**EMPLOYMENT RELATIONS BILL 2012**

**JUNE 2012**

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**A BILL**

**An Act to provide for a legislative framework which promotes the well-being and prosperity of all people in the Republic of Vanuatu by –**

1. **Creating a fair and optimum working environment through the maintenance of minimum and acceptable labour standards that are fair to both workers and employers, with the view to building productive and sustained employment relations;**
2. **Assisting in the prevention and elimination of discrimination in employment.**
3. **Providing for a framework of rights and duties for the all parties engaged in employment relations to regulate the relationship and encourage collective bargaining in good faith and co-determination based on observance of agreements as well as effective prevention and efficient settlement of employment related disputes;**
4. **Establishing the Mediation Service, the Employment Relations Tribunal and Employment Division of the Court to carry out their respective powers, functions and duties;**
5. **Encouraging and facilitating consultation between labour and management in the workplace for better employment relations;**
6. **Complying with international obligations, relevant laws and the Constitution of the Republic of Vanuatu; and**
7. **For related matters.**

**­­­­­­­­­­­­­­­**

ENACTED by the Parliament of the Republic of Vanuatu –

# **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the Employment Relations Act 2012.

### **2. Commencement**

(1) This Act commences on a date or dates appointed by the Minister by notice in the *Gazette*.

(2) The Minister may appoint different dates for the commencement of different provisions of this Act.

### **3. Application**

(1) Subject to subsection (2) this Act applies to all employers and workers in workplaces in the Republic of Vanuatu, including the Government, other Government entities, Vanuatu Mobile and Police Forces, local authorities and statutory authorities, except where expressly stated.

(2) Where a worker’s employment is covered by this Act and any of the:

(a) *Public Service Act*;

(b) *Police Act*;

(c) *Teaching Service Act;*

(d) *Nurses Act*;

(e) *Judicial Services and Courts Act*;

(f) *State Law Office Act;*

(g) *Public Prosecutor Act;* or

(f) *Maritime Act,*

then subject to subsections (3) and (4), if any inconsistency arises between one or more provisions of this Act and one or more provisions of any of the abovementioned Acts - the meaning of the relevant provisions in the abovementioned Acts will apply.

(3) Where the meaning of any provision in the above mentioned Acts can be interpreted consistently with this Act, that meaning shall be preferred.

(4) [Part 2](#_PART_2_–) of this Act applies to all persons without exception and notwithstanding any inconsistency set out in subsection (2).

### **4. Interpretation**

In this Act, unless the context otherwise requires –

“aiding and abetting” means inciting, instigating, aiding, abetting, counselling or procuring, or by act or omission in any way directly or indirectly knowingly being concerned in or a party to, the commission of an offence against this Act or a breach of a contract of employment;

“birth” means the issue of a child or children, whether alive or dead, and for the purposes of this Act birth commences and ends on the actual day of birth, and when two or more children are born commences and ends on the day of the birth of the last born of such children;

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

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

1. the ability of a worker to perform the duties for which they were hired to a satisfactory level that would be reasonably expected by an employer; or
2. the behaviour by a worker that would reasonably be expected by an employer in the workplace.

“casual worker” means a worker who works without fixed hours or has an irregular pattern of employment;

“compassionate leave” means paid leave from work due to a bereavement of a relative or to care for a dependent who is seriously ill or injured.

“Commissioner of Labour” means the Commissioner of Labour responsible for employment relations matters;

“child” means a person who is under the age of 18 years; “child labour” means work by a child under the age of 18 that is harmful to the child’s physical or mental development and includes work that interferes with the child’s education.

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

1. prescribes (wholly or in part) the terms and conditions of employment of workers of one or more descriptions;
2. regulates the procedure to follow in negotiating terms and conditions of employment; or
3. combines *(a)* and *(b);*

“collective bargaining” means meeting and negotiating with a view to concluding a collective agreement or reviewing or renewing an agreement;

“contract of employment” means a written or oral contract, whether expressed or implied, to employ or to serve as a worker whether for a fixed or indefinite period, and includes task or piecework or a contract for services determined by the Tribunal to be a contract of employment;

“contract period” means the period of time or number of days or hours to be worked for which expressly or by implication a contract of employment is made;

“Council” means the Tripartite Labour Advisory Council established under [section **8.**](#_8._Establishment)

“Court” means the Employment Division of the Supreme Court of Vanuatu

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

“disability” means physical disability or impairment, physical illness, intellectual or psychological disability or impairment or the presence in the body of organisms capable of causing illness.

