Division—

"*DIVISION 3—SEAFARER EMPLOYMENT CONDITIONS*

Seafarer employment condition under this Division to prevail

41A. To the extent that there is any inconsistency between the employment conditions of a seafarer under this Division and the employment conditions of a worker who is a seafarer under this Act, the employment conditions under this Division prevail.

General employment conditions of a seafarer

41B.—(1) An employer who employs a seafarer must comply with the following employment conditions, in addition to any other employment conditions that apply to a seafarer under this Act—

(a) that the seafarer must be employed under an employment contract that is a written contract of service that contains the particulars set out in Schedule 2A;

(b) that the seafarer must be given information and advice on his or her rights and duties under the employment contract;

(c) that the seafarer must be given an opportunity to examine the employment contract and seek independent advice;

(d) that the employer must give the seafarer a signed copy of his or her employment contract;

(e) that the employer must display a standard form of the relevant employment contract on board any ship where the seafarer works;

(f) that the employment contract must specify the mechanism for the seafarer to report, investigate and resolve a complaint about any ship where the seafarer works;

(g) that the employer must permit the seafarer in addition to any agreement under section 43 or authorisation under section 46 for the payment of wages, to elect that the whole or part of his or her wages be paid by the employer to a person nominated by the seafarer;

(h) that the employer must repatriate the seafarer to the place from where the seafarer was engaged if—

(i) the seafarer has been employed by the employer for a period of at least 11 months; and

(ii) the seafarer employment has been terminated because of any of the following reasons—

(A) the seafarer giving notice;

(B) the expiry of the employment contract;

(C) the employer giving notice of termination in accordance with this Part;

(D) the seafarer is no longer able to carry out his or her duties under the employment contract;

(E) it is unreasonable for the seafarer to continue to carry out his or her duties having been certified by a medical practitioner to be unfit for work;

(F) the seafarer has died;

(G) the employer is no longer able to fulfil the employment contract as a result of the transfer of the registration of the relevant ship;

(H) the seafarer is left behind in another country for any reason.

(2) An employer who without reasonable excuse, fails to comply with an employment condition that applies to a seafarer in accordance with subsection (1) commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $5,000; and

(b) in the case of a body corporate, a fine not exceeding $10,000.".

Employment conditions for hours of work and rest for seafarers

41C. The following employment conditions in relation to hours of work and rest apply to an employment contract for the employment of a seafarer—

(a) the daily hours of work must not exceed 14 hours in any given working day;

(b) the working week is comprised of up to 6 working days that must not exceed 72 hours of work in total;

(c) the hours of rest for any working day must be at least 10 hours or more;

(d) the hours of rest for the working week must be at least 77 hours or more for any working week;

(e) the hours of rest for any working day specified in paragraph *(c)* must not be divided into more than 2 periods, one of which must be at least 6 hours in duration, and the interval between any consecutive periods of rest must not exceed 14 hours.

Paid annual leave for seafarers

41D.—(1) The following employment conditions in relation to paid annual leave entitlements apply to an employment contract for the employment of a seafarer—

(a) that the seafarer is entitled to acquire paid annual leave and must be given 2.5 working days for each month of continuous service by the seafarer under the employment contract;

(b) the seafarer is entitled to all or part of his or her paid annual leave to be taken at a time agreed between the seafarer and the employer in accordance with the terms and conditions of the employment contract, if any;

(c) the seafarer must be paid for the time that the seafarer would normally have worked during any period of paid annual leave;

(d) if the seafarer's employment is terminated after a period exceeding one month and less than 12 months from the date of commencement of employment, the employer must pay on or before the date of termination, pay the seafarer a sum equal to paid annual leave for each completed month of the period of employment.

(2) An employer who without reasonable excuse fails to comply with an employment condition that applies to a seafarer in accordance with subsection (1) commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $5,000; and

(b) in the case of a body corporate, a fine not exceeding $10,000.

Form and content of written contract of service or collective agreement for seafarer

41E.—(1) A written contract of service concerning a seafarer must be signed by the parties and contain the particulars set out in Schedule 2A.

(2) A collective agreement concerning a seafarer association or trade union and a ship owner must contain the particulars set out in Schedule 2B.

(3) An employment contract must not include any term, condition or provision which—

(a) requires a worker to pay off a debt which reduces his or he ability or availability to be employed by another employer;

(b) requires the employer to retain the worker's identity documents or other documents required by the worker to obtain employment.".

PART 4—AMENDMENTS FOR SEXUAL HARASSMENT AND EQUAL EMPLOYMENT OPPORTUNITIES

Sections 75A and 75B inserted

33.—(1) The Principal Act is amended after section 75 by inserting the following new sections—

"*Duty to eliminate sexual harassment*

75A.—(1) This section applies to an employer who is liable under section 76 for the sexual harassment of a worker or a child.

(2) An employer must take reasonable and proportionate measures to eliminate, as far as possible, sexual harassment.

(3) In determining whether a measure is reasonable and proportionate the following factors must be considered—

(a) the size of the employer's business or operations;

(b) the nature and circumstances of the employer's business or operations;

(c) the employer's resources;

(d) the employer's business and operational priorities;

(e) the practicality and the cost of the measures.

Sexual harassment national policy

75B.—(1) In addition to any measures taken under section 75A, an employer must develop and maintain a policy to eliminate sexual harassment in his or her workplace, consistent with any national policy guidelines under subsection (2).

(2) The Minister may direct the Board to develop a national policy guideline for elimination of sexual harassment in workplaces and prescribed reporting requirements to apply to employers.".

Section 76 amended

34. Section 76 of the Principal Act is amended by—

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

"(1) An employer is liable under this section, together with the worker who sexually harasses another worker or a child in the employer's workplace if the employer fails to take reasonable and proportionate measures to prevent sexual harassment of the employer's worker or a child in the employer's workplace."; and

(b) deleting subsections (2) and (3).

Section 78 amended

35. The Principal Act is amended by deleting section 78 and substituting the following—

"*Unlawful discrimination in rates of remuneration*

78.—(1) Subject to subsection (2), an employer must not refuse or omit to offer or afford equal remuneration for men and women for work of equal value or for any reason including on the prohibited grounds of discrimination under section 75.

(2) An employer may offer a worker, regardless of their gender—

(a) a bonus or extra remuneration above a base rate on the basis of productivity or the quality of work; and

(b) if the worker is a member of a trade union, the trade union must be involved in the exercise of determining the mechanism for determining a bonus or extra remuneration for the worker.".

PART 5—AMENDMENTS FOR EMPLOYMENT DISPUTES AND COLLECTIVE BARGAINING

Division 1—Amendments for Wage Theft

Section 42 amended

36. Section 42 of the Principal Act is amended by—

(a) in paragraph *(a)*, deleting "; and" and substituting ";"; and

(b) after paragraph *(a)*, inserting the following new paragraph—

"*(ab)* to provide for offences for an employer who fails or withholds a worker's wages or any other entitlement payable under this Act; and".

Section 43 amended

37. The Principal Act is amended by deleting section 43 and substituting the following—

"*Payment of wages and entitlements*

43. If the employer and worker agree in writing and the worker has nominated his or her authorised payment mode—

(a) the whole wages of a worker may be paid by cheque payable to the bearer on demand and drawn on a bank in Fiji;

(b) the whole wages of a worker within the city, town, municipal boundaries must be deposited or paid electronically into a bank account in the Fiji Islands of the worker's choice;

(c) where banking services are not available, the employer must pay the whole wages of the worker in cash directly to the worker; or

(d) the whole wages of the worker must be paid to a mobile banking service or a money transfer service provided by a service provider within the meaning of the Telecommunications Act 2008 or a licensed financial institution within the meaning of the Banking Act 1995 of the worker's choice.".

Section 43A inserted

38. The Principal Act is amended after section 43 by inserting the following new section—

"*Offence of failing to pay certain amounts required to be paid to a worker*

43A.—(1) An employer commits an offence if—

(a) the employer is required to pay wages or any other entitlements (a "required amount") to, on behalf of, or for the benefit of, a worker under—

(i) this Act;

(ii) a contract of service;

(iii) an employment contract; and

(b) the employer engages in conduct; and

(c) the conduct results in a failure to pay the required amount to, on behalf of, or for the benefit of, the worker in full on or before the day when the required amount is due for payment.

(2) For the purposes of subsection (1)—

(a) absolute liability applies to paragraphs (1)*(a)* and *(b)*; and

(b) the fault element for paragraph (1)*(c)* is intention.

(3) An employer who contravenes this section is liable on conviction to—

(a) in the case of a natural person, for a first offence a fine not exceeding $20,000 and for a second or subsequent offence a fine not exceeding $100,000 or a term of imprisonment not exceeding 5 years or both;

(b) in the case of a body corporate, for a first offence a fine not exceeding $200,000 and for a second or subsequent offence a fine not exceeding $1,000,000 or a term of imprisonment not exceeding 5 years or both.".

Section 44 amended

39. Section 44 of the Principal Act is amended by—

(a) in subsection (1), deleting "when" and substituting "within one day of";

(b) in subsection (2), deleting "12 nor more than 26" and substituting "25 nor more than 52"; and

(c) deleting subsection (3) and substituting the following—

"(3) An employer who without reasonable excuse contravenes a requirement of subsection (1) commits an offence and is liable on conviction to—

(a) in the case of a natural person, for a first offence a fine not exceeding $5,000 and for a second or subsequent offence a fine not exceeding $25,000;

(b) in the case of a body corporate, for a first offence a fine not exceeding $25,000 and for a second or subsequent offence a fine not exceeding $100,000.".

Section 45 amended

40. The Principal Act is amended by deleting section 45 and substituting the following—

"*Wages and time record*

45.—(1) An employer who employs a worker and the worker's wages or rates of wages are prescribed or paid under an employment contract or in accordance with this Act must keep the worker's record (the "wages and time record") at the worker's normal workplace.

(2) The wages and time record for a worker must include the following information—

(a) the name of the worker;

(b) the worker's date of birth;

(c) the worker's address;

(d) the employment contract under which the worker is employed;

(e) the classification or designation of the worker according to which the worker is paid or the job title;

(f) a daily attendance register incorporating the hours and days worked by the worker;

(g) the wages paid to the worker each week and the method of calculation;

(h) any deductions;

(i) any accrued leave;

(j) any payment of parental leave made in accordance with Part 11 of this Act;

(k) the Tax Identification Number;

(l) the Fiji National Provident Fund Member Number;

(m) any other prescribed particulars.

(3) An employer must within 14 days of a request by a labour officer or a labour inspector, produce for inspection by that officer or inspector every wages and time record that is, or at any time during the preceding 6 years was, in use under this Act in respect of any worker employed by that employer at any time in those 6 years.

(4) All records that the employer is required to maintain under subsection (1) must be proper, accurate, complete and in the English language.

(5) An employer commits an offence if the employer, without reasonable excuse—

(a) keeps a wages and time record that is in whole or part is false in nature;

(b) attempts to cause or causes a worker to endorse a false wages and time record;

(c) obtains a worker's signature or thumbprint as endorsement of a wages and time record that records wages or rates of pay that are incorrect or that records payment of wages to the worker at less than the prescribed minimum wage rate;

(d) requires a worker to return in full or part, wages paid into the worker's bank account or paid in cash;

(e) forges a worker's signature in the worker's wages and time record;

(f) causes a worker to fail to attend an interview with a labour inspector;

(g) causes or encourages a worker to give false information to a labour inspector;

(h) keeps two or more sets of wages and time records for the same period that record different information.

(6) An employer who contravenes subsection (5) is liable on conviction to—

(a) in the case of a natural person, for a first offence a fine not exceeding $10,000 and for a second or subsequent offence a fine not exceeding $50,000;

(b) in the case of a body corporate, for a first offence a fine not exceeding $20,000 and for a second or subsequent offence a fine not exceeding $100,000.

(7) An employer who contravenes this section commits an offence and is liable to pay a fixed penalty fine under Schedule 8.".

Section 47 amended

41. Section 47 of the Principal Act is amended by—

(a) deleting subsection (1) and (2) and substituting the following—

"(1) An employer must—

(a) deduct from the wages of a worker an amount due by the worker in respect of any contribution to a provident fund, any tax or deduction imposed by law or ordered by a court; and

(b) with the worker's consent, deduct any trade union dues and any contribution to life insurance, medical insurance, medical scheme, credit union or co-operative society.";

(2) An employer may deduct from the wages of a worker, with the worker's consent—

(a) any amount due by the worker to a school fund, pension fund, sports fund, superannuation scheme or any other fund or scheme that the worker is a member and pay the amount to the person or entity authorised to receive it;

(b) any deduction to account for an over payment made by the employer in the last 3 months to the worker to a maximum of 50 % of the worker's total wages at any time;

(c) any deduction required for the following—

(i) articles or provisions purchased on credit by the worker from the employer;

(ii) charges for the cost of accommodation, fuel or light supplied by the employer and used by the worker, provided that such charges are not excessive or above average market rates; or

(iii) in respect of food cooked, prepared and eaten on the employer's premises, as prescribed.".

(b) in subsection (3), deleting "Board" and substituting "board"; and

(c) after subsection (5), inserting the following new subsection—

"(6) An employer who contravenes subsection (5) without reasonable excuse is liable on conviction to—

(a) in the case of a natural person, for a first offence a fine not exceeding $10,000 and for a second or subsequent offence a fine not exceeding $50,000;

(b) in the case of a body corporate, for a first offence a fine not exceeding $20,000 and for a second or subsequent offence a fine not exceeding $100,000.".

Section 49 amended

42. Section 49 of the Principal Act is amended by deleting subsections (1) and (2) and substituting the following—

"(1) An employer must not make a deduction from a worker's wage for any of the following purposes—

(a) charging interest or other charges on account of an advance on wages or a loan;

(b) taking a direct or indirect payment for obtaining or retaining employment;

(c) the provision of a uniform, personal protective equipment in the circumstance that the employer requires the worker to wear the uniform or use the equipment;

(d) to recoup expenses at a rate that exceed the market rate in relation to recruitment, travel, immigration visas and accommodation.".

(2) An employer who contravenes subsection (1) without reasonable excuse, commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $5,000; and

(b) in the case of a body corporate, a fine not exceeding $10,000.".

Section 55 amended

43. Section 55 of the Principal Act is amended by deleting subsection (2) and substituting the following—

"(2) A person commits an offence if he or she, without lawful authority or reasonable excuse, fails to comply with a provision of a wages regulation order and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $20,000; and

(b) in the case of a body corporate, a fine not exceeding $40,000.".

Division 2—Amendments for Redundancy and Employment Grievances

Section 107 amended

44. Section 107 of the Principal Act is amended by—

(a) in subsection (1)—

(i) in paragraph *(a)*—

(A) deleting "30" and substituting "60"; and

(B) deleting "; and" and substituting ";";

(ii) in paragraph *(b)*—

(A) deleting "." and substituting "; and"; and

(iii) after paragraph *(b)*, inserting the following new paragraph—

"*(c)* offer reasonable supports in relation to the workers health and safety."; and

(b) after subsection (1), inserting the following new subsections—

"(1A) A termination of employment must not be considered a redundancy if the worker's role or an equivalent role is replaced within 3 months of the worker's notice of termination by way of redundancy.

(1B) An employer who includes a provision in a contract or deed with a worker which provides that a worker who has been made redundant must not apply for his or her role if it is readvertised commits an offence.

(1C) An employer who contravenes subsection (1B) without reasonable excuse is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $20,000; and

(b) in the case of a body corporate, a fine not exceeding $50,000.".

Section 108 amended

45. Section 108 of the Principal Act is amended by—

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

"(1) Subject to subsection (2), if an employer terminates a worker's employment for reasons of an economic, technological, structural or similar nature, the employer must pay to the worker 3 months wages and not less than two weeks wages for each complete year of service, in addition to any other entitlements owed to the worker.

(1A) The redundancy pay under subsection (1) must be calculated on the worker's rate of wages that applied immediately before the worker is made redundant.";

(b) after subsection (3), inserting the following new subsection—

"(4) An employer who without reasonable excuse contravenes the requirements of this Part commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $20,000; and

(b) in the case of a body corporate, a fine not exceeding $40,000.".

Section 111 amended

46. Section 111 of the Principal Act is amended by—

(a) deleting subsection (2) and substituting the following—

"(2) If the worker intends to pursue the employment grievance, from the date on which an alleged action, event or circumstance occurred that gave rise to the employment grievance (the "commencement date") the worker or a trade union must—

(a) within 12 months of the commencement date, give the employer notice in writing of the employment grievance and attempt to resolve the employment grievance within 12 months of the commencement date or any later period with the agreement of the employer;

(b) within 12 months of the commencement date give the Permanent Secretary notice in writing of the employment grievance and also give the employer a copy of that notice; and

(c) within 6 years of the commencement date, report the employment grievance in the prescribed form to the mediation service regardless of notice having been given under paragraphs *(a)* or *(b)*.";

(b) in subsection (3), deleting "consent is not given" and substituting "the employer has not agreed"; and

(c) after subsection (4), inserting the following new subsection—

"(5) A person who reports an employment grievance to the Mediation Services under this section must not be victimised or discriminated against by an employer.".

Section 114 amended

47. Section 114 of the Principal Act is amended by—

(a) renumbering section 114 as section 114(1); and

(b) after subsection (1), inserting the following new subsection—

"(2) An employer who contravenes subsection (1) without reasonable excuse, commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $10,000; and

(b) in the case of a body corporate, a fine not exceeding $20,000.".

Division 3—Amendments for Trade Unions

Section 122 amended

48. Section 122(1)*(c)* of the Principal Act is amended after "discriminatory", by inserting "or contravenes any other written law".

Section 123 amended

49. Section 123 of the Principal Act is amended by—

(a) deleting subsections (1), (2) and (3); and

(b) in subsection (4), deleting "Upon amalgamation" and substituting "If 2 or more trade unions wish to amalgamate".

Section 124 amended

50. The Principal Act is amended by deleting section 124 and substituting the following—

"*Affiliation to federation of trade union*

124. If a trade union wishes to affiliate with any other trade union or trade union federation, or an international federation of trade unions or an international confederation of trade unions the affiliation must be consistent with the trade union's Constitution.".

Section 125 amended

51. Section 125(1) of the Principal Act is amended by—

(a) in the chapeau, deleting "consultation" and substituting "good faith consultations"; and

(b) deleting paragraph *(a)*.

Section 127 amended

52. Section 127 of the Principal Act is amended by deleting subsection (1).

Section 128 amended

53. Section 128 of the Principal Act is amended by deleting subsections (3), (4) and (5).

Section 129 amended

54. Section 129 of the Principal Act is amended by—

(a) after subsection (3), inserting the following new subsection—

"(3A) The Registrar may extend the time required for filing by a registered trade union for up to 3 months."; and

(b) deleting subsection (4) and substituting the following—

"(4) The secretary of a registered trade union who fails to comply with subsection (1), commits an offence is liable to pay a fixed penalty fine under Schedule 8.".

Section 130A inserted

55. The Principal Act is amended after section 130 by inserting the following new section—

"*Bargaining fee*

130A.—(1) A worker must pay a fee to a trade union that is the equivalent of 12 months subscription fee payable by a member of that trade union if—

(a) the worker is not a member of the trade union; and

(b) the terms or conditions contained in a collective agreement to which the trade union is a party will apply to the worker.

(2) The terms or conditions contained in a collective agreement must not be applied to a worker referred to in subsection (1) unless—

(a) the worker has paid the bargaining fee by his or her employer deducting the bargaining fee from the worker's wages; and

(b) the employer has paid the bargaining fee to the trade union that is the party to the relevant collective agreement in accordance with subsection (3).

(3) The employer must give the trade union any bargaining fee deducted from a worker's wage within the prescribed period.

(4) The Minister may make regulations, prescribing all matters that are required or permitted by this section to be prescribed or that are convenient to be prescribed for carrying out or giving effect to the matters related to bargaining fees.".

Section 133 amended

56. Section 133 of the Principal Act is amended by—

(a) in subsection (2), deleting "must" and substituting "may"; and

(b) in subsection (3)—

(i) in paragraph *(c)*—

(A) deleting "an unlawful" and substituting "a"; and

(B) deleting "; or" and substituting ";"; and

(ii) in paragraph *(d)*—

(A) deleting "." and substituting "; or"; and

(B) after paragraph *(d)*, inserting the following new paragraph—

"*(e)* the Registrar has first consulted with the Board.".

Section 136 amended

57. Section 136(4) of the Principal Act is amended by—

(a) in paragraph *(g)*, deleting "or";

(b) in paragraph *(h)*, deleting "union." and substituting "union; or"; and

(c) after paragraph *(h)*, inserting the following new paragraph—

"(i) refer a matter to the tribunal if a trade union disputes the appointment of the liquidator.".

Section 137 amended

58. Section 137*(c)* of the Principal Act is amended by deleting "Consolidated Fund" and substituting "Employment Relations Fund".

Part 15A amended

59. The Principal Act is amended by deleting Part 15A.

Division 4—Amendments for Bargaining

Division 1 to Part 16 amended

60. Division 1 heading to Part 16 of the Principal Act is amended after "FAITH" by inserting "BARGAINING".

Section 150 amended

61. Section 150 of the Principal Act is amended by—

(a) deleting "does not require" and substituting "requires"; and

(b) after "agreement", inserting "to use their best endeavours".

Section 151 amended

62. Section 151(3) of the Principal Act is amended after "must" by inserting "within 30 days,".

Section 156 amended

63. The Principal Act is amended by deleting section 156 and substituting the following—

"*Bargaining for collective agreements and expiry dates*

156.—(1) A collective agreement may specify an expiry date.

(2) Any collective agreement that expires is deemed to remain in force after the relevant expiry date until—

(a) a new collective agreement is made and comes into force; or

(b) the collective agreement is revoked by the parties.".

Section 159 amended

64. The Principal Act is amended by deleting section 159.

Section 160 amended

65. Section 160 of the Principal Act is amended by deleting subsection (3) and substituting the following—

"(3) A collective agreement must continue in force after any expiry date in accordance with section 156, until it is superseded by a new collective agreement between the relevant trade union for the workers and the employer.".

Section 161 amended

66. The Principal Act is amended by deleting section 161.

Section 162 amended

67. Section 162(3) of the Principal Act is amended by—

(a) in paragraph *(e)*, deleting ";" and substituting "; and";

(b) in paragraph *(f)*, deleting "; and" and substituting "."; and

(c) deleting paragraph *(g)*.

Section 165 amended

68. The Principal Act is amended by deleting section 165.

Section 166 amended

69. Section 166 of the Principal Act is amended by deleting subsection (5).

Division 5—Amendments for Disputes

Section 169 amended

70. The Principal Act is amended by deleting section 169 and substituting the following—

"*Reporting of disputes*

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

(a) an employer who is a party to the dispute, if the following has occurred—

(i) the notice of secret ballot has been served on the Registrar; and

(ii) the trade union has provided notice of any issue in the notice of secret ballot to the Registrar; or

(b) a trade union that is a party to the dispute.

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

(3) A party must notify the Permanent Secretary of an employment dispute in writing within 12 months of the employment dispute arising and such notice must be copied to the other affected party to the employment dispute.

(4) A party must report an employment dispute to the Permanent Secretary in the prescribed form not more than 6 years from the date on which the dispute arose.

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

Section 170 amended

71. Section 170 of the Principal Act is amended by—

(a) deleting subsection (5) and substituting the following—

"(5) If an employment dispute is referred to Mediation Services, the parties must use their best endeavours to engage in the mediation process and resolve the dispute within 30 days—

(a) subject to paragraph *(b)*, if the dispute is not resolved within 30 days, the dispute must be referred by the Mediator to the tribunal;

(b) if the employer wishes to lockout the worker or the worker wishes to strike, without prejudicing or preventing the right to strike or lockout, the mediation must be expedited and in the event that the dispute is not resolved within 30 days—

(i) the mediation may be extended by a further 30 days with the mutual agreement of the parties; or

(ii) the parties may by mutual agreement refuse to take any further part in the mediation at any time by giving notice in writing.".

(b) in subsection (8), deleting "mail or courier" and substituting "mail, courier or electronic communication".

Division 6—Amendments for Strikes

Section 174 amended

72. Section 174 of the Principal Act is amended by—

(a) in paragraph *(a)*, deleting "certain";

(b) in paragraph *(b)*, deleting "and";

(c) in paragraph *(c)*, deleting "." and substituting ";"; and

(d) after paragraph *(c)*, inserting the following new paragraphs—

"*(d)* to ensure that when a strike or lockout occurs, the strike or lockout is resolved expeditiously; and

(e) the employers recognise the workers' right to strike and workers recognise the right of the employers to lockout.".

Section 175 amended

73. Section 175(3) of the Principal Act is amended by—

(a) in paragraph *(b)*, deleting "more than 50 % of all the members entitled to vote" and substituting "a simple majority of the votes cast"; and

(b) deleting paragraph *(c)* and substituting the following—

"*(c)* the secret ballot must be conducted by the officers of the trade union and must be observed by a labour inspector or a labour officer who is authorised in writing by the Registrar to do so; and".

Section 176 amended

74. Section 176 of the Principal Act is amended after subsection (2) by inserting the following new subsection—

"(3) The written notice under subsection (1) must—

(a) specify the reasons for the proposed lockout; and

(b) state the steps taken to resolve the proposed lockout, which must include any good faith negotiations that have taken place.".

Section 177 amended

75. The Principal Act is amended by deleting section 177 and substituting the following—

"*Unlawful strikes or lockouts*

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

(a) occurs while a collective agreement binding the workers participating in the strike or affected by the lockout is in force, unless—

(i) it was an aspect of a collective agreement that a right to strike or lockout was provided; or

(ii) it relates to a matter which is not covered by the existing collective agreement or variation to the collective agreement;

(b) occurs during bargaining for a collective agreement or variation of a collective agreement that will bind the workers participating in the strike or affected by the lockout, unless at least 21 days have passed since the bargaining was initiated;

(c) relates to a dispute reported under section 169 or Part 19 and is being processed in accordance with this Act;

(d) takes place in contravention of section 175 or 176;

(e) takes place in contravention of section 191O, 191P or 191S(2);

(f) takes place in contravention of a settlement by a Mediator or a decision of a tribunal or the court;

(g) where a strike or lockout continues after it has been declared unlawful under section 180; or

(h) where a strike or lockout continues after a health and safety issue is resolved in accordance with the Health and Safety at Work Act 1996.

(2) Any trade union or employer who participates in a strike or lockout which continues after it has been declared unlawful contravenes this Act.".

Section 180 amended

76. Section 180 of the Principal Act is amended by—

(a) in subsection (1), deleting "Minister" and substituting "tribunal";

(b) in subsection (2), deleting "Minister" and substituting "tribunal".

Section 181 amended

77. The Principal Act is amended by deleting section 181 and substituting the following—

"*Court may order discontinuance of strike or lockout*

181.—(1) Where there is a strike or lockout—

(a) a union, in the case of the lockout;

(b) an employer, in the case of the strike; or

(c) the Minister on the request of a union or an employer, in the case of strike or lockout, in the public interest, in a national emergency or in an essential service—

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

(2) After a strike or lockout has been declared unlawful, workers must return to work and employers must allow workers to return to work within 24 hours of either the date of the tribunal's declaration under section 180 of the Act or the issuing of the court's order to discontinue the strike or lockout under this section.".

Section 184 amended

78. The Principal Act is amended by deleting section 184.

PART 6—AMENDMENTS FOR EMPLOYMENT OF CHILDREN

Section 90A inserted

79. The Principal Act is amended after section 90 by inserting the following new section—

"*Best interests of the child principle*

90A.—(1) For the purposes of this Act, the best interests of the child must always be paramount.

(2) When determining whether employment is in the best interests of the child, the need to protect the child from harm, to protect his or her rights and to promote his or her development (taking into account his or her age and stage of development) must always be considered.".

Section 91 amended

80. The Principal Act is amended by deleting section 91 and substituting the following—

"*Prohibition of worst forms of child labour*

91.—(1) The following forms of child labour are prohibited—

(a) all forms of labour, slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and any form of forced or compulsory labour, including forced or compulsory recruitment of children in armed conflict;

(b) the use, procuring or offering of a child for illicit activities in particular for begging or for the production and trafficking of drugs as defined in relevant international treaties;

(c) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; or

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, wellbeing or morals of children.

(2) A person who engages a child in labour and is reckless as to causing that child labour which is prohibited under subsection (1) commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $100,000;

(b) in the case of a body corporate, a fine not exceeding $200,000; and

(c) in the case of an office holder in a body corporate, a fine not exceeding $100,000 or imprisonment for a term not exceeding 10 years or both.".

Section 92 amended

81. Section 92 of the Principal Act is amended by deleting "15" and substituting "16".

Section 93 amended

82. The Principal Act is amended by deleting section 93 and substituting the following—

"*Employment of children under 16 years*

93. —(1) An employer must not employ a child under the age of 16 years in any capacity other than in accordance with subsection (2) and a person who contravenes this subsection without reasonable excuse commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $20,000;

(b) in the case of a body corporate, a fine not exceeding $40,000.

(2) Subsection (1) does not apply if a child of 13 to 16 years of age is engaged in employment or light work or in a workplace in which members of the same family or of communal or religious group are employed provided that—

(a) the employment is not likely to be harmful to the health, safety or development of the child; and

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

Section 94 amended

83. The Principal Act is amended by deleting section 94 and substituting the following—

"*Trade union rights*

94.—(1) A child who is 16 years or over has the right to join a trade union and to vote in a trade union election where the child is a member.

(2) A trade union must not allow a child to continue to be a member of a trade union if it receives a written notice from the child's parent, guardian or the Ministry, that the child has joined a trade union without the consent of the parent or the guardian.".

Section 95 amended

84. Section 95 of the Principal Act is amended by—

(a) in subsection (3), deleting "an order" and substituting "a notice in writing by the labour inspector stating that the employer is in breach of the notice"; and

(b) after subsection (4), inserting the following new subsection—

"(4A) An employer who contravenes this section without reasonable excuse, commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $100,000;

(b) in the case of a body corporate, a fine not exceeding $100,000; and

(c) in the case of an office holder in a body corporate, a fine not exceeding $100,000 or imprisonment for a term not exceeding 10 years or both.".

Section 96 amended

85. Section 96 of the Principal Act is amended by deleting subsection (2) and substituting the following—

"(2) An employer who contravenes this subsection (1) without reasonable excuse, commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $20,000;

(b) in the case of a body corporate, a fine not exceeding $40,000.".

Section 96A inserted

86. The Principal Act is amended after section 96 by inserting the following new section—

"*Removal of a child engaged in prohibited child labour*

96A.—(1) A labour officer who forms an opinion that a child is engaged in child labour prohibited under section 91, may remove the child from a workplace with any assistance necessary and convey the child to a place of safety and to seek any medical assistance as required.

(2) Any costs or expenses incurred in removing a child in accordance with subsection (1) must be paid by the child's employer.".

Section 97 amended

87. The Principal Act is amended by deleting section 97 and substituting the following—

"*Hours of work for children*

97.—(1) A child must—

(a) not be employed or permitted to be employed for more than 8 hours in a day;

(b) be given at least 30 minutes paid rest for every continuous 4 hours worked; and

(c) not work overtime.

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

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

(4) A child who is employed is entitled to all entitlements under this Act including minimum wages, paid annual leave and other types of leave set out in Part 7, on a *pro rata* basis if the child does not work full time.

(5) An employer who contravenes subsection (1) or (2) without reasonable excuse commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $20,000;

(b) in the case of a body corporate, a fine not exceeding $40,000.".

Section 98 amended

88. The Principal Act is amended by deleting section 98 and substituting the following—

"*Conditions on night employment*

98.—(1) Subject to subsection (2), the Minister may, after consultation with the Board, by order in the Gazette, prescribe conditions for employment of children at night in a workplace.

(2) A child may be employed at night if the child is more than 14 years old and employed by an employer to work in a workplace under the following conditions—

(a) in the case of child aged from 14 to 15 years of age, to work at night before the hour of 6 pm; and

(b) in the case of a child aged from 16 to 17 years of age, to work at night before the hour of 7 pm.".

Section 99 amended

89. Section 99 of the Principal Act is amended by—

(a) in subsection (1)—

(i) in paragraph *(a)*, after "ages", inserting "the names of the children, the address of each child, each child's age, rates of pay, hours of work, each child's date of birth, each child's name and contact details for each child's parent or guardian"; and

(ii) in paragraph *(b)*, after "register", inserting "and a copy of the birth certificate for each child included in the register of children referred in subsection (1); and"; and

(b) deleting subsection (3) and substituting the following—

"(3) An employer who contravenes this section commits an offence is liable to pay a fixed penalty fine under Schedule 8.".