“discrimination” means any distinction, exclusion or preference based on a prohibited ground set out in [subsection 7(3)](#_7._Fundamental_Rights), which has the effect of nullifying or impairing equality of opportunity or treatment in employment and occupation.

“dismissal” means any termination of employment by an employer including those under [section 22;](#_22._Subcommittees_and)

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

“duress”, in a worker’s employment, means if that worker’s employer or a representative of that employer directly or indirectly -

1. makes membership of a union or a particular union a condition to be fulfilled if that worker wishes to retain his or her employment;
2. makes non-membership of a union or a particular union a condition to be fulfilled if that worker wishes to retain his or her employment; or
3. exerts undue influence on that worker, or offers, or threatens to withhold, or does withhold, a monetary incentive or advantage to or from that worker, or threatens to or does impose a monetary disadvantage on that worker, with intent to induce that worker –
   1. to become or remain a member of a union or a particular union;
   2. to cease to be a member of a union or a particular union;
   3. not to become a member of a union or a particular union;
   4. in the case of a worker who is authorised to act on behalf of workers, not to act on their behalf or cease to act on their behalf;
   5. on account of the fact that the worker is, or, as the case may be, is not a member of a union or a particular union, to resign or leave from any employment;
   6. to participate in the formation of a union; or
   7. not to participate in the formation of a union;

“eligible for membership” means qualified by age and occupation and in all other respects to be a voting member of a registered trade union in accordance with the union constitution and rules;

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

“employer” means a corporation, company, partnership, incorporated association or individual by whom a worker is employed under a contract of employment; and includes –

1. the Government;
2. other Government entities;
3. a local authority;
4. a statutory authority;
5. the agent or authorised representative of a local or foreign employer;

“employer organization” means a group of not less than 5 employers the principal object of which is to regulate the relationship between ⎯

1. employers and workers; or
2. employers,

irrespective of whether such organization would, if this Act had not been enacted, have been deemed to have been an unlawful organization by reason of some one or more of its objects being in restraint of trade;

“employment” means the performance by a worker of a contract of employment;

“employment dispute” mean a dispute or difference between or amongst employers, alleged employers, workers, alleged workers, former workers, job applicants and registered trade unions about employment, non-employment, terms of employment, or conditions of labour and without limiting the generality of that statement, includes a dispute about:

1. compliance with the provisions relating to collective bargaining in [Part 16](#_PART_16_–_1) of this Act, including with respect to bargaining in good faith and in accordance with any applicable code of good faith;
2. the dismissal of a worker;
3. the validity and lawfulness of the reason for termination of a contract of employment in accordance with [Part 7](#_PART_7_–);
4. discrimination within the terms of [Part 11](#_PART_11_–);
5. sexual harassment within the terms of [section 99](#_99.__Exceptions);
6. duress in employment due to membership or non-membership of a trade union or participation in union activities;
7. the breach of any of the fundamental principles and rights listed in [Part 2](#_PART_2_–) of this Act; or
8. misrepresentation of an employment relationship under [section 47](#_47._Misrepresenting_employment);

“Employment Tribunal” or “Tribunal” means the Employment Relations Tribunal constituted under [section 198;](#_198._Establishment_of)

“essential service” means a service listed in Schedule 4;

“executive committee” means the body established under the constitution of a union to manage the affairs of the trade union;

“family” means the spouse or partner, dependent or any child of a worker;

“forced labour” means all work or service that is exacted from any person under the threat of any penalty and is not offered voluntarily but does not include –

1. any work or service exacted in accordance with compulsory military service laws for work of a purely military character;
2. any work or service which forms part of the normal civic, traditional or religious obligations;
3. any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the work or service is carried out under the supervision and control of a public authority and that the person is not hired to or placed at the disposal of private individuals, companies or associations;
4. any work or service exacted in cases of emergency, such as war, calamity, threatened calamity, fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstances that would endanger the existence or well-being of the whole or part of the people of the Republic of Vanuatu;
5. communal services of a kind performed by members of the community in the direct interest of the community in accordance with their rules or customary practices;

“foreign contract of employment” means a contract of employment made within the Republic of Vanuatu, and to be performed wholly or partially outside the Republic of Vanuatu and any contract of employment with a foreign state;

“full-time worker” means a person who is employed under a contract of employment to work 35 hours or more per week and who is not a casual worker.

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

“HIV/AIDS screening” includes measures whether direct (HIV testing) or indirect (assessment of risk-taking behaviour), or asking questions about tests already taken or about medication to determine whether a worker has the condition;

“indirect discrimination” means any apparently neutral situation, regulation or practice which in fact results in unequal treatment of persons with certain characteristics that occurs when the same condition, treatment or criterion is applied to everyone, but results in a disproportionate impact on one or more persons on the grounds set out in [subsection 7(3)](#_7._Fundamental_Rights) and is not an inherent requirement of the job;

“industry” includes ⎯

1. a business, trade, manufacture, workplace or calling of employers;
2. a calling, service, employment, handicraft, occupation or vocation of workers;
3. a branch of an industry; and
4. a group of industries;

“injure” for the purposes of [section 244](#_244.__Intimidation) includes injury to a person in respect of the person’s business, occupation, employment or other source of income, and includes any actionable wrong;

“intimidate”, for the purposes of [sections 244](#_244.__Intimidation) and [245](#_245.__Peaceful), means to cause in the mind of a person a reasonable apprehension of injury to the person or to a member of the person’s family or to any of the person’s dependants or violence or damage to a person or property;

“Judicial Service Commission” means, the Judicial Service Commission constituted under Chapter 8, clause 48 of the Constitution of the Republic of Vanuatu.

“labour inspector” means a labour inspector designated for the purpose of this Act;

“labour officer” means a labour officer designated for the purpose of this Act;

“local authority” means a municipal council, town council or a rural authority;

“lock-out” means the act of an employer ⎯

1. in closing the employer’s place of business, or suspending or discontinuing the employer’s business;
2. in discontinuing the employment of workers employed by the employer in consequence of a dispute;
3. in breaking any of the employer’s contracts of service; or
4. in refusing or failing to engage workers for any work for which the employer usually employs the worker,

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

“Mediator” means a Mediator appointed under [section 189](#_189._Mediation_Service) and includes the Chief Mediator;

"medical practitioner" means a medical practitioner registered as a health practitioner under the Health Practitioners Act, to practice medicine and/or surgery;

‘minimum wage’ means the minimum sum payable to a worker for work performed or for services rendered during the worker’s normal hours of work, whether calculated on the basis of time or output;

“Minimum Wage Order” means an Order made by the Minister pursuant to [section 28](#_28._Minister’s_power);

“Ministry” means the Ministry responsible for the administration of this Act;

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

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

“oral contract” means a contract of employment which is not evidenced in writing;

“outworker” means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired or adapted for sale in the person’s own home or on other premises not under the control or management of the person who gave out the materials or articles;

“part-time worker” means a person who is employed under a contract of employment on a part-time basis for a specified number of hours a day or specified number of hours or days a week and is not a casual worker or a full-time worker;

“party” with reference to an employment dispute, includes ⎯

1. a worker;
2. an employer;
3. a registered trade union; or

“piece work” means any work the pay for which is fixed at a rate based on the output of units of work, payable at a set monetary amount for each unit of work

“piece worker” means any worker who undertakes piece work;

“Port Vila Statement on Decent Work” means the Port-Vila Statement on Decent Work made by the Government, Employers and Workers from the International Labour Organisation’s Pacific Island member States on 9th February 2010.