PART 7—AMENDMENTS FOR INDIVIDUAL CONTRACTS

Part 16A inserted

90. The Principal Act is amended after section 166 by inserting the following new Part—

"PART 16A—INDIVIDUAL CONTRACT OF SERVICE

Object of this Part

166A. The object of this Part is the following—

(a) to provide for the determining of the terms and conditions of employment for a worker under an individual contract of service;

(b) to provide for information and advice that must be provided to a worker before entering into an employment contract that is an individual contract of service or a collective agreement;

(c) to provide for an employer and a prospective worker to negotiate in good faith the terms and conditions of employment that will apply under an individual contract of service.

Letter of offer for prospective worker to be employed under collective agreement or individual contract of service

166B.—(1) An employer who proposes to employ a prospective worker must provide the prospective worker with a letter of offer that is accompanied by the following—

(a) in the case where a collective agreement between the employer and the trade union for the employer's workers is not in force—

(i) a draft contract of service setting out the individual terms and conditions of employment that the employer proposes to apply to the employment of the prospective worker under an individual contract of service;

(ii) a contract of service that sets out the standard terms and conditions that must apply to the employment of the employer's workers who are not employed under an individual contract of service;

(b) in the case that one or more collective agreements are in force between the employer and the trade union for the employer's workers—

(i) the contact details for any relevant trade union that is a party to one or more of the collective agreements, if requested by the prospective worker; and

(ii) a statement setting out that the prospective worker may elect by giving notice to the employer, anytime at least 30 days before the commencement of his or her employment, to be employed under a collective agreement or an individual contract of service;

(iii) a statement that the prospective worker may elect to be employed under a collective agreement, only if he or she is a member of the trade union for the relevant collective agreement;

(iv) a statement that the prospective worker should seek independent advice regarding his or her proposed employment;

(v) subject to paragraph *(c)*, a draft contract of service setting out the individual terms and conditions of employment, if any, that the employer proposes to apply to the employment of the prospective worker;

(vi) a statement that if the prospective worker does not give the employer notice electing to be employed under a collective agreement or an individual contract of service at least 30 days before commencement of his or her employment, that the individual contract of service referred to in subparagraph (v) will apply to the prospective worker;

(c) if a prospective worker on or before the commencement of his or her employment elects to be employed under a relevant collective agreement, the employer is not required to provide the prospective worker with an individual contract of service, unless it contains provisions that are in addition to the relevant collective agreement.

(2) A prospective worker who is given a letter of offer in accordance with subsection (1) may—

(a) accept the offer of employment within the time specified in the letter of offer, by entering into a standard contract of service, an individual contract of service with the employer or by electing to be employed under a collective agreement; or

(b) refuse the offer of employment set out in the letter of offer.

Later agreement to an individual contract of service

166C. An employer and a worker may agree that individual terms and conditions of employment are to apply to the worker if—

(a) the worker was employed under a standard contract of service given to the worker with his or her letter of offer; and

(b) the worker and employer both agree to vary the contract of service to be an individual contract of service that applies individual terms and conditions to the worker.

Collective agreement and additional terms and conditions

166D.—(1) If a worker is employed under a collective agreement, that collective agreement as is in force from time to time applies to the employment of the worker.

(2) The collective agreement that applies to a worker may include any additional terms and conditions—

(a) negotiated and agreed to by the employer and the trade union on behalf of the worker; and

(b) that are not inconsistent with the existing terms and conditions of the collective agreement or this Act.

Worker employed under a contract of service who joins a trade union

166E. If a worker is employed under an individual contract of service and then joins a trade union, the worker must—

(a) cease to be employed under the individual contract of service and be employed under the relevant collective agreement agreed to by his or her employer and trade union; and

(b) the collective agreement applies to the worker on and from the date that the worker joined the trade union.".

PART 8—AMENDMENTS FOR ESSENTIAL SERVICES

Part 19 amended

91. The Principal Act is amended by deleting Part 19 and substituting the following—

"PART 19—ESSENTIAL SERVICES

Division 1—General

Object of this Part

185. The object of this Part is to make provision for employment matters for a workplace that is engaged in an essential service.

Application of this Part and other provisions of this Act

186.—(1) The employment matters for a worker and an employer engaged in an essential service must be conducted in accordance with this Part and any other provision of this Act, to the extent that the other provision is not inconsistent with this Part.

(2) This Part does not apply to a corrections officer, or a police officer engaged in an essential service unless the contrary intention expressly appears.

Offence for corrections officers or police officers engaged in an essential service to strike

187.—(1) A corrections officer or a police officer engaged in an essential service must not instigate or participate in a strike.

(2) A corrections officer or a police officer who contravenes subsection (1) without reasonable excuse commits an offence and is liable on conviction to a fine not exceeding $40,000.

Division 2—Collective bargaining and mediation for essential services

Initiation of collective bargaining

188. —(1) Collective bargaining is initiated in relation to workers and an employer engaged in an essential service by—

(a) the relevant trade union serving a notice in writing on an employer; or

(b) an employer serving a notice in writing on the relevant trade union.

(2) A notice referred to in subsection (1) must—

(a) be signed by a person authorised by the trade union or the employer to serve the notice, as the case requires;

(b) identify the parties to the proposed collective agreement;

(c) identify the matters to addressed by the proposed collective agreement;

(d) set out any proposals to be addressed and any log of claims to be presented by a trade union, in the collective bargaining;

(e) provide an invitation to the trade union or the employer as the case may be, to enter into collective bargaining with the other party to reach a collective agreement or an agreement on the amendment to a collective agreement that is in force.

Acceptance or refusal of invitation to enter into collective bargaining

189. A trade union or an employer who has been served a notice offering an invitation to enter collective bargaining under section 188 may—

(a) accept the invitation within 10 days of service of the notice and commence collective bargaining; or

(b) refuse the invitation and within 14 days of service of the notice, by giving the Permanent Secretary notice of that refusal.

Period of collective bargaining

190.—(1) Subject to subsection (2), the period of collective bargaining that a trade union and employer may conduct good faith bargaining is 30 days from the date that the invitation is accepted in accordance with section 189*(a)*.

(2) The period of collective bargaining may be extended for a period of 15 days, if the trade union and employer agree in writing to the extension.

Failure to enter into collective agreement

191. If the trade union and the employer fail to enter into a collective agreement during a period of collective bargaining, the trade union or the employer must give the Permanent Secretary notice of that outcome.

Mediation following refusal of collective bargaining or failure to enter into collective agreement

191A.—(1) The Permanent Secretary, on receiving a notice of a refusal of an invitation to enter collective bargaining under section 189(b) or a notice of failure to enter into a collective agreement under section 191, may consult or direct the Mediator to mediate between the trade union or the employer.

(2) Any period of mediation conducted in accordance with subsection (1) must—

(a) be no more than 15 days, unless the period is extended under paragraph *(b)*; and

(b) be extended for a further period of 15 days in addition to the period under paragraph *(a)*, if the trade union and employer agree to an extension; and

(c) cease if—

(i) the Permanent Secretary at any time during the period of mediation holds a reasonable belief, that the trade union and the employer are unlikely to reach an agreement or there exists circumstances that amount to a national emergency; or

(ii) the trade union or the employer refuse to take part in the mediation.

Declaration of employment dispute

191B.—(1) The Permanent Secretary may declare that an employment dispute exists between a trade union and an employer if—

(a) the trade union and the employer failed to enter into a collective agreement during a period of collective bargaining and give notice in accordance with section 191;

(b) a mediation conducted between the trade union and the employer in accordance with section 191A, does not result in the parties entering into a collective agreement.

(2) A declaration given under subsection (1) must—

(a) contain a statement from the trade union and the employer, the parties to the employment dispute;

(b) set out any matters in dispute contained in any notice given to the Permanent Secretary;

(c) set out any reasons given to the Permanent Secretary by the trade union or the employer for refusing to take part in a mediation or collective bargaining.

Division 3—Collective agreements

Making a collective agreement

191C.—(1) A trade union and an employer that reach agreement under Division 2 to make a collective agreement, must draft an agreement setting out the agreed terms and conditions that are to form the collective agreement.

(2) The trade union and employer may make the agreement by a person authorised by each party signing the collective agreement.

(3) A trade union or an employer who intentionally does not draft an agreement contravenes subsection (1) and commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $10,000; and

(b) in the case of a body corporate, a fine not exceeding $20,000.

Registering a collective agreement

191D.—(1) The trade union and the employer who make a collective agreement in accordance with section 191C, must within 7 days of its making lodge the signed collective agreement and any matter incorporated by reference into the collective agreement with the Registrar.

(2) The Registrar on a collective agreement being lodged must—

(a) review the collective agreement for compliance with the requirements of this Act and any other relevant written law;

(b) notify the parties of any non-compliance matter identified in the collective agreement that is contrary to this Act and any other relevant written law.

(3) If the Registrar is satisfied that the collective agreement is satisfactory according to this Act and any other relevant written law, the Registrar must—

(a) register the collective agreement in the register;

(b) issue a certificate of registration in the prescribed form to the parties; and

(c) notify the parties that the collective agreement has been registered.

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

Division 4—Employment grievances

Employment grievances for workers, corrections officers and police officers, engaged in essential service

191E.—(1) Part 13 of this Act does not apply to an employment grievance of a worker, a corrections officer or a police officer, engaged in an essential service.

(2) The worker, the corrections officer or the police officer, as the case requires, who believes that he or she has an employment grievance may pursue the employment grievance either personally or through the assistance of a trade union or an association representative by—

(a) entering into mediation by the Mediator with the employer; or

(b) commencing a proceeding in the tribunal or the court, as the case requires.

(3) The appropriate tribunal or court to hear and determine the employment grievance is in accordance with the jurisdiction conferred on the tribunal under section 211(1)*(ab)* and the court under section 220*(fa)*.

Mediation of employment grievance

191F.—(1) Subject to subsection (2), a worker, a corrections officer or a police officer who believes that he or she has an employment grievance must report in the prescribed form the employment grievance to the employer as soon as practicable, but no later than 6 years after the date on which an alleged action, event or circumstance occurred that gave rise to the employment grievance.

(2) The employer may agree to a longer period than 6 years for the reporting of an employment grievance of a worker, a corrections officer or a police officer.

(3) The worker, the corrections officer or the police officer as the case requires, and the employer, the parties to the employment grievance must commence mediation of an employment grievance by the Mediator on the worker, the corrections officer or the police officer making a report under subsection (1), unless the worker, the corrections officer or the police officer has commenced a proceeding under section 191H.

(4) A mediation of an employment dispute must be completed within 30 days of it commencing, unless the parties agree to an extension of the period of the mediation.

(5) The worker, the corrections officer or the police officer or the employer may refuse to take part in a mediation at any time by giving notice in writing to the Permanent Secretary.

(6) A mediation that ceases on notice being given under subsection (5) by a party must be referred by the Permanent Secretary in the prescribed form to the tribunal or the court, as the case requires.

Statements made in mediation privileged

191G. Any statement made or information given during a mediation of an employment grievance under this Division is privileged.

Commencing an employment grievance proceeding

191H.—(1) An employment grievance proceeding is commenced by—

(a) a worker, a corrections officer or a police officer making an application to the tribunal or the court, as the case requires; or

(b) the Permanent Secretary directing that an employment grievance be referred to the tribunal or the court in accordance with section 191F(6).

(2) The application must be made to the tribunal or the court in accordance with the relevant procedures that apply to making an application, claim, dispute or civil proceeding.

Notice requirements for an employment grievance proceeding

191I.—(1) A worker, a corrections officer or a police officer who believes that he or she has an employment grievance and intends to commence a proceeding under section 191H(1)*(a)*, must give notice to the Permanent Secretary and the employer of that employment grievance proceeding.

(2) Notice must be given in writing by the worker, the corrections officer, the police officer as the case requires or the worker's trade union or association representative, within 12 months of the date on which an alleged action, event or circumstance occurred that gave rise to the employment grievance.

Division 5—Employment disputes in essential service

Employment disputes in essential service

191J.—(1) An employment dispute between a trade union or an association and an employer engaged in an essential service, must be dealt with by the tribunal or the court, as the case requires.

(2) Subject to subsection (3), the Permanent Secretary must be given notice in writing by the trade union or the association as the case requires or the employer of an employment dispute no later than 12 months after the date on which the dispute arose.

(3) The employer must not give the Permanent Secretary notice of an employment dispute, if the dispute is an issue included in a notice of secret ballot that is to be served or has been served on the Registrar under section 191O.

Report on employment disputes in essential service

191K.—(1) A report of an employment dispute to the Permanent Secretary must—

(a) be in writing and in the prescribed form;

(b) be provided as a copy by the party reporting on the employment dispute, to each party to the dispute, no later than 3 days after the report is given to the Permanent Secretary;

(c) be given to the Permanent Secretary no later than 6 years from the date on which the employment dispute arose, except where the delay in giving the report was caused by mistake or other good cause.

(2) In this section, "date on which the employment dispute arose" means the date commencing from the date the final decision is made on the dispute.

Decisions of the Permanent Secretary

191L.—(1) The Permanent Secretary must within 30 days of receiving a report under section 191K accept or reject the employment dispute reported to him or her.

(2) The Permanent Secretary must accept an employment dispute, unless the Permanent Secretary holds a reasonable belief that the employment dispute—

(a) is vexatious or frivolous in nature;

(b) is in the process of being negotiated by the parties and all internal processes have not been exhausted by the parties; or

(c) in the absence of documented internal processes to resolve an employment dispute, the processes under Schedule 6 have not been fully complied with.

(3) The Permanent Secretary must—

(a) inform the parties in writing that he or she accepts or rejects the employment dispute; and

(b) give reasons for rejecting the employment dispute.

(4) The decision of the Permanent Secretary must be delivered by hand, registered mail or courier.

(5) If a dispute is accepted by the Permanent Secretary, the dispute becomes an employment dispute for the purposes of this Act.

(6) If a dispute reported to the Permanent Secretary is not accepted or rejected by the Permanent Secretary within 30 days of it being reported, the employment dispute is deemed to have been accepted.

Referral of employment dispute to mediation

191M.—(1) The Permanent Secretary must refer an employment dispute to the Mediator for mediation no later than 3 working days of the dispute being accepted under section 191L.

(2) A mediation of an employment dispute must be completed within 15 days of the date on which the dispute was referred to mediation by the Permanent Secretary under subsection (1).

(3) The period of a mediation may be extended for a further period of 15 days, as agreed by the parties to the employment dispute.

(4) The parties to the employment dispute may refuse to take part in a mediation at any time by giving notice in writing to the Permanent Secretary.

Referral of employment dispute to tribunal or court

191N. The Permanent Secretary must refer an employment dispute to the tribunal or the court as the case requires, directly if the parties do not settle the employment dispute in a mediation under section 191M.

Division 6—Strikes and lockout in essential service

Secret ballot and notice a prerequisite to strike in essential service

191O.—(1) For the avoidance of doubt, this Division does not apply to a corrections officer or a police officer.

(2) A trade union must not conduct a strike of workers engaged in an essential service in relation to an employment dispute between the workers and their employer unless—

(a) a secret ballot has been conducted in accordance with section 175;

(b) notice in writing of the strike is given to the employer at least 14 days before the strike in accordance with this section; and

(c) the Registrar has been given a copy of the notice referred to in paragraph *(b)*.

(3) A notice referred to in subsection (2) must—

(a) be signed by the secretary to the trade union;

(b) state the date, time and any place that it is contemplated that the strike will occur;

(c) state the category of workers who propose to go on strike; and

(d) be served by hand, registered mail or courier.

(4) A notice is deemed to not have been given under subsection (2)*(b)* and any strike that occurs under the purported notice is unlawful, if—

(a) the notice does not satisfy any of the requirements of this section; or

(b) the strike does not occur as specified in the purported notice.

Lawful lockouts in essential services

191P.—(1) An employer engaged in an essential service must not lockout the workers in that essential service unless—

(a) the lockout is lawful under this Act;

(b) the employer gives notice in writing to the Registrar and the trade union of the proposed lockout, at least 14 days before the lockout is to occur;

(c) the notice referred to in paragraph *(b)*, is posted in a place visible to workers in all premises used for the purposes of the essential service.

(2) A notice referred to in subsection (1)*(b)* must specify—

(a) the nature of the proposed lockout, including whether or not it will be continuous;

(b) any place 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

191Q.—(1) An employer engaged in an essential service must display in a place visible to workers in all premises used for the purposes of the essential service, a notice that contains the words of the offence under section 191R.