“public authority” includes a Ministry or a Department of Government or a local authority or a commercial statutory authority or a government commercial company or a government company;

“public holiday” means a public holiday declared as such by the President’s Office and includes a special public holiday declared under [section 88](#_88._Special_public);

“redundancy” means the dis-establishment of a job for economic, technological, structural or other operational requirements of an [enterprise](http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/s12.html#enterprise) but does not include the dis-establishment of a job at the conclusion of a fixed-term contract of employment;

“register” means the register of trade unions and employer organisations kept under [section 123](#_123._Register_of);

“registered office” means the office in the Republic of Vanuatu of a registered trade union as the head office of the trade union or of a registered employer organisation as the head office of the employer organisation ;

“registered postal address” means the postal address in the Republic of Vanuatu of a registered trade union or registered employer organisation;

“registered trade union” means a trade union registered as a trade union under [section 123](#_123._Registration_1);

“registered employer organization” means an employer organization registered as an employer organization under [section 123](#_123._Registration_1).

“Industrial Registrar” means the Industrial Registrar appointed under [Part 13](#_PART_13_-) of this Act.

“Registrar of the Court” means the Registrar of the Supreme Court responsible for matters within the Employment Division.

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

1. time and piece wages, overtime, bonus or other special payments;
2. allowances, fees, commission, or any other payment, whether in one sum or several sums, and whether paid in money or not;
3. the value of a house, accommodation or the supply of food, fuel, light, water or medical attendance, or amenity or services;
4. a contribution paid by the employer on the employer’s own account to a pension fund or provident fund;
5. a travelling allowance or the value of a travelling concession;
6. a sum payable to the worker to defray special expenses incurred by the worker by the nature of the worker’s employment; or
7. a gratuity payable on discharge or retirement.

“sexual harassment” means when a worker is sexually harassed in his or her workplace, or places where workers are gathered for work-related purposes including social activity, when an employer or its representative or a co-worker –

1. makes a request of a worker for sexual intercourse, sexual contact or any other form of sexual activity which contains an implied or overt –
   1. promise of preferential treatment in that worker’s employment;
   2. threat of detrimental treatment in that worker’s employment; or
   3. threat about the present or future employment status of that worker;
2. by the use of a word (whether written or spoken) of a sexual nature or materials of a sexual nature;
3. by physical behaviour or gestures of a sexual nature; or
4. creates an intimidating, hostile or humiliating work environment by conduct, word or both on the basis of gender,

that subjects the worker to behaviour which is unwelcome or offensive to that worker (whether or not that is conveyed to the employer, its representative or the perpetrator) and which is either repeated or of such a nature that it has a detrimental effect on the worker’s employment, job performance or job satisfaction; In this context, “detrimental effect” includes the creation of an environment which affects a worker’s physical, emotional or mental health and well-being;

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

“social protection” means the set of public measures that a society provides for its members to protect them against economic and social distress that would be caused by the absence or a substantial reduction of income from work as a result of various contingencies (sickness, maternity, employment injury, unemployment, invalidity, old age, and death of the breadwinner); the provision of health care; and, the provision of benefits for families with children;

“strike” means the act of a number of workers who are in the employment of the same employer or different employers ⎯

(a) in discontinuing their employment either wholly or partially, or in reducing the normal performance of it;

(b) in breaching their contract of employment, which results in a reduction or discontinuance in the work of the employer;

(c) in refusing or failing after such discontinuance to resume or return to their employment;

(d) in refusing or failing to accept engagement for work in which the workers are usually employed; or

(e) in reducing their normal output or their normal rate of work with the intention of disrupting the work;

if the act is intended due to a combination, agreement, common understanding or concerted action, expressed or implied, made or entered into by the workers; but does not include a union meeting agreed to between a trade union and the employer;

“strike benefit” means a financial or other benefit given by a trade union to a member of the trade union in consideration of a strike or lock-out;

“trade union” means the union of a group of not less than 7 workers the principal object of which is to regulate the relationship between ⎯

1. workers and employers; or
2. workers,

irrespective of whether such union would, if this Act had not been enacted, have been deemed to have been an unlawful union by reason of some one or more of its objects being in restraint of trade;

“Vanuatu Chamber of Commerce and Industry” means the National Council of the Chambers of Commerce and Industry established under the *Chambers of Commerce and Industry of Vanuatu Act* 1995.

“wage period” means the period in respect of which wages earned by a worker are payable;

“wages” means the salary which is payable to a worker for work done in respect of the worker’s contract of employment but does not include ⎯

1. the value of a house, accommodation or the supply of food, fuel, light, water or medical attendance, or amenity or services;
2. a contribution paid by the employer on the employer’s own account to a pension fund or provident fund;
3. a travelling allowance or the value of a travelling concession;
4. a sum payable to the worker to defray special expenses incurred by the worker by the nature of the worker’s employment; or
5. a gratuity payable on discharge or retirement;

“week” means a period of 7 consecutive days;

“worker” means a person who is employed under a contract of employment, and includes an apprentice, learner, domestic worker, part-time worker, casual worker, piece worker or outworker;

“workplace” means any place, whether or not in a building or structure, including a ship, vehicle or aircraft, where workers are required to work;

“written contract” means a specified contract of employment which is required to be made in writing in accordance with [section 49](#_49._Certain_contracts);

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

### **5. Language**

Where in this Act any record or document is required to be kept, that record or document must be in either English, French or Bislama. A record or document in any language other than English, French or Bislama will not satisfy the requirement for maintenance of such a record or document under this Act.

# **PART 2 – FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK**

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### **6. Object of this Part**

The object of this Part is to state the entitlement to fair labour practices for all persons.

### **7. Fundamental Principles and Rights**

(1) No person shall be required to perform forced labour.

(2) No child shall be permitted or required to engage in child labour in contravention of [Part 12](#_PART_12_-_1) of this Act.

(3) No person shall discriminate against any worker or prospective worker, either directly or indirectly, in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship, on any of the following grounds, whether actual or perceived: ethnic origin, race, colour, gender, sex, sexual orientation, religion, political opinion, national extraction, social origin, age, marital status, pregnancy, social class, economic status, family responsibilities, state of health including real or perceived HIV / AIDS status, trade union membership or activity, or disability.

(4) Every employer shall pay male and female workers equal remuneration for work of equal value including in accordance with determinations of the Tribunal pursuant to [section 209](#_209._Further_powers).

(5) Workers and employers have the right, in accordance with [Parts 14](#_PART_14_–) and [15](#_PART_15_-) of this Act, to establish trade unions or employer organizations respectively, in co-operation with others, and without any discrimination, for the protection of their economic and social interests, and to join any such trade union or employer organization of their choice.

(6) Trade unions and employer organizations have the right to join federations of industrial organizations and international industrial organizations, and to affiliate with, participate in the affairs of, or contribute to and receive financial assistance from those federations and international industrial organizations.

(7) Subject to this Act, nothing contained in any law shall prohibit any worker or employer from being or becoming a member of any trade union or employer organization.

(8) No employer may directly or indirectly submit a person to duress with respect to their trade union membership or activity.

(9) Any condition specified in subsection (9) in a contract of employment or in any written law is void.

(10) Workers, their representative trade unions, employers, their representative employer organizations, have a right to bargain collectively.

# **PART 3 - TRIPARTITE LABOUR ADVISORY COUNCIL**

### **8. Object of this Part**

The object of this Part is to establish the Tripartite Labour Advisory Council.

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### **9. Establishment**

The Tripartite Labour Advisory Council is established.

### **10. Objectives**

The objectives of the Council are to:

1. make recommendations for the resolution of social, economic and labour issues; and promote employment and industrial relations practices in accordance with the Port Vila Statement on Decent Work; and
2. ensure active consultation with tripartite constituents on the development, adoption, implementation and regulation of International Labour Standards.

### **11. Composition**

(1) The Council consists of the following members appointed in writing by the Minister:

(a) the Commissioner of Labour, who is the chairperson of the Council; and

(b) three Government representatives nominated by the Minister of Internal Affairs upon the advice of the Commissioner of Labour; and

(c) three members nominated by the Vanuatu Council of Trade Unions; and

(d) three members nominated by the Vanuatu Chamber of Commerce and Industry.

The Minister must appoint the members nominated under subsection (1) within 28 days of receiving the nomination.

(2) The members appointed under paragraphs (1)(c) and (1)(d) are to nominate respectively from amongst themselves two members to be the vice-chairpersons of the Council.

(3) The appointment of the members must be published in the Gazette.

### **12. # Placeholder #**

### **13. Remuneration**

Members of the Council are entitled to a sitting allowance as may be determined from time to time by the Minister.