(2) An employer who contravenes subsection (1) without reasonable excuse commits an offence and is liable to pay a fixed penalty fine under Schedule 8.

(3) A person who, without lawful authority, damages, defaces, obliterates, destroys or removes a notice displayed in accordance with subsection (1) commits an offence and is liable to pay a fixed penalty fine under Schedule 8.

Offence worker engaged in essential service breaching employment contract by unlawful strike

191R.—(1) A worker who is engaged in an essential service and knowingly breaches his or her employment contract by participating in an unlawful strike commits an offence if the unlawful strike causes any of the following circumstances—

(a) the whole or part of the public is deprived of an essential service or substantially diminished enjoyment of that essential service;

(b) the endangerment of human life or serious bodily injury to a person;

(c) the destruction, deterioration or serious damage to property whether real or personal.

(2) A worker who contravenes subsection (1) is liable on conviction to a fine not exceeding $10,000.

(3) A person who aids, abets, counsels or procures the commission of an offence by a worker against subsection (1) is taken to have committed that offence and is liable on conviction to a fine not exceeding $10,000.

Permanent Secretary to refer lawful strike or lockout in essential service to the tribunal

191S.—(1) The Permanent Secretary may refer an employment dispute to the tribunal if satisfied that the continuation of a lawful strike or lockout is not in the public interest or is causing a national emergency and the relevant trade union and the employer—

(a) is not willing to settle the employment dispute; or

(b) does not report the employment dispute under section 191K.

(2) The tribunal on being referred an employment dispute under subsection (1), must expedite the hearing and determination of the matter.".

PART 9—AMENDMENTS FOR LEAVE AND PARENTAL ENTITLEMENTS

Section 59 amended

92. The Principal Act is amended by deleting section 59 and substituting the following—

"*Paid annual leave*

59.—(1) After each year of employment with an employer, a worker must be given 12 working days annual leave and must be paid in respect of such annual leave the wages the worker would have been paid for the time the worker would normally have worker during that period.

(2) A worker who has completed between one and 12 months of work for an employer must accrue annual leave on a pro rata basis.

(3) If the employment of a worker is terminated, his or her annual leave entitlement must be calculated on a pro rata basis for the time he or she has worked and must be paid to the worker on termination of his or her employment.

(4) Notwithstanding subsection (1), a worker is not entitled to be paid annual leave in respect of any year during which the worker attended work if—

(a) the worker has been absent from work for more than 20 normal working days during that year, except where the absence has been due to sickness certified by a medical practitioner; or

(b) the worker is excused from work by the employer or is prevented from attending work by any other cause acceptable to the employer.

(5) If a worker is entitled to paid annual leave under this section, by mutual agreement of the parties, the employer must permit the worker to take the annual leave in one unbroken period or, at the request of the worker, in 2 or more periods, one of which must be a continuous period of one working week.".

Section 60 amended

93. Section 60 of the Principal Act is amended by—

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

"(1) If a worker's employment is terminated and at that time the worker has completed at least one month of work for an employer, his or her annual leave must accrue and be calculated on a pro rata basis for the time worked and must be paid to the worker on that termination."; and

(b) in subsection (3), deleting "holiday" and substituting "leave".

Section 61 amended

94. The Principal Act is amended by deleting section 61 and substituting the following—

"*Continuity of employment*

61. For the purposes of this Part, employment is deemed to continue as long as the worker continues—

(a) to be employed in the workplace by or on behalf of the employer or by an entity with the same or related owners; and

(b) is deemed not to be discontinued by the termination of an employment contract entered into by the worker if, within three months of the termination, the worker is re-engaged in the same workplace.".

Section 62 amended

95. The Principal Act is amended by deleting section 62 and substituting the following—

"*Paid annual leave to be given within certain period*

62.—(1) A worker is entitled to take annual leave on a prorate basis, and by mutual agreement of the parties, a worker may be paid up to 50% of his or her accrued annual leave in lieu of taking annual leave.

(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 leave may, by agreement between the parties, be taken before the completion of the year in respect of which the paid annual leave may be due.

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

Section 67 amended

96. Section 67 of the Principal Act is amended by deleting subsection (2) and substituting the following—

"(2) If a worker works on a public holiday—

(a) the worker must be paid the single rate in addition to the entitlement under subsection (1); and

(b) the worker must be entitled to take an alternative one day of leave.".

Section 68 amended

97. Section 68 of the Principal Act is amended by—

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

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

(b) after subsection (1), inserting the following new subsection—

"(1A) A woman may use three of her 10 days of paid sick leave if at any time she experiences severe or debilitating menstruation.";

(c) in subsection (2), after "each year", inserting ", unless agreed between the worker and the employer, and if there is no agreement"; and

(d) in subsection (3)*(b)*, deleting "produce," and substituting "if the worker takes more than one day or more as sick leave, produce".

Section 68A amended

98. Section 68A of the Principal Act is amended by deleting subsection (2) and substituting the following—

"(2) Where a worker has completed more than 3 months continuous service with the same employer and wishes to provide care to a member of the worker's immediate family who is incapacitated because of sickness, injury or a medical condition the worker is entitled to paid family care leave of not less than 3 working days during each year of service.".

Section 69 amended

99. Section 69 of the Principal Act is amended by—

(a) renumbering section 69 as 69(1); and

(b) after subsection (1), inserting the following new subsection—

"(2) A worker's bereavement leave entitlement must not be accumulated and unused bereavement leave for each year worked by the worker automatically lapses in the next year, unless agreed to between the worker and the employer or between the trade union and the employer.".

Section 70 amended

100. Section 70 of the Principal Act is amended by deleting subsection (3) and substituting the following—

"(3) An employer who contravenes this section without reasonable excuse, commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $5,000; and

(b) in the case of a body corporate, a fine not exceeding $40,000.".

Section 73 amended

101. Section 73 of the Principal Act is amended by deleting subsection (1) and inserting the following—

"(1) This Part does not apply to workers employed in management or executive positions who are paid a salary above $31,200 per annum before deductions.".

Section 101 amended

102. Section 101 of the Principal Act is amended by—

(a) in subsection (6), after "98 days", inserting ", unless the parties agree that the woman must be paid for the days in excess of 98 days"; and

(b) after subsection (7), inserting the following new subsections—

"(8) A woman who holds a certificate from a registered medical practitioner or a registered nurse regarding her pregnancy is entitled to leave in the following circumstances, as the case requires—

(a) the woman gives birth after experiencing a miscarriage of a child whose gestation period is less than 24 weeks, the woman is entitled, in addition to any sick leave entitlements, to take compassionate leave of—

(i) 3 working days leave if the gestation period was up to 12 weeks;

(ii) 7 working days leave if the gestation period was between 13 to 23 weeks; or

(b) the woman has a lawful abortion in accordance with section 234 of the Crimes Act 2009, to take compassionate leave in addition to any sick leave entitlements.

(9) For the avoidance of doubt, compassionate leave under subsection (8) may be taken on a pro rata basis and must not be accumulated.".

Section 101A amended

103. The Principal Act is amended by deleting section 101A.

Sections 101B and 101C inserted

104. The Principal Act is amended after section 101A by inserting the following new sections—

"*Protection of pregnant or nursing women*

101B.—(1) An employer must not compel a pregnant woman or a breastfeeding woman to perform work which may harm the health of the woman or her child.

(2) An employer who contravenes subsection (1) without reasonable excuse commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $20,000; and

(b) in the case of a body corporate, a fine not exceeding $40,000.

Nursing women

101C. A woman who returns to her workplace after maternity leave is entitled for a period of 3 months, to at least one paid daily break of 30 minutes in addition to any other paid break, and access to suitable facilities to breastfeed her child or express breast milk.".

Section 104 amended

105. Section 104 of the Principal Act is amended by—

(a) in subsection (2), after "termination", inserting "of employment";

(b) deleting subsection (3) and substituting the following—

"(3) If, after each 3 month interval from the expiry of the woman's maternity leave, the woman remains absent from work, as a result of illness (certified by a registered medical practitioner) arising out of her pregnancy or the birth of her child, rendering her unfit for work, she may elect to take a further 3 months leave without pay at the expiration of her maternity leave."; and

(c) after subsection (3), inserting the following new subsections—

"(3A) At 3 months interval from the expiry of her maternity leave, the employer may elect to refer the woman to an independent registered medical practitioner for an assessment of the woman's fitness to work.

(3B) If, after a total of 6 months from the expiry of the woman's maternity leave, the woman remains absent from work as a result of illness that has been certified by a registered medical practitioner as arising from her pregnancy or the birth of her child rendering her unfit for work, and a further independent registered medical practitioner determines that the woman is unfit for work, then the woman's employer may—

(a) allow the woman to resign;

(b) allow the woman to take annual leave, sick leave or any other leave entitlements; or

(c) give the woman notice of the termination of her employment.

(3C) Notwithstanding subsections (3), (3A) and (3B), a woman may return to work within 6 months from the expiry of her maternity leave if a registered medical practitioner determines that the woman is fit to work.".

Section 105 amended

106. Section 105 of the Principal Act is amended by deleting subsection (2) and substituting the following—

"(2) An employer who contravenes subsection (1) and intends to withhold, limit or restrict an entitlement under this Part of a worker commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $10,000;

(b) in the case of a body corporate, a fine not exceeding $20,000.".

PART 10—AMENDMENTS FOR CIVIL PENALTY PROVISIONS AND FIXED PENALTY NOTICES

Parts 21A and 21B inserted

107. The Principal Act is amended after section 257 by inserting the following new Parts—

"PART—21A CIVIL PENALTY PROVISIONS

Civil action for contraventions

257A.—(1) The Permanent Secretary, labour officer or labour inspector may apply to the tribunal or the court for an order under this section.

(2) The tribunal or the court, as the case requires, may make one or more of the following orders in relation to an employer who has contravened a civil penalty provision—

(a) an order that the employer pay a pecuniary penalty of not more than the amount set out in the table in section 257B in relation to the provision;

(b) any other order that the tribunal or the court considers appropriate.

(3) Nothing in this section is to be construed as limiting any power of the tribunal or the court.

(4) For the purpose of determining the amount of a pecuniary penalty under this section the tribunal or the court must have regard to—

(a) the nature and extent of the contravention; and

(b) the nature and extent of any loss or damage suffered as a result of the contravention; and

(c) the circumstances in which the contravention took place.

(5) An application under this section may be made to—

(a) in the case of a civil penalty provision for which the maximum penalty is $50,000 or less for a body corporate – the tribunal; and

(b) in any other case to the court.

(6) An application made under this section must be made within 6 years of the contravention.

(7) Proceedings under this provision are civil proceedings for all purposes.

Civil penalty provisions

257B.—(1) A provision of this Act that is set out in the table in subsection (2) is a civil penalty provision.

(2) The Permanent Secretary, labour officer or labour inspector may apply to the tribunal or the court, as the case requires, for an order in relation to a contravention or proposed contravention of a civil penalty provision set out in column 2 of an item of this table, including an order for the payment of the maximum penalty referred to in column 3 of the item of this table in respect of the civil penalty provision.

Item	*Civil penalty provision*	*Maximum penalty for contravention by a natural person*	*Maximum penalty for contravention by a body corporate*
1.	Section 17(3)	$1,000	$10,000
2.	Section 22(3)*(b)* (Employment to be in accordance with this Act)	$20,000	$100,000
3.	Section 24(1A) Duty of employer to provide work	$10,000	$20,000
4.	Section 26 (Wages, leave and entitlements during detention or imprisonment of a worker)	$20,000	$100,000
5.	Section 30 (Further provision as to termination of contracts)	$20,000	$100,000
6.	Section 35A(3) Dismissal without notice	$5,000	$10,000
7.	Section 41(2) Termination of contract in other circumstances	$5,000	$10,000
8.	Section 70(3) Record of leave and entitlement	$5,000	$40,000
9.	Section 78 (Unlawful discrimination in rates of renumeration)	$20,000	$100,000
10.	Section 97 (Hours of work for children)	$20,000	$100,000
11.	Section 101B(1) Protection of pregnant or nursing women	$20,000	$40,000
12.	Section 114(1) Statement of reasons for dismissal	$10,000	$20,000
13.	Section 191R(1) Offence worker engaged in essential service breaching employment contract by unlawful strike	$10,000	None

Employers involved in contravening civil penalty provision

257C.—(1) An employer must not—

(a) aid, abet, counsel or procure a contravention of a civil penalty provision; or

(b) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or

(c) be in any way directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision; or

(d) conspire to contravene a civil penalty provision.

(2) This Act applies to an employer who contravenes subsection (1) in relation to a civil penalty provision as if the employer had contravened the provision.

Recovery of a pecuniary penalty

257D. If the court orders an employer to pay a pecuniary penalty for a contravention of a civil penalty provision—

(a) the penalty is to be paid to the Employment Relations Fund; and

(b) the order is enforceable as a judgment debt.

Civil proceedings after criminal proceedings

257E. The tribunal or the court, as the case requires, must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

Criminal proceedings during civil proceedings

257F.—(1) Proceedings for a pecuniary penalty order against an employer for a contravention of a civil penalty provision are stayed if—

(a) criminal proceedings are instituted or have already been instituted against the employer for an offence; and

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

(2) The proceedings for the pecuniary penalty order may be resumed if the employer is not convicted of the offence.

(3) If proceedings for the pecuniary penalty order are not resumed as referred to in subsection (2), the proceedings are taken to be dismissed.

Criminal proceedings after civil proceedings

257G. Criminal proceedings may be instituted against an employer for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a pecuniary penalty order has been made against the employer.

Evidence given in proceedings for pecuniary penalty order not admissible in criminal proceedings

257H.—(1) Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the employer if—

(a) the employer previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the employer for a contravention of a civil penalty provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

(2) Subsection (1) does not apply to criminal proceedings in respect of the falsity of the evidence given by the employer in the proceedings for the pecuniary penalty order.

Contravening a civil penalty provision is not an offence

257I. To avoid doubt, a contravention of a civil penalty provision is not an offence.

PART—21B FIXED PENALTY NOTICES

Employment Relations Fixed Penalty Notice

257J. A labour officer or a labour inspector may in respect of the alleged commission of an offence—

(a) serve personally on the person alleged by him or her to have committed the offence a fixed penalty notice provided for in Schedule 8; or

(b) institute legal proceedings if authorised in accordance with section 18.

Form of fixed penalty notice

257K. A fixed penalty notice must—

(a) be in writing and contain the prescribed details;

(b) state that the person is entitled to elect to have the matter of the fixed penalty offence heard and determined in court.

Payment within time specified

257L. A fixed penalty notice must be paid within the period specified in the fixed penalty notice, being a period not less than 21 days after a fixed penalty notice has been served.

Late payment

257M.—(1) The labour officer or labour inspector may accept payment of a fixed penalty notice after the expiry of 21 days for payment stated in the notice, if the fixed penalty notice has not been withdrawn on the election of the person, to have the offence heard and determined in court.

(2) The person must pay any prescribed fee that is in addition to the fixed penalty amount for the late payment of the fixed penalty notice under subsection (1).

Expiating the offence

257N.—(1) This section applies if a fixed penalty notice is not withdrawn and the fixed penalty amount and any relevant prescribed fee are paid within 21 days as specified in the fixed penalty notice or late payment is accepted in accordance with section 257M.

(2) The person on whom the fixed penalty notice was served has expiated the offence by payment of the fixed penalty amount and any relevant fee.

(3) If a person has expiated an offence under this section no further proceedings may be taken against the person on whom the notice was served in respect of the offence and no conviction is to be taken to have been recorded against that person for the offence.

Failure to comply or withdrawal of notice to commence proceedings

257O.—(1) Subject to subsection (2), where a fixed penalty notice served on a person is not complied with within 21 days of the notice being served or paid under section 257M, the notice must be regarded for all purposes as a summons issued under the provisions of the Criminal Procedure Act 2009.

(2) The labour officer or labour inspector may withdraw the fixed penalty notice at any time before the expiry of 21 days for payment stated in the notice and place the notice before the court for the issuing of a summons under the provisions of the Criminal Procedure Act 2009.

(3) Nothing in this section may be taken to prevent the institution of proceedings under any other provision of this Act.".

PART 11—CRIMINAL OFFENCES

Section 246 amended

108. Section 246 of the Principal Act is amended by—

(a) in subsection (1)—

(i) deleting "A person who" and substituting "A person commits an offence if the person";

(ii) in paragraph *(c)*, deleting "," and substituting "."; and

(iii) deleting "commits an offence and is liable on conviction to a fine not exceeding $10,000 or to a term of imprisonment not exceeding 12 months.";

(b) after subsection (1), inserting the following new subsection—

"(1A) A person who contravenes subsection (1) without reasonable excuse commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $50,000; and

(b) in the case of a body corporate, a fine not exceeding $100,000.";

(c) in subsection (2)—

(a) the chapeau, deleting "A person who" and substituting "A person commits an offence if the person";

(b) in paragraph *(a)*, deleting "; or" and substituting ";";

(c) in paragraph *(b)*, deleting "," and substituting "."; and

(d) deleting "commits an offence and is liable on conviction to a fine not exceeding $10,000 or to a term of imprisonment not exceeding 12 months or both.";

(d) after subsection (2), inserting the following new subsection—

"(2A) A person who contravenes subsection (2) without reasonable excuse commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $50,000; and

(b) in the case of a body corporate, a fine not exceeding $100,000.".

Section 247 amended

109. Section 247 of the Principal Act is amended by—

(a) renumbering section 247 as section 247(1);

(b) in subsection (1)—

(i) in the chapeau, deleting "An employer who" and substituting "An employer commits an offence if the employer";

(ii) deleting paragraph *(h)* and substituting the following—

"*(h)* pays a worker on a piece-work basis which results in the worker receiving less than the rate of wages prescribed in the applicable employment contract."; and

(c) after subsection (1), inserting the following new subsection—

"(2) An employer who contravenes subsection (1) without reasonable excuse commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $50,000; and

(b) in the case of a body corporate, a fine not exceeding $100,000.".

Section 249 amended

110. The Principal Act is amended by deleting section 249 and substituting the following—

"*Offence by worker relating to money owed to employer*

249. A worker who on ceasing to be employed by his or her employer, intentionally fails to repay money or return the employer's property to the employer within 3 months or any other agreed period, commits an offence and is liable on conviction to a fine not exceeding $5,000.".

Section 250 amended

111. Section 250 of the Principal Act is amended by—

(a) in subsection (1), deleting "commits an offence and is liable upon conviction to a fine not exceeding $50,000" and substituting "under section 180 contravenes this Act and is liable on conviction to a fine not exceeding $40,000";

(b) deleting subsection (2) and substituting the following—

"(2) A person who aids, abets, counsels or procures the commission of an offence by a person against subsection (1) is taken to have committed that offence and is liable on conviction to a fine not exceeding $40,000."; and

(c) in subsection (5), deleting "commits an offence and is liable upon conviction to a fine not exceeding $10,000" and substituting "contravenes this section and is liable on conviction to a fine not exceeding $40,000".

Section 255A inserted

112. The Principal Act is amended after section 255 by inserting the following new section—

"*Forced labour or servitude offences*

255A.—(1) A person or a body corporate (the "first person") commits an offence if—

(a) the first person recklessly coerces, threatens or deceives another person (the "victim") to provide labour or services; and

(b) the coercion, threat or deception causes the victim to provide labour or services.

(2) A person or a body corporate who contravenes subsection (1) is liable on conviction to a fine not exceeding $500,000 or imprisonment for a term not exceeding 20 years or both.

(3) A person (the "first person") commits an offence if—

(a) the first person recklessly coerces, threatens or deceives another person (the "victim") into providing labour or services; and

(b) the coercion, threat or deception causes the victim to remain in servitude or in forced labour.

(4) A person or body corporate who contravenes subsection (3) is liable on conviction to a fine not exceeding $500,000 or imprisonment for a term not exceeding 20 years or both.

(5) An employer who intentionally prevents or hinders the employer's worker from doing any of the following during a period of service commits an offence—

(a) leaving Fiji;

(b) ascertaining or seeking information on the worker's entitlements (including the payment of wages and any overtime) under the laws of Fiji; or

(c) disclosing the worker's circumstances of employment to another person.

(6) An employer who contravenes subsection (5) without reasonable excuse, is liable on conviction to a fine not exceeding $250,000 or imprisonment for a term not exceeding 10 years or both.

(7) In subsection (5) conduct that amounts to preventing or hindering a worker from doing a thing may include—

(a) taking or retaining possession or control of a person's passport, any travel or identity document or any document that enables a person to work or travel;

(b) preventing or hindering a person from—

(i) having access to a telephone or other means of communication;

(ii) using a telephone or any other means of telecommunication;

(iii) using a telephone or any other means of telecommunication in private;

(iv) leaving premises including a workplace or accommodation unaccompanied; or

(c) preventing or hindering a labour officer or a labour inspector from entering or having access to any place or premises to which the person is entitled to have access under any written law.".

Section 256 amended

113. The Principal Act is amended by deleting section 256 and substituting the following—

"*General penalty*

256. A person who contravenes this Act for which no particular penalty is provided, is liable on conviction to—

(a) for a natural person, a fine not exceeding $20,000; or

(b) for a body corporate or a director of a body corporate, a fine not exceeding $40,000.".

PART 12—MISCELLANEOUS AMENDMENTS, SAVINGS AND TRANSITIONAL PROVISIONS

Section 193 amended

114. Section 193(4) of the Principal Act is amended by—

(a) in paragraph *(d)*, deleting "; and" and substituting ";";

(b) in paragraph *(e)*, deleting "." and substituting "; and"; and

(c) after paragraph *(e)*, inserting the following new paragraph—

"*(f)* other relevant areas or fields where Mediation Services may be required.".

Section 194 amended

115. Section 194 of the Principal Act is amended by—

(a) deleting subsection (3) and substituting the following—

"(3) A party to proceedings before a Mediator may appear personally or be represented by a person or a representative of a trade union whom the Mediator is satisfied has the authority of the respective party to act in the mediation proceedings.";

(b) deleting subsection (5) and substituting the following—

"(5) If the parties fail to resolve an employment dispute, the Mediator must refer the dispute to the tribunal."; and

(c) after subsection (5), inserting the following new subsection—

"(6) Any person who intentionally participates in a mediation proceeding before a Mediator without the authority to act under subsection (3) commits an offence and is liable on conviction to a fine not exceeding $1,000.".

Section 196 amended

116. Section 196 of the Principal Act is amended by—

(a) in subsection (2), deleting "Where" and substituting "Subject to subsection (4), where";

(b) in subsection (3), after "purposes", inserting "and in accordance with subsection (4)"; and

(c) after subsection (3), inserting the following new subsection—

"(4) The Mediator or the Permanent Secretary or his or her nominee may—

(a) provide advice to amend the settlement agreement if the settlement agreement does not comply with this Act;

(b) if, having obtained advice under paragraph *(a)*, the parties sign a settlement agreement that does not comply with this Act or the parties do not agree to sign a settlement agreement within 14 days of the last mediation, the Mediator may refer the matter to the tribunal.".

Section 201 amended

117. Section 201 of the Principal Act is amended by—

(a) deleting subsection (2) and substituting the following—

"(2) A party, who is authorised to finalise terms of settlement on behalf of the worker or the employer and fails to appear before the Mediator without reasonable cause, commits an offence and is liable on conviction to—

(a) in the case of an individual, a fine not exceeding $5,000; or

(b) in the case of a trade union or a body corporate, a fine not exceeding $10,000."; and

(b) after subsection (2), inserting the following new subsection—

"(3) A party, who is authorised to finalise terms of settlement on behalf of the worker, the trade union or the employer and who fails to appear before the Mediator without reasonable cause, commits an offence and is liable to pay a fixed penalty fine under Schedule 8 of this Act.".

Section 203 amended

118. Section 203 of the Principal Act is amended by—

(a) in subsection (1)*(b)*, deleting "may or may not be" and substituting "are";

(b) in subsection (3), deleting "up to 3" and substituting "not less than 5"; and

(c) after subsection (3), inserting the following new subsection—

"(4) The tribunal must be constituted by a Judge or a Magistrate to hear and determine offences against this Act.".

Section 211 amended

119. Section 211 of the Principal Act is amended by—

(a) in subsection (1)—

(i) in paragraph *(a)*, deleting "to" and substituting "subject to paragraph *(ab)*,";

(ii) after paragraph *(a)*, inserting the following new paragraph—

"*(ab)* to adjudicate on employment grievances and any applications, claims, disputes and civil proceedings up to $50,000 under Part 19;";

(iii) in paragraph *(b)*, after "disputes", inserting "including disputes of right and disputes of interest";

(iv) deleting paragraph *(n)*;

(v) in paragraph *(p)*, deleting "Workmen's Compensation Act 1964" and substituting "Accident Compensation Act 2017 or equivalent legislation";

(vi) in paragraph *(q)*, deleting "; and" and substituting ";";

(vii) in paragraph *(r)*, deleting "." and substituting ";"; and

(viii) after paragraph *(r)*, inserting the following new paragraphs—

"*(s)* to hear and determine offences against this Act;

(t) to hear and determine all actions for the recovery of penalties under this Act;

(u) to hear and determine an action founded on an employment contract;

(v) subject to subsection (2) and in proceedings founded on an employment contract to make any order that the tribunal may make under written law or the law relating to contracts;

(w) to hear and determine an application for a discontinuance of an order in respect of an unlawful strike or lockout under this Act;

(x) to hear and determine proceedings founded on tort relating to this Act;

(z) to adjudicate on all claims and actions for contraventions under this Act; and

(za) to hear and determine departure prohibition applications."; and

(b) deleting subsection (2) and substituting the following—

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

(a) to adjudicate on matters within its jurisdiction relating to civil claims up to $50,000, exclusive of interests and costs; and

(b) to hear and determine offences under this Act.".

Section 214 amended

120. Section 214 of the Principal Act is amended by—

(a) in subsection (1) after "in the prescribed manner in the tribunal" inserting "using Form 9"; and

(b) after subsection (2), inserting the following new subsections—

"(3) Any person who recklessly fails to pay wages or other money due or makes payment of wages or other money payable at rates lower than the rates due under this Act or under an employment contract commits an offence and is liable on conviction to—

(a) in the case of a natural person, a fine not exceeding $50,000; or

(b) in the case of a body corporate, a fine not exceeding $100,000.

(4) An employer who contravenes any provision of this Act is liable to pay both a fine imposed by the tribunal or the court in addition to all wages and entitlements owing to a worker, as the case requires.

(5) The tribunal or the court may order that any fine or any portion of a fine paid under this Act may be awarded to a worker.

(6) Any wages or other monies due to a worker which are recovered from an employer must be paid into the Employment Relations Fund, and the Minister may authorise that monies be paid out of the fund to the worker who is due the relevant amount.".

Section 215 amended

121. The Principal Act is amended by deleting section 215 and substituting the following—

"*Failure to keep or produce records*

215.—(1) If an action is brought before the tribunal under section 214 to recover wages or other money payable to a worker, the worker or labour inspector may produce evidence to show—

(a) that the employer failed to keep or produce a wages and time record in respect of that worker as required by this Act; and

(b) that the failure to keep or produce records referred to in paragraph *(a)* prejudiced the worker's ability to bring an accurate claim under this Act.

(2) The tribunal in determining an action must consider the evidence of both the worker and the employer and any other person who has bona fide knowledge of the worker's employment conditions at the relevant time.

(3) The tribunal must ensure that the worker is not disadvantaged due to the employer's failure to keep and produce wages and time records.

(4) If the employer fails to keep and produce accurate wages and time records under this Act, the worker's statement in the form of a statutory declaration, is deemed to be an accurate record of the worker's claims for wages and entitlements.".

Section 218 amended

122. Section 218(2) of the Principal Act is amended by—

(a) in paragraph *(a)*, deleting "or";

(b) in paragraph *(b)*, deleting "." and substituting ";"; and

(c) after paragraph *(b)*, substituting the following new paragraphs—

"*(c)* it is fair, reasonable or equitable to transfer the case in the interests of justice; or

(d) the matter exceeds or is outside the jurisdiction of the tribunal.".

Section 220 amended

123. Section 220 of the Principal Act is amended by—

(a) in the heading, deleting the words "Employment Relations Court" and substituting "court";

(b) in subsection (1)—

(i) after paragraph *(f),* inserting the following new paragraph—

"*(fa)* to hear and determine employment grievances and any applications, claims, disputes and civil proceedings over $50,000 under Part 19;";

(ii) in paragraph *(m)*, deleting "or";

(iii) in paragraph *(n)*, deleting "." and substituting ";"; and

(iv) after paragraph *(n),* inserting the following new paragraphs—

"*(o)* to adjudicate on employment grievances;

(p) to adjudicate on employment disputes of right and disputes of interest;

(q) to hear and determine any matter under the Accident Compensation Act 2017 or equivalent legislation;

(r) to adjudicate on all actions under this Act for the recovery of wages or other money;

(s) to adjudicate on all actions involving entitlements and related matters provided for by this Act;

(t) to adjudicate on actions for breach of an employment contract; or

(u) to hear and adjudicate on forced labour cases under section 255A of this Act.".

Section 221 amended

124. The Principal Act is amended by deleting section 221 and substituting the following—

"*Power of tribunal or court to order compliance*

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

(a) a provision of this Act; or

(b) an order, determination, direction, or requirement made or given under this Act by the tribunal or court—

the tribunal or court may, in addition to any other power it may exercise, by order require, in or in conjunction with any proceedings under this Act to which that person is a party, that person to do a specified thing, or to cease a specified activity,

for the purpose of preventing further non-observance of or non-compliance with that provision, order, determination, direction or requirement, and must specify a time within which that order is to be obeyed.

(2) The power given to the tribunal or court by subsection (1) may be exercised by the tribunal or court—

(a) on the application of a party to the proceedings; or

(b) of its own motion.

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

(4) An order made under subsection (1) may—

(a) be subject to the terms and conditions as the court thinks fit (including conditions as to the actions of the applicant); and

(b) be expressed to continue in force until a specified time or the happening of a specified event.

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

(6) If a person fails to comply with a compliance order made under this section, or if the tribunal or court, on an application under section 212(6), is satisfied that a person has failed to comply with the compliance order under section 212 or in any other case it deems fit, the tribunal or the court may do one or more of the following things—

(a) if the person in default is a plaintiff, order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by the plaintiff in the proceedings;

(b) if the person in default is a defendant, order that the defendant's defence be struck out and that judgment be entered accordingly;

(c) order that the person or body corporate in default pays a fine;

(d) order that the property of the person or body corporate in default be sequestered, sold and paid to a worker if the employer has breached this Act and has not paid the worker;

(e) issue a garnishee order to an individual or to a body corporate or a company director requiring the individual or body corporate or the company director pay a specified amount in the garnishee order into the Employment Relations Fund;

(f) order that the person does not depart from Fiji for a foreign country without wholly discharging the amount due under this Act or making satisfactory arrangements with the tribunal or court for the liability to be wholly discharged under this Act; or

(g) order the recovery of an amount due that has not been paid by the due date by distress and sale of the personal property of the employer or a company director of the employer.".

Section 222 amended

125. Section 222(1) of the Principal Act is amended after "Judge" by inserting "or by the Registrar of the court".

Section 223 amended

126. Section 223(1) of the Principal Act is amended by deleting "3" and substituting "6".

Section 226A inserted

127. The Principal Act is amended after section 226 by inserting the following new section—

"*Powers of the Registrar of the court and assistant registrars of the tribunal*

226A. Subject to any direction given by the Chief Registrar, the Registrar of the court and the assistant registrars of the tribunal, as the case requires, have the following powers, authority and jurisdiction—

(a) to set down the place and time for the hearing of a matter before the court or the tribunal;

(b) to set down the place, time and mode of hearing or argument in the court or the tribunal;

(c) to set down the discovery of documents, the production and exchange of documents;

(d) to require the amendment of an employment grievance, an employment dispute, an application or other document;

(e) to grant an extension of time;

(f) to issue a direction in respect of a compliance order made by the court or the tribunal;

(g) to issue any direction required to expedite a proceeding in the court or the tribunal;

(h) to add, omit or substitute a party;

(i) to provide for substituted service;

(j) to award costs in a matter;

(k) to transfer a proceeding from the court, the tribunal to the mediation service, as required;

(l) to transfer a proceeding from the court to the tribunal;

(m) to grant leave to withdraw an employment grievance, employment dispute, application or other document;

(n) to deliver a decision made by a tribunal;

(o) to grant leave to serve an employment grievance, employment dispute or application out of the jurisdiction; and

(p) to make orders by consent.".