### **14. Functions of the Council**

(1) The functions of the Council are to consider and make recommendations or proposals to the Government on:

(a) any legislation or legislative amendment on any of the following areas before it is introduced in Parliament:

(i) labour; or

(ii) employment; or

(iii) industrial relations; or

(iv) working conditions; or

(v) wages; or

(b) any policy measures or programmes that affect:

(i) labour; or

(ii) employment; or

(iii) industrial relations; or

(iv) working conditions; or

(v) wages; or

(c) appointments to the Mediation Service or Tribunal; or

(d) the establishment and functioning of national bodies responsible for:

(i) vocational training; or

(ii) occupational safety and health; or

(iii) productivity; or

(e) the ratification, implementation and denunciation of:

any Conventions and recommendations of the International Labour Organization; or any other international labour standards

(f) the reports to the International Labour Office regarding ratified conventions; or

(g) the ratification of newly adopted Conventions and recommendations of the International Labour Organization; or

(h) proposals of matters to be discussed at the International Labour Conference of the International Labour Organization or resolutions or conclusions adopted by the International Labour Conference, or issues addressed by other tripartite regional or international conferences; or

(i) the implementation and evaluation of technical cooperation activities of the International Labour Office; or

(j) the promotion of a better understanding in the community of Decent Work and the activities of the International Labour Organisation; or

(k) other matters connected with the employment of workers or industrial relations referred to it by the Commissioner of Labour.

(2) make recommendations to the Minister on the setting of the Minimum wage consistent with its minimum wage functions in Part 6 of this Act.

(3) In addition to subsection (1), the Council may also carry out studies on issues related to:

(a) labour; or

(b) economic and social affairs.

### **15. # Placeholder #**

### **16. The Council may determine its own rules and procedure.**

Subject to this Act, the Council may determine its own rules and procedure.

# **PART 4 - MINIMUM WAGE SETTING**

### **17. Object of this Part**

The object of this Part is to set out the functions of the Tripartite Labour Advisory

Council with respect to making recommendations on minimum wage.

### **18. Minimum wage and terms and conditions for workers**

Notwithstanding anything in this Act or any other law, collective agreement or individual contract of employment to the contrary, every worker shall be entitled to receive from his or her employer a minimum wage and any other terms and conditions of employment, as prescribed by the relevant Minimum Wage Order.

### **19. More favourable entitlements**

Where a law, collective agreement or individual contract of employment entitles a worker to a higher wage or more generous terms or conditions of employment than those specified by the relevant Minimum Wage Order, that higher wage or more generous terms and conditions shall continue to apply.

### **20. Powers and functions of the Council with respect to minimum wages and terms and conditions of employment**

(1) Subject to subsection (2), the functions of the Council established under [section 9](#_9._Establishment), shall be to consider and submit recommendations to the Minister concerning the fixing of the minimum wage for workers in one or more of the following categories:

1. for all workers;
2. for casual workers;
3. for piece workers;
4. in any occupation or class or grade of occupation,
5. in any area, island or region of Vanuatu;
6. in any sector; or
7. in any industry.

(2) Before submitting any minimum wage recommendation to the Minister, the Council shall inquire into such matters as it sees fit, but must take account of the following matters–

(a) the needs of workers and their families;

(b) the general level of wages in Vanuatu;

(c) the cost of living and its effect on the real value of the minimum wage;

(d) whether other social protection measures have compensated for cost of living increases in subsection 2(c);

(e) the relative living standards of other social groups;

(f) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment;

(g) equal remuneration for women and men for work of equal value;

(h) any other information, including information submitted to it by worker and employer representatives and other interested parties, relating to the reasonableness of any wage, including information of a financial or economic nature either at the national level or in relation to an industry, sector, occupation or geographic area.

(3) The Council may commission research reasonably necessary to fulfil its obligations under subsection (2),

(4) The Council may also consider and advise the Minister on any other matter relating to the fixing of the minimum wage, and terms and conditions for workers generally.

(5) The Minister may request the Council to advise him or her on any matter relating to the Council’s minimum wage functions or may request the Council to submit a minimum wage recommendation at any time.