Section 230 amended

128. The Principal Act is amended by deleting section 230 and substituting the following—

"*Employment grievance or employment dispute remedies*

230.—(1) If the tribunal or the court determines that a worker has an employment grievance or employment dispute, it may, in settling the grievance or dispute, order one or more of the following remedies or make an order for—

(a) reinstatement of the worker in the worker's former position or a position no less advantageous to the worker;

(b) the reimbursement to the worker of a sum equal to the whole or any part of the wages or other money lost by the worker as a result of the grievance or employment dispute;

(c) the payment to the worker of compensation by the worker's employer, including compensation for—

(i) humiliation, loss of dignity, and injury to the feelings of the worker;

(ii) loss of any benefit, whether or not of a monetary kind, which the worker might reasonably expect to obtain if the employment grievance or employment dispute had not occurred;

(iii) loss of any personal property; or

(iv) medical and related expenses including any costs paid by the worker for medical or psychological treatment.

(2) If the tribunal or court determines that a worker has an employment grievance or employment dispute by reason of being unfairly dismissed under section 35C, the tribunal or the court may—

(a) in deciding the nature and extent of the remedies to be provided in respect of the employment grievance, consider the extent to which the actions of the worker contributed towards the situation that gave rise to the employment grievance or employment dispute; and

(b) if those actions so require, reduce the remedies that would otherwise have been decided accordingly.

(3) If the remedy of reinstatement is provided by the tribunal or the court, the worker must be reinstated immediately or on such a date as is specified by the tribunal or the court, the pro visions for reinstatement must, unless the tribunal or the court otherwise orders, remain in force pending the determination of the appeal.".

Section 238 amended

129. Section 238(1) of the Principal Act is amended after "Justice" by inserting ", in consultation with the Chief Registrar,".

Section 242 amended

130. Section 242 of the Principal Act is amended by deleting subsections (1), (2), (3) and (4) and substituting the following—

"(1) A party to proceedings before the tribunal who is aggrieved by a decision of the tribunal may appeal as of right or by leave to the court.

(2) An appeal filed by an aggrieved party under subsection (1) must be made within one month of the decision of the tribunal.

(3) A notice of appeal under subsection (2) must specify—

(a) the grounds of appeal;

(b) the decision or the part of the decision appealed from;

(c) the orders which the appellant proposes to seek from the court.

(4) An appeal made by an aggrieved party under this section must be made to the court on—

(a) a question of law;

(b) the reasonableness of the tribunal's decision; and

(c) whether a reasonable tribunal would have made such a decision.".

Part 20A amended

131. The Principal Act is amended by deleting Part 20A.

Section 253A and 253B inserted

132. The Principal Act is amended after section 253 by inserting the following new section—

"*Enduring obligations of the director of a body corporate under this Act*

253A.—(1) This section applies if, in relation to a pecuniary penalty or a fine imposed on a body corporate under this Act—

(a) the body corporate is deregistered after the commission of the alleged offence; or

(b) the person enforcing the pecuniary penalty or the fine against the body corporate returns that the person cannot find sufficient personal property of the body corporate to satisfy the amounts specified in the court order or any warrant together with all lawful costs of execution; or

(c) the person executing a warrant issued against the body corporate in relation to the pecuniary penalty or the fine is or may be able to find sufficient personal property of the body corporate to satisfy the amounts in the warrant together with all lawful costs of execution but, in the course of executing the warrant, the person becomes aware that the body corporate is under administration within the meaning of the Bankruptcy Act 1944.

(2) If the Permanent Secretary is satisfied based on the register of companies, that a person was a director of a body corporate to which this section applies at the time of the commission of the offence, the Director may serve the person with a notice.

(3) The notice must state that the person—

(a) is a declared director by force of this section; and

(b) is jointly and severally liable for the payment of the pecuniary penalty or the fine, as the case requires; and

(c) has 28 days from the date of service of the notice to apply to the court for an order that the person is not a declared director.

(4) Unless an order is made by the court under section 253B, on and from 28 days after service of a notice, the Permanent Secretary may take any action against a declared director in relation to a pecuniary penalty or a fine that can be taken against a natural person in relation to a pecuniary penalty or a fine.

Director of company or body corporate may challenge being declared director

253B.—(1) A person who receives a notice under section 253A may apply to the court for an order that the person is not a declared director and not liable to pay any pecuniary penalty or fine of the body corporate specified in the notice.

(2) An application under subsection (1)—

(a) must be made within 28 days from the date of service of the notice under section 253A; and

(b) if made within the period specified in paragraph (a), suspends any enforcement action under section 253A until the court hears and determines the application.

(3) On making an application under subsection (1), the applicant must give a copy of the application to the Permanent Secretary.

(4) On an application under subsection (1), the court may order that a person who was the director of a body corporate to which section 253A applies is not a declared director if satisfied that—

(a) at the time of the commission of the offence, the person did not take part in the management of the body corporate because of illness or for some other good reason which prevented the person from taking part in that management in accordance with the person's duties as a director under the Companies Act 2015; or

(b) if paragraph *(a)* does not apply to the person, as soon as practicable after the pecuniary penalty order or fine was imposed, the person either took all reasonable steps or, in all the circumstances, there were no reasonable steps the person could have taken to ensure that—

(i) the pecuniary penalty or the fine was paid; or

(ii) an arrangement was made to pay the pecuniary penalty or the fine; or

(iii) the body corporate appointed an administrator under the Bankruptcy Act 1944; or

(iv) the body corporate was wound up in accordance with the Companies Act 2015.

(5) If the court does not make an order under subsection (4), the person remains a declared director.".

Section 262 amended

133. The Principal Act is amended by deleting section 262 and substituting the following—

"*Time for instituting proceedings for offences*

262. Notwithstanding anything in any other written law, proceedings for an offence against this Act may be instituted within the period of 6 years after the act or omission alleged to constitute the offence or from the date of a demand notice issued by a labour officer or labour inspector.".

Section 264 amended

134. Section 264 of the Principal Act is amended by—

(a) in the heading, after "Regulations" inserting "and other subsidiary legislation";

(b) after subsection (1), inserting the following new subsection—

"(1A) The Minister may, on advice of the Board, make regulations prescribing matters that are required to be prescribed or are necessary or convenient to be prescribed for the issue of fixed penalty notices under this Act, including—

(a) the offences for which fixed penalty notices may be issued;

(b) the fixed penalties for prescribed offences;

(c) the manner, form and timeframes for which fixed penalty notices are to be issued;

(d) the actions a person may undertake on receipt of a fixed penalty notice; and

(e) the penalties that a person to whom a fixed penalty notice may be liable to.";

(c) deleting subsections (4) and (5) and substituting the following—

"(4) The Minister may, on the advice of the Board issue, publish, amend, vary or revoke a code of practice including the Code of Good Faith, guidelines, orders or Commissions for the purposes of this Act.

(5) The Minister may, by regulations on the advice of the Board amend, vary or revoke and Schedule to this Act.".

Sections 267, 268, 269 and 270 inserted

135.—(1) The Principal Act is amended after section 265 by inserting the following new sections—

"*Transitional power to extend application of subsidiary legislation*

267. The Minister may in consultation with the Employment Relations Advisory Board, extend the application of any regulations, orders or notices made under a section of this Act that is deleted or amended by the Employment Relations Amendment Act 2025 for the purpose of facilitating the implementation of those amendments.

Transitional provision – existing labour officers or labour inspectors

268. This section applies to a labour officer or a labour inspector who immediately before the commencement of section 13 of the Employment Relations Amendment Act 2025 is a labour officer or a labour inspector under the Employment Relations Act 2007, the labour officer or the labour inspector is deemed to have been appointed under section 18A of the Employment Relations Act 2025.

Transitional provision – existing contracts of service, employment contract or collective agreement

269.—(1) Subject to subsection (2), where a provision of the Employment Relations Act 2007 is deleted, repealed or amended by a provision of the Employment Relations Amendment Act 2025, the deletion, repeal or amendment of the Employment Relations Act 2007 must not—

(a) revive anything not if force or existing at the time at which the deletion, repeal or amendment becomes operative;

(b) affect any penalty, forfeiture or punishment incurred in respect of an offence committed against the Employment Relations Act 2007;

(c) affect any investigation, legal proceeding or remedy in respect of anything mentioned in paragraphs *(a)* to *(d)*—

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if any provision of the Employment Relations Act 2007 had not been deleted, repealed or amended.

(2) A contract of service, an employment contract or a collective agreement that is in force immediately before the commencement of Part 2 of the Employment Relations Amendment Act 2025—

(a) continues in existence until its expiry; and

(b) to the extent that any that the contract of service, the employment contract or the collective agreement makes provision for a matter that is inconsistence with a deletion, amendment or an enactment made by the Emploment Relations Amendment Act 2025, the provisions of the Employment Relations Amendment Act 2025 prevails.

Existing employment dispute on abolition of Arbitration Court

270.—(1) An employment dispute referred to the Arbitration Court under the Employment Relations Act 2007 as in force immediately before the commencement of Part 8 of the Employment Relations Amendment Act 2025 must continue to be heard and determined by the Arbitration Court in accordance with Part 19 as in force immediately before the commencement of Part 8 of the Employment Relations Amendment Act 2025.

(2) Despite the commencement of Part 8 of the Employment Relations Amendment Act 2025, the Arbitration Court is to continue in existence for the purpose of hearing and determining an employment dispute in accordance with subsection (1).

Schedule 2A and 2B inserted

136. The Principal Act is amended after Schedule 2 by inserting the following new Schedules—

"SCHEDULE 2A
(Section 41B(1)(b))

PARTICULARS OF WRITTEN CONTRACT OF SERVICE FOR SEAFARERS

1. Shipowner's name or Agent of the Shipowner
2. Shipowner's full address
3. Full name of seafarer and nationality
4. Date and place of birth of seafarer

5. Address of seafarer
6. Place of work including any name of vessel or state any vessel owner, managed or chartered by a ship owner
7. Capacity in which a seafarer is to be employed
8. Hours of work
9. Rest periods
10. Wages
11. Means of payment of wages
12. Paid leave including annual leave and sick leave
13. Disciplinary and grievance procedure
14. Duration of contract
15. Notice of termination of employment or voyage agreement
16. Health care
17. Repatriation
18. Compensation for any loss of crew's personal effects
19. Signatures
20. Place and date that the seafarer employment contract is entered into."

"SCHEDULE 2B
(Section 41E(2))

PARTICULARS OF COLLECTIVE AGREEMENTS FOR SEAFARERS

1. Shipowner's name or Agent of the Shipowner and full address
2. Name and address of trade union
3. Application
4. Hours of work
5. Rest periods
6. Wages
7. Means of payment of wages
8. Paid leave including annual leave and sick leave
9. Disciplinary and grievance procedure
10. Duration of employment
11. Notice of termination of employment or voyage agreement
12. Health care
13. Repatriation
14. Compensation for any loss of crew's personal effects
15. Signatures
16. Date.".

Schedule 4 amended

137.—(1) Schedule 4 to the Principal Act is amended by deleting clause 3 and substituting the following—

"3(1) A worker or trade union may notify the employer of an employment grievance within a period of 12 months beginning with the date on which the action alleged to amount to an employment grievance has occurred or has come to the notice of the worker, whichever is later, so as to enable the employer to remedy the grievance rapidly and as near as possible to the point of origin.

(2) Where the grievance is submitted to the employer, the employer is required to accord the worker a fair hearing by allowing the worker an opportunity to be heard, and in the presence of a third party if requested by the worker.".

(2) Schedule 4 to the Principal Act is amended after clause 6 by inserting the following—

"6A A worker or trade union must notify the Permanent Secretary of an employment grievance in writing within 12 months of the grievance arising and such notice must be copied to the employer.".

(3) Schedule 4 to the Principal Act is amended in clause 7 after "in the prescribed manner" by inserting "within 6 years of the grievance arising. The parties may refuse to enter into mediation.".

Schedule 5 amended

138. Schedule 5 to the Principal Act is amended in clause 10 after "conferences" by inserting "and special delegates conferences".

Schedule 6 amended

139. Schedule 6 to the Principal Act is amended by deleting clause 8*(c)* and substituting the following—

"*(c)* the parties have agreed to waive the requirement for an exchange of written statements and the party invoking the procedure is not satisfied that the dispute has been resolved the party invoking the procedure—

(i) must notify the Permanent Secretary of the dispute in writing within 12 months of the dispute arising and must copy the other affected party to the dispute;

(ii) report the dispute to the Permanent Secretary in the prescribed manner within 6 years from the date on which the dispute arose.".

Schedule 7 amended

140. Schedule 7 to the Principal Act is amended

(a) after paragraph *(c)* by inserting the following—

"*(ca)* Fiji Corrections Service;";

(b) after paragraph *(k)* by inserting the following—

"*(ka)* Fiji Police Force;".

Schedule 8 amended

141. The Principal Act is amended by deleting Schedule 8 and substituting the following—

"SCHEDULE 8
(Section 263)

FIXED PENALTY OFFENCES

Item No.	*Section*	*Fixed penalty amount*
1	17(2)	$1,000
2	45(5)	$1,000
3	70(3)	$1,000
4	96(2)	$1,000
5	99(3)	$1,000
6	105(2)	$1,000
7	129(4)	$1,000
8	132(4)	$1,000
9	191Q(2)	$1,000
10	191Q(3)	$1,000
11	201(3)	$1,000
12	248	$1,000
13	249	$1,000

Schedule 9 amended

142. The Principal Act is amended by deleting Schedule 9 and substituting the following—

"SCHEDULE 9

(Section 18)

FORM 9 – COMMENCE A CHARGE OR CLAIM

Information Only the Permanent Secretary, a labour officer or labour inspector may use this form to make a claim or to pursue criminal sanctions under the Employment Relations Act 2007. Depending on the monetary value of your civil claim or the criminal sanctions, it may be filed in the registry of the Employment Relations Tribunal (ERT) or the Employment Relations Court (ERC.) Please read this form carefully and complete all relevant sections. Information that is missing or non-compliant with the relevant section of the Act may result in the non-acceptance of your claim by the ERT or ERC registry staff. For further information, please contact the registry: Telephone: Email:	
Parties	**PLEASE NOTE: If there are more than two parties to this application, please complete a Form 1 – Parties list and file with this form.**
Full name of the Claimant/Applicant *Attach further pages if necessary if there is more than one claimant/applicant.* *Multiple claimants/applicants may be included in one charge or claim.*	
Full name of the respondent/defendant	
Workers's details	
Title	☐ Mr ☐ Mrs ☐ Ms ☐ Miss ☐ Master ☐ Other:
Name	
Phone and email address	
Name of the representative of employee (if any)	
Phone (mobile and landline) and email address of representative	

Notices Where should the notices of the ERT or ERC be served? (Please tick one option)	☐ Employee/Claimant/Applicant ☐ Representative ☐ Both above ☐ Other
Details of work or services performed by the employee	
Occupation/ Job Title	
Duties (provide a summary of the main duties performed by the worker)	
Classification (under the relevant contract of service and/or collective agreement), if applicable	
Place/location where the work was performed, or services provided	
Period of employment including: **-date of commencement** **-last date worked**	
Employment status	☐ Full time ☐ Casual ☐ Part time ☐ Fixed term ☐ Other
Is the worker a Fiji citizen? **If not, list worker's country/countries of citizenship**	☐ Yes ☐ No List Countries of Citizenship:
Is the worker a child (a person under 18 years of age?)	☐ Yes ☐ No
Please provide certified copies of the worker's wage statements (pay slips) provided by the employer	

<table>
<tr><td>If the employee is unable to provide wage statements, please provide—

-a statutory declaration which includes a statement outlining the hours worked over the disputed period and applicable wages; and

-Please provide information (where possible) to verify the statement of hours worked, such as FNPF statements.

-Any statutory declarations from third parties with corroborating statements.</td><td></td></tr>
<tr><td>Details of Charge or Claim

(Attach an additional page or pages, if necessary)</td><td></td></tr>
<tr><td>Relevant section of the ERA (if known) that has been breached:</td><td></td></tr>
<tr><td>Venue:

Charge or Claim is to be filed in:

(Tick one, if known)</td><td>☐ Employment Relations Tribunal
(for criminal matters or a civil claim for less than $50,000

Or

☐ Employment Relations Court
(for claims above $50,000.)</td></tr>
<tr><td>Remedy sought by the worker/ claimant/applicant

Attach further pages if necessary to outline details of the amount claimed</td><td>
<table>
<tr><th>Tick one or more boxes</th><th>Claim</th><th>Specify amount claimed</th></tr>
<tr><td></td><td>Wages (due/arrears/minimum wage)</td><td></td></tr>
<tr><td></td><td>Overtime</td><td></td></tr>
<tr><td></td><td>Allowances</td><td></td></tr>
<tr><td></td><td>Leave (specify type)</td><td></td></tr>
<tr><td></td><td>Redundancy pay</td><td></td></tr>
<tr><td></td><td>Damages</td><td></td></tr>
<tr><td></td><td>Unauthorised deductions</td><td></td></tr>
<tr><td></td><td>Other (specify)</td><td></td></tr>
</table>
</td></tr>
<tr><td>Name and Signature of the Claimant/ Applicant –

Must be witnessed by a

Labour Officer or Labour Inspector</td><td>……..
Print Name:

Witnessed by: ……..

Print Name: ……..

Labour Officer or Labour Inspector</td></tr>
<tr><td>Date</td><td></td></tr>
<tr><td>Office details</td><td></td></tr>
</table>

Office of the Attorney-General
Suvavou House
Suva

August 2025

EMPLOYMENT RELATIONS (AMENDMENT) BILL 2025

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 (**"the Act"**) was passed in 2007 and commenced on 1 October 2007. The Act overhauled Fiji's labour laws, repealed and consolidated employment related legislation including the Employment Act (Cap. 92), the Trade Disputes Act (Cap. 97), Wages Councils Act (Cap. 98), Trade Unions Act (Cap. 96), the Trade Unions (Recognition) Act 1998 and the Public Holidays Act (Cap. 110). Since the Act came into force, it has undergone eleven legislative amendments .

1.2 The documented consultations regarding the proposed amendments to the Act show that the tripartite partners of Fiji, represented by the Ministry of Employment, Productivity and Workplace Relations (**"Ministry"**), the Fiji Employers and Commerce Federation (FCEF) and the Fiji Trade Union Congress (FTUC) commenced a review of the Act in 2010. There has been over fourteen years of social dialogue in relation to the review of the Act.

1.3 From an employment law perspective, Fiji has had a chequered history. As a member of the International Labour Organization (**"ILO"**), its supervisory bodies including the Committee of Experts on the Application of Conventions (CEACR) have made numerous comments on the application of the international labour standards ratified by Fiji in its employment and related legislation. By choosing to ratify ILO Conventions, Fiji is committed to implementing such conventions in legislation and in practice. The ILO's supervisory bodies have provided guidance on the implementation of ratified conventions in compliance with international labour standards.

1.4 Since the inception of the Act, there have been various concerns raised by the CEACR and ILO's Committee on the Application of Standards (CAS) regarding certain provisions in the Act, the Public Order Act 1969 and the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013, which are not in compliance 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).

1.5 An example of legislative change that drew widespread criticism was the Employment Relations (Amendment) Act 2015 which repealed the 2007 version of Part 19 of the Act (Protection of Essential Services, Life and Property) and replaced it with a new Part 19.

1.6 In relation to Part 19 the concerns raised by ILO's CEACR include: -

(a) Provisions which allow compulsory conciliation or arbitration which are contrary to the voluntary nature of collective bargaining;

(b) Comments regarding section 191BQ which may result in the imposition of penal sanctions involving compulsory labour for having participated in strikes (by virtue of the general penal sanction in s.256*(a)* of the ERA and s.43(1) of Corrections Service Act 2006);

(c) Requests to review certain sections including provisions that relate to impeding industrial action; the penalty of imprisonment in case of staging an unlawful or possibly even lawful peaceful strike in services qualified as essential; excessively wide discretionary powers of the Minister with respect to the appointment and removal of members of the Arbitration Court and appointment of mediators, calling into question the impartiality of the dispute settlement bodies and compulsory arbitration in services qualified as essential.

1.7 Some of the concerns raised by the CEACR in relation to the Part 19 provisions amended in 2015 were addressed by amendments in the Employment Relations (Amendment) Act 2016. In addition, the comments of ILO's supervisory bodies relating to large number and scope of industries included in the definition of "essential services" in Part 19 has been rectified by the passing of the Employment Relations (Amendment) Act 2023.

1.8 In addition to concerns raised by the ILO, from 2006 to 2022 there were multiple complaints by trade unions (both in Fiji and internationally) regarding the lack of freedom of association in Fiji. In 2012, an ILO direct contact mission on freedom of association visited Fiji at the invitation of the Fiji Government. In September 2012, the Fiji Government suspended meetings, proposed new terms of reference and ultimately requested that ILO's direct contact mission leave Fiji.

1.9 In 2013, several workers' delegates to the International Labour Conference (ILC) made complaints and serious consideration was given to establishing a Commission of Inquiry which may have led to serious trade repercussions for Fiji. The Commission of Inquiry was averted due to the ILO Governing Body's decision not to proceed with such a process. An ILO tripartite mission to Fiji took place in January 2016.

1.10 The tripartite partners of Fiji signed the Joint Implementation Report Tripartite Agreement on 29 January 2016 which effectively averted a Commission of Inquiry for Fiji and closed the case under article 26 of the ILO Constitution.) The Joint Implementation Report provided, inter alia, that the parties would amend the Act and bring it in compliance with core ILO Conventions that were the subject of the Article 26 complaint and that any on-going review of labour laws, including the review of the Act would be conducted through the Employment Relations Advisory Board ("ERAB.") Following the signing of the Joint Implementation Agreement, ERAB was not convened and the legislative review of Fiji's employment laws was not finalized.

1.11 ILO's CAS observed serious allegations concerning the violation of basic civil liberties, including the arrests, assaults and detention of trade union officials and restrictions of freedom of association and noted with regret the Government`s failure to complete the process under the 2016 Joint Implementation Report .

1.12 The new Coalition Government came into power in Fiji in December 2022. The new Government indicated that a key priority of the Government was to finalise the review of the Act in line with international labour standards. In early 2023, ERAB was reconstituted, after a significant break, and the process of social dialogue to amend the Act recommenced. At the ILC's in 2022 and 2023, the CAS reiterated strong comments that Fiji bring its employment and related legislation in compliance with ILO Conventions it has ratified, including fundamental conventions.

1.13 The primary legislative intentions for amending the Principal Act are:—

- to ensure that the human rights as set out in the Constitution of the Republic of Fiji are protected, respected and fulfilled. These human rights include the right to fair employment practices, including human treatment and proper working conditions (section 20), the right to freedom of association (section 19), the right to work and earn a just minimum wage (section 33) and the rights of children to be protected from inter alia, hazardous and exploitative labour (section 41.)
- to protect vulnerable groups of workers in Fiji, which include migrant workers, domestic workers, seafarers and fishers, and workers in industries who are prone to exploitation, including the security sector, retail sector and the maritime sector.

- to recognize the important role of the private sector and employers in Fiji in creating jobs, generating income and driving economic growth in Fiji.
- to bring the Act in compliance with ILO Conventions ratified by Fiji.
- to take into consideration gender, inclusivity (including disability and sexual orientation, gender identity, gender expression and sex characteristics) and rights- based transformation. The Bill includes the introduction of leave that is specific to women (including menstrual leave and miscarriage leave), new provisions relating to "harassment" in the workplace and the widening of anti-discrimination provisions.
- to expedite the resolution of employment grievances, employment disputes, strikes and lockouts in essential services under Part 19, which is captured in Clause 105 of the Bill.
- to increase access to justice and to simplify and streamline the processes for the recovery of unpaid or underpaid wages and statutory entitlements, to be filed by labour inspectors or labour officers on behalf of workers in the Tribunal and Court, by using a new form in Schedule 9.
- to address difficulties faced by the Ministry in facilitating implementation of the Principal Act.

1.14 Due in part to jurisdictional limits, where there are significant breaches of the Act by a defaulting employer, the Ministry's officers face serious challenges with filing multiple criminal charges and civil claims for the recovery of wages and entitlements. In some cases, an employer may owe substantial wage arrears and/or entitlements in excess of one million dollars. The process of filing multiple criminal and civil actions to prosecute and recover wages and entitlements is a labour intensive and protracted process.

1.15 The Ministry cited cases of chronic underpayment of wages, non-payment of overtime and non-payment of entitlements under the Act, including leave. The proposed amendments to the Act aim to increase fines as a deterrent to offending, reserve terms of imprisonment as penalties for serious criminal offences and increase and improve enforcement mechanisms. The Act currently has low penalties for serious offences, such as a $100 fixed penalty fine under Schedule 8 for a failure to provide wage and time records (section 45) and a $1000-$5000 fine for non-payment of wages (section 247). The Bill proposes to increase fixed penalty fines to $1,000.

1.16 Amendments to the Act propose to increase the scope of enforcement mechanisms (including new provisions for garnishee orders and departure prohibition orders), bring the Act in compliance with international labour standards, increase access to justice and streamline proceedings.

2.0 CLAUSES

2.1 Clause 1 of the Bill makes provision for the short title, commencement and provides that the Principal Act is the Employment Relations Act 2007 which includes all amendments made to the legislation to date. If the Bill is 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 provides for amendments to paragraph (B) of the Preamble by including "trade union activities" or "employer activities".

2.3 Clause 3 inserted new section 2A to provide that the Act binds the State.

2.4 Clause 4 amends section 3 of the Principal Act by including the Fiji Corrections Service, and the Fiji Police Force meaning that officers of the Fiji Corrections Service and the Fiji Police Force are covered by the Principal Act in certain circumstances as an essential service under Schedule 7 and the new Part 19 introduced by the Bill.

2.5 Clause 5 includes new definitions and makes changes to existing definitions in section 4 of the Principal Act.

2.6 Clause 6 amends section 6 of the Principal Act by stating that a worker must voluntarily join a trade union of his or her choice and to have the right to bargain collectively. Section 6 also provides that when employing a child, an employer must recognise the best interests of a child and must create a supportive workplace.

2.7 Clause 7 amends section 8 of the Principal Act as it concerns the Employment Relations Advisory Board, particularly the issue of representation on the Employment Relations Advisory Board ("the Board").

2.8 Clause 8 amends section 9 of the Principal Act by clarifying the functions of the Board, including acting in compliance with international labour standards. In addition, section 9 is amended by repealing provisions that establish the Labour Management Consultation and Cooperation committee Board.

2.9 Clause 9 amends section 12 of the Principal Act by clarifying the issue of quorum in relation to the Board.

2.10 Clause 10 amends section 16 of the Principal Act by empowering the Permanent Secretary to delegate powers and duties to a labour inspector or a labour officer.

2.11 Clause 11 amends section 17 of the Principal Act by providing a power for the Permanent Secretary to compel the giving of information necessary for the effective administer the Act.

2.12 Clause 12 amends section 18 of the Principal Act by empowering a labour officer or labour inspector to commence a criminal or civil action to recover wages or for any statutory breach of the Principal Act by completing Form 9.

2.13 Clause 13 amends the Principal Act by inserting new section 18A which provides the appointment of labour inspectors and labour officer by the Permanent Secretary.

2.14 Clause 14 substitutes section 19 and inserts new section 19A into the Principal Act. Section 19 provides for the powers of the Permanent Secretary and officers. New section 19A provides for the powers to the labour officers to enter and inspect a place in certain circumstances and times.

2.15 Clause 15 inserts new sections 20A, 20B, 20C and 20D after section 20 of the Principal Act. New sections 20A, 20B, 20C and 20D establish the Employment Relations Fund a trust fund for the benefit of the workers.

2.16 Clause 16 amends section 22 of the Principal Act by sanctioning a person or a company who urges or prevails on a person to exclude or limit their rights or entitlements under the Principal Act and provides that any unreasonable restraint of trade clauses are void.

2.17 Clause 17 amends section 23 of the Principal Act by providing that an employer must provide to the worker a copy of his or her employment contract.

2.18 Clause 18 inserts new section 23A of the Principal Act by clarifying the issue of probation, that is, if a contract of service is over 12 months, then the probation period should be less than 3 months and that such probation period may be extended by a further period of three months.

2.19 Clause 19 amends section 24 of the Principal Act by providing that an employer who fails to comply with the duty to provide work is liable to pay a fine.

2.20 Clause 20 inserts a new section 24A of the Principal Act which provides that an employer is prohibited from publishing or making public any personal information of a worker after he or she resigns or his or her employment is terminated, without the worker's consent.

2.21 Clause 21 amends section 25 of the Principal Act by clarifying that the distribution of wages and entitlements owed to a worker on his or her death, must comply with the next of kin provisions provided in the Succession, Probate and Administration Act 1970.

2.22 Clause 22 substitutes section 26 of the Principal Act by clarifying circumstances in which an employer can pay remuneration to a worker while the worker is in unlawful detention or imprisonment.

2.23 Clause 23 amends section 28 of the Principal Act by deleting the phrase "expressed not to be" which has the effect of providing that in the case of a fixed contract, there is no presumption that a contract is for an indefinite duration.

2.24 Clause 24 amends section 29 of the Principal Act by making it clear that an employer who terminates a contract must provide the worker with written reasons for such termination. However, in the case of a worker who terminates his or her employment as per the terms and conditions of his or her contract, that worker need not provide reasons for terminating his or contract.

2.25 Clause 25 amends section 32 of the Principal Act by providing for situations where a worker is paid on a weekly basis but not on a daily or monthly basis.

2.26 Clause 26 deletes section 33 from the Act.

2.27 Clause 27 inserts a new Divion 1A after section 35. The new Division 1A provides for summary dismissal, unfair dismissal, meaning of dismissed, genuine redundancy and what constitutes unfair dismissal. It includes the rights of the payment of wages when the worker was dismissed only under lawful cause. It also extends to the criteria for considering harshness.

2.28 Clause 28 amends section 37 of the Principal Act by providing that certain contracts must be in writing. This amendment provides for another category, that is, a contract between a Fijian worker and employment agency or a third party.

2.29 Clause 29 substitutes section 39 of the Principal Act by making it clear that the transfer of a written contract from one employer to another requires the consent of the worker and if that worker is a trade union member then the trade union must be consulted and be involved in all dealings relating to such transfer.

2.30 Clause 30 amends section 40 of the Principal Act by requiring that the employer must pay for the costs associated with repatriating a deceased worker during the contracted term.

2.31 Clause 31 substitutes section 41 of the Principal Act by providing that an employer who terminates a contract under certain circumstances, which are not in compliance with the Principal Act, may be fined.

2.32 Clause 32 inserts new Division 3 that includes new sections 41A, 41B, 41C, 41D and 41E in the Principal Act which make provision for special conditions in relation to seafarers including hours of work, hours of rest and paid annual leave for seafarers.

2.33 Clause 33 inserts new sections 75A and 75B of the Principal Act by providing a duty for an employer eliminate sexual harassment of a worker with the addition of the implementation of a sexual harassment national policy.

2.34 Clause 34 amends section 76 of the Principal Act by sanctioning an employer who fails to prevent or stop sexual harassment of a worker by the imposition of fines.

2.35 Clause 35 amends section 78 of the Principal Act by providing clarity on unlawful discrimination in rates of remuneration.

2.36 Clause 36 amends section 42 of the Principal Act by highlighting the object of Part 6 of the Principal Act to provide for the offences of withholding or failing to pay wages.

2.37 Clause 37 amends section 43 of the Principal Act by providing various modes by which a worker can be paid by an employer including, but not limited to, a money transfer service.

2.38 Clause 38 adds a new section 43A which deals with cases of chronic and substantial non-payment or underpayment of wages and entitlements (including leave and allowances.) The penalties for a breach of section 43A are significant with fines of up to $100,000 or $1,000,000 for natural persons and body corporates and a term of imprisonment not exceeding five years or both.

2.39 Clause 39 amends section 44 of the Principal Act to require that a wages statement is provided to a worker so that that it is cognizant of the timing of paying a worker's wages in practice and repeals the provision that allowed payment of wages on a monthly basis.

2.40 Clause 40 substitutes section 45 of the Principal Act by requiring an employer to provide additional information in the wages and time record, including deductions and leave accruals. Further, it sanctions an employer, for example, who keeps records such as multiple records which are false in nature, partially or in full.

2.41 Clause 41 amends section 47 of the Principal Act by making it clear that an employer may make deductions in certain circumstances, provided that it is no more than 50% of a worker's wage.

2.42 Clause 42 amends section 49 of the Principal Act by providing for five circumstances in which an employer must not deduct from a worker's wages. An employer's failure to comply may be the subject of a fine.

2.43 Clause 43 amends section 55 of the Principal Act by providing that an employer who fails to comply with a wages regulation order contravenes the provision and may be liable for a fine.

2.44 Clause 44 amends section 107 of the Principal Act relating to proposed redundancies and provides that such redundancy should not have an adverse effect on the remaining workers such as increased workload, shortened timeframes or other relevant health and safety concerns. In addition, section 107 is amended to make provision for circumstances in which a termination of employment shall not be considered a redundancy.