### **21. Process and procedures of the Council**

(1) Notwithstanding [section 20](#_53._Powers_and), the Council shall review the minimum wage, no less than every two years and shall make publicly available a report on each review.

(2) Minimum wage recommendations made by the Council shall include both a monthly and an hourly minimum wage.

(3) In making minimum wage recommendations, where relevant the Council will specifically consider and make recommendations with respect to casual workers and piece workers. In making these recommendations the Council must consider the precarious nature of these forms of employment and any absence of other employment entitlements that may warrant a higher minimum wage.

(4) In addition to making minimum wage recommendations, the Council may make recommendations with respect to other minimum conditions of employment, including but not limited to hours of work and overtime.

### **22. Subcommittees and advisors**

(1) The Chairperson may, after consultation with the Council;

(a) appoint from amongst the members of the Council, one or more sub-committees for the purpose of reviewing the minimum wage;

(b) invite advisors to provide advice to Council on matters relating to fixing the minimum wage, but such advisors shall not be entitled to vote at any Council meeting.

### **23. Consultation**

Before submitting a minimum wage recommendation to the Minister, the Council shall:

(a) invite submissions from, and consult with, worker and employer representatives, and in particular with those representing workers and employers in sectors, industries, occupations or geographical areas paying the lowest wages;

(b) request analysis of current wage rates from relevant Government Departments; and

(c) take reasonable measures to notify the public of the minimum wage review and invite and receive relevant submissions from interested parties, people or organisations.

### **24. Consultation with other agencies**

Before making minimum wage recommendations for public servants or for members of the teaching service, the police force, the Vanuatu Mobile Force or the prison services or for persons employed by statutory bodies, the Council shall consult with –

(a) In the case of public servants, the Public Service Commission, the Minister responsible for the public service and the Director of the Public Service Department;

(b) In the case of members of the police force, the Vanuatu Mobile Force and the prison services, with the Police Service Commission, the Commissioner of Police and the Minister responsible for the police, the Vanuatu Mobile Force and the prison service; and

(c) In the case of the teaching service, the Teaching Service Commission and the Minister responsible for education;

(d) In the case of nurses, the Vanuatu Nursing Council and the Minister responsible for health; and

(e) In the case of persons employed by statutory bodies, such person or authority responsible for the overall management of such statutory body.

### **25. Voting**

Minimum wage recommendations of the Council must be determined by a majority vote of the members present and voting and in the event of an equality of votes, the motion on the table shall be lost.

### **26. Reasons & Criteria**

In making a minimum wage recommendation to the Minister, the Council shall state the criteria that it applied and the reasons for its recommendation.

### **27. Content of minimum wage requirements**

(1) Any recommendation of the Council to fix a minimum wage, in any of the areas described in [section 20](#_53._Powers_and)(1), shall include the following –

(a) a proposed minimum wage or wages; and

(b) may include other terms and conditions of employment as the nature of the case require.

### **28. Minister’s power to fix minimum wages**

1. The Minister may make a Minimum Wage Order for all workers or with respect to one or more of the following classes –
2. for casual workers;
3. for piece workers;
4. for workers in any occupation or class or grade of occupation;
5. for workers in any area, island or region of Vanuatu;
6. for workers in any sector; or
7. for workers in any industry.

### 

(2) In addition to prescribing a minimum wage in accordance with subsection (1), the Minister may prescribe in the Minimum Wage Order any minimum conditions of employment, including but not limited to hours of work and overtime.

### **29. Minister to Consult**

Where the Council makes a minimum wage recommendation for any class of worker covered by [section 28](#_61._Minister’s_power), the Minister shall, before making a Minimum Wage Order, consult with the appropriate Minister responsible for such workers.

### **30. Obligation to act on recommendation**

Within 14 days of receiving a minimum wage recommendation from the Council, the Minister must consider the recommendation and either:

* 1. make a Minimum Wage Order in accordance with the Council’s minimum wage recommendation; or
  2. refer the minimum wage recommendation back to the Council for its reconsideration and provide reasons to the Council for not making the Minimum Wage Order in accordance with the Council’s recommendation.

### **31. Procedures where matter referred back to the council**

Where a Minimum