2.45 Clause 45 amends section 108 of the Principal Act by including additional provisions in relation to redundancy pay.

2.46 Clause 46 amends section 111 of the Principal Act by strengthening provisions concerning the submission of an employment grievance.

2.47 Clause 47 amends section 114 of the Principal Act by making an employer liable to pay a fine if the employer fails to provide written reasons for a worker's dismissal.

2.48 Clause 48 amends section 122(1) of the Principal Act by making it clear that a change or alteration of a trade union name which is in the opinion of the Registrar, offensive, insulting or racially or ethnically, must also not contravene any other written law.

2.49 Clause 49 amends section 123 of the Principal Act that provides for amalgamation of a trade union with another trade union must be supported by a secret ballot with more than 50% of all members of each applicant trade union.

2.50 Clause 50 substitutes section 124 of the Principal Act by empowering a national trade union to be a member or an affiliate of an international federation of trade unions.

2.51 Clause 51 amends section 125 of the Principal Act by making it clear that the Registrar of Trade Unions must facilitate consultations in good faith when the Registrar exercises the power to refuse registration of a trade union.

2.52 Clause 52 amends section 127 of the Principal Act by repealing certain provisions that limit who may be an officer of a trade union.

2.53 Clause 53 amends section 128 of the Principal Act by strengthening the provision relating to inspection of accounts.

2.54 Clause 54 amends section 129 of the Principal Act by empowering the Registrar of Trade Union to extend the time required to submit their returns for up to 3 months.

2.55 Clause 55 introduces a new section 130A of the Principal Act by clarifying the rules regarding the payment of bargaining fees by a worker to a trade union, if a worker who is not a member of a particular trade union takes the benefit of a provision in a collective agreement to which a particular trade union is a party.

2.56 Clause 56 amends section 133 of the Principal Act by clarifying that prior to the cancellation or suspension of a trade union, the Registrar must consult the Board.

2.57 Clause 57 amends section 136 of the Principal Act by clarifying that the Registrar may refer a matter to the tribunal if a trade union disputes the appointment of a liquidator in respect of a trade union.

2.58 Clause 58 amends section 137 of the Principal Act by removing "Consolidated Fund" and substituting "Employment Relations Fund"

2.59 Clause 59 repeals Part 15A that provided for registration of federation of trade unions and employers.

2.60 Clause 60 inserts the word 'bargaining' in the heading of Division 1 in Part 16 of the Principal Act.

2.61 Clause 61 amends section 150 of the Principal Act by making it clear that parties to an employment dispute must use their best endeavours to resolve such a dispute.

2.62 Clause 62 amends section 151 of the Principal Act by providing that, where a party requests information whilst bargaining for a collective agreement, such information must be provided within 30 days.

2.63 Clause 63 substitutes section 156 of the Principal Act and provides that there are conditions for collective agreements and expiry dates.

2.64 Clause 64 repeals section 159 of the Principal Act which has the effect of excluding the issue of consolidation of bargaining.

2.65 Clause 65 amends section 160 of the Principal Act by providing that a collective agreement shall continue to be in force until it is replaced by another collective agreement.

2.66 Clause 66 repeals section 161 of the Principal Act.

2.67 Clause 67 amends section 162 of the Principal Act by deleting reference to the expiry of the collective agreement, in line with the amendments made for sections 156, 160 and 161 of the Principal Act.

2.68 Clause 68 repeals section 165.

2.69 Clause 69 repeals section 166(5) so that the terms of a collective agreement shall no longer be an implied condition of a contract of service.

2.70 Clause 70 substitutes section 169 to provide that an employer shall not report a dispute in relation to any issue which has been included in a notice of secret ballot that has already been provided to the Registrar by a trade union.

2.71 Clause 71 amends section 170 of the Principal Act by clarifying the role of the Mediator and the tribunal in respect of an employment dispute.

2.72 Clause 72 amends section 174 of the Principal Act by adding two objects of Part 18 which are to ensure that a strike or a lockout are resolved expeditiously and that employers recognize the worker's right to strike and the worker recognizes the right of the employer to lockout.

2.73 Clause 73 amends section 175 of the Principal Act by providing, inter alia, that a simple majority of votes cast is required when a secret ballot to strike is carried out and that it must be conducted by officials of a trade union and be observed by labour inspectors or labour officers who have been authorised by the Registrar.

2.74 Clause 74 amends section 176 of the Principal Act by providing that in the case of a lockout, the parties shall use their best endeavours to engage in good faith negotiations to attempt to resolve the matter.

2.75 Clause 75 substitutes section 177 of the Principal Act to make reference to unlawful strike and lockouts.

2.76 Clause 76 amends section 180 of the Principal Act to provide that the tribunal, instead of the Minister, shall have the power to declare a strike or a lockout unlawful.

2.77 Clause 77 amends section 181 of the Principal Act by providing that after a strike or lockout has been declared unlawful, employers must allow workers to return to work within 24 hours.

2.78 Clause 78 repeals section 184 of the Principal Act which deals with the prohibition of expulsion of members.

2.79 Clause 79 inserts new section 90A of the Principal Act by providing for the best interests of the child principle in relation to the worst forms of child labour.

2.80 Clause 80 substitutes section 91 of the Principal Act by providing for the prohibition on the worst forms of child labour.

2.81 Clause 81 amends section 92 of the Principal Act by increasing the minimum age for employment from 15 to 16 years

2.82 Clause 82 amends section 93 of the Principal Act by amending the age for limitations on night work to 13-16 years of age

2.83 Clause 83 substitutes section 94 of the Principal Act by making it clear that a trade union shall not allow a child to continue to be a member of a trade union if the trade union receives a written notice from the parent, guardian or Ministry, that the child has joined a trade union against the wishes of the parent or guardian.

2.84 Clause 84 amends section 95 of the Principal Act by making it clear that a labour inspector may issue a notice to an employer in respect of certain restrictions in relation to the employment of children

2.85 Clause 85 amends section 96 of the Principal Act by imposing a fine on an employer who fails to comply with the wishes of the parent or guardian not to employ their child.

2.86 Clause 86 inserts a new section 96A of the Principal Act by empowering a labour officer to remove a child from a workplace if the labour officer is of the opinion that the child is engaged in prohibited child labour. The new section provides that a labour inspector may assist with making arrangements for transportation to a place of safety and for medical assistance of the child who has been removed from the workplace.

2.87 Clause 87 substitutes section 97 of the Principal Act by providing for the hours of work for a child who is employed, including minimum wage, holidays and annual leave on a pro rata basis.

2.88 Clause 88 amends section 98 of the Principal Act by making clear that a child in certain age groups cannot be employed between the hours of 6pm and 6am or 7pm and 7am respectively, to ensure that the child has adequate rest.

2.89 Clause 89 amends section 99 of the Principal Act by making clear that an employer of children must maintain a register which should have matters such as the name and address of each, rates of pay, hours of work and all listed matters.

2.90 Clause 90 inserts a new Part 16A, which includes machinery provisions which allow a prospective worker to decide whether he or she will be employed either under an individual contract of service or under a collective agreement. The new Part 16A is a major departure from current Fiji law, which in practice requires that a worker must have both an individual contract of service and may elect to join a trade union, in which case, the relevant collective agreement will apply, in addition to a contract of service.

2.91 Clause 91 repeals and replaces the current Part 19 of the Principal Act which deals with essential services. The new Part 19 contains provisions that govern employment grievances, employment disputes and collective bargaining in essential services and the timeframes contained in Part 19 have been streamlined so that proceedings may be expedited. The new Part 19 also applies in part to corrections officers and police officers in relation to employment grievances and employment disputes.

2.92 Clause 92 substitutes section 59 of the Principal Act by increasing annual leave from 10 to 12 days per annum and clarifying that annual leave shall be calculated on a pro rata basis for a worker who is terminated.

2.93 Clause 93 amends section 60 of the Principal Act by providing that where a worker has worked for at least a month then that worker's annual leave accrues and be calculated on a pro rata basis.

2.94 Clause 94 substitutes section 61 of the Principal Act by providing that a worker is deemed to be in continuous work or is employment is deemed not to be discontinued if the worker is employed in the workplace by or on behalf of the owner or by an entity with the same or related owners, if within three months of the worker's termination, the worker is re-engaged in the same workplace.

2.95 Clause 95 substitutes section 62 of the Principal Act by providing that a worker can paid up to fifty per cent of his or her accrued annual leave in lieu of taking annual leave. Clause 42 amends section 67 of the Principal Act by providing that a worker who works on a public holiday is entitled to be paid the single rate in addition to the entitlement under subsection (1) and the worker shall be entitled to take an alternative one day's leave.

2.96 Clause 96 amends section 67 of the Principal Act by providing that a worker who works on a public holiday is entitled to be paid the single rate in addition to the entitlement under subsection (1) and the worker shall be entitled to take an alternative one day's leave..

2.97 Clause 97 amends section 68 of the Principal Act by providing that where a worker has completed more than 3 months continuous service with the same employer may use 3 of her 10 days paid sick leave during each year of service if she has severe or debilitating menstruation.

2.98 Clause 98 amends section 68A of the Principal Act by providing for family care leave of 3 days where a worker whose immediate family member is incapacitated due to sickness, injury or a medical condition.

2.99 Clause 99 amends section 69 of the Principal Act by providing that a worker's bereavement leave entitlement cannot be accumulated and be unused and it will automatically lapse in the succeeding year unless an arrangement is agreed to between the employer and the worker or between the employer and a trade union.

2.100 Clause 100 amends section 70 of the Principal Act by providing that an employer who does not keep a record of leave and entitlements is liable to pay a fine.

2.101 Clause 101 amends section 73 of the Principal Act by providing that Part 8 does not apply to workers employed in management or executive positions and who are paid a salary above $31,200 per annum before deductions.

2.102 Clause 102 amends section 101 of the Principal Act by strengthening the provisions on the rights of women on maternity leave.

2.103 Clause 103 repeals section 101A of the Principal Act which provided for paternity leave of men.

2.104 Clause 104 inserts new sections 101B and 101C in the Principal Act by providing for protection for pregnant or breastfeeding women from performing work that is harmful and for nursing mothers.

2.105 Clause 105 amends section 104 of the Principal Act by strengthening protection for women who are not fit to return to work following maternity leave. Clause 68 amends section 105 of the Principal Act by prescribing fines for a breach of the section

2.106 Clause 106 amends section 105 of the Principal Act by prescribing fines for a breach of the section.

2.107 Clause 107 amends the Act by inserting new Parts 21A and 21B comprising sections 257A, 257B, 257C, 257D, 257E, 257F, 257G, 257H, 257I, 257J and 257K. Part 21A creates a civil penalty scheme for contravention of specified provisions and offences. Part 21B makes provision for a labour officer or a labour inspector to issue a fixed penalty notice.

2.108 Clause 108 amends section 246 of the Principal Act to clarify the offence and the applicable penalty.

2.109 Clause 109 amends section 247 of the Principal Act by making the employer liable to pay a high fine if the employer fails to pay wages or imposes conditions upon the expenditure of the worker's wages

2.110 Clause 110 substitutes section 249 of the Principal Act by providing that a worker who owes money to an employer is liable to pay a fine to an employer, unless the worker and the employer mutually agree to a timeline for the worker to pay.

2.111 Clause 111 amends section 250 of the Principal Act by providing that a person who, in connection with an unlawful strike or lockout causes, procures, counsels another worker to take part in a strike or lockout is liable to pay a fine.

2.112 Clause 112 adds a new section 255A in the Principal Act which makes it an offence to cause a person to provide forced labour or services..

2.113 Clause 113 section 256 of the Principal Act by increasing the fine payable by an individual or a company, in the absence of a specific penalty and removes the term of imprisonment.

2.114 Clause 114 amends section 193 of the Principal Act by providing that mediation services can also be provided to other relevant areas or fields where mediation services are required.

2.115 Clause 115 amends section 194 of the Principal Act by making clear that only authorized representatives of parties to the mediation proceedings can appear before the Mediator.

2.116 Clause 116 amends section 196 of the Principal Act by clarifying the role of the Mediator and the Permanent Secretary in relation to the amendment of a settlement agreement. Clause 109 amends section 201 of the Principal Act by making it clear that a person who is authorized to finalise terms of settlement on behalf of the employer or the worker and fails to appear is liable to pay a fixed penalty fine.

2.117 Clause 117 amends section 201 of the Principal Act by making it clear that a person who is authorized to finalise terms of settlement on behalf of the employer or the worker and fails to appear is liable to pay a fixed penalty fine.

2.118 Clause 118 amends section 203 of the Principal Act by removing the requirement of non-legal people to be on the tribunal and providing for a tribunal which has not less than 5 people.

2.119 Clause 119 amends section 211 of the Principal Act by widening the powers of the tribunal and increasing the monetary jurisdiction of the tribunal to $50,000 from $40,000.

2.120 Clause 120 amends section 214 of the Principal Act by making an employer liable to pay high fines for failing to pay wages or other money due or other money payable low than the rates due under the Principal Act. In addition, the amendments provide that an employer is liable to pay both fines and wages and entitlements owing to a worker and that fines or a portion of fines may be awarded to a worker.

2.121 Clause 121 amends section 215 of the Principal Act by providing that when the tribunal or court makes a determination in relation to a claim under section 214 and where the employer fails to keep and produce accurate wages and time records then the worker's statement can be held to be accurate and correct as far as it relates to claims for wages and entitlements.

2.122 Clause 122 amends section 218 of the Principal Act by making the transfer of cases from the tribunal to the court easier provided it is in the interests of justice to do so or in cases where the matter exceeds or is outside the jurisdiction of the tribunal.

2.123 Clause 123 amends section 220 of the Principal Act by widening the jurisdiction of the Employment Relations Court.

2.124 Clause 124 substitutes section 221 of the Principal Act and provides for the enforcement mechanisms such as a garnishee order, sequestering of property, departure prohibition order and the recovery of monies owed to a worker through the distress and sale of the personal property of the employer.

2.125 Clause 125 amends section 222 of the Principal Act by amending removing Judge and including "by Registrar of the court".

2.126 Clause 126 amends section 223 of the Principal Act by increasing the timeframe from 3 years to 6 years for a worker to recover wages owed by an employer to the worker

2.127 Clause 127 inserts section 226A for the powers of the registrar and its assistants of the tribunal.

2.128 Clause 128 amends section 230 in the Principal Act by providing that this section deals with both employment grievance remedies and employment dispute remedies.

2.129 Clause 129 amends section 238 of the Principal Act by providing that the Chief Justice, in consultation with the Chief Registration, may makes rules from time to time.

2.130 Clause 130 amends section 242 of the Principal Act by making clear procedures when filing an appeal from the Employment Relations Tribunal to the Employment Relations Court.

2.131 Clause 131 deletes Part 20A.

2.132 Clause 132 inserts section 253A and 253B that provides for the enduring obligation of a director of a body corporate for a pecuniary penalty or fine in certain circumstances.

2.133 Clause 133 substitutes section 262 of the Principal Act by increasing the period in which to file proceedings under the Principal Act from 12 months to 6 years.

2.134 Clause 134 amends section 264 of the Principal Act by clarifying the regulation making powers of the Minister as it concerns codes of practice, guidelines, orders or Commissions.

2.135 Clause 135 inserts section 267, 268, 269 and 270 to provide for savings and transitional provisions in respect of this Employment Relations (Amendment) Act.

2.136 Clause 136 adds a new Schedule 2A and 2B to the Principal Act by providing for the particulars of a written contract for an individual employment contract for seafarers.

2.137 Clause 137 amends Schedule 4 to the Principal Act by clarifying an aspect of the Standard Clauses on Procedures for Settlement of Employment Grievances.

2.138 Clause 138 amends Schedule 5 to the Principal Act which deals with notifying the Permanent Secretary on the dispute within 12 months.

2.139 Clause 139 amends Schedule 6 by adding "Corrections Service and Fiji Police Force."

2.140 Clause 140 amends Schedule 7 to the Principal Act which deals with fixed penalties and increases the fixed penalty fine.

2.141 Clause 141 substitutes Schedule 8 to the Principal Act.

2.142 Clause 142 substitutes Schedule 9 which provides for Form 9, to commence a charge or claim under the Principal Act.

3.0 MINISTERIAL RESPONSIBILITY

3.1 The Act comes under the responsibility of the Minister responsible for Employment, Productivity and Workplace Relations.

S. D. TURAGA
Acting Attorney General

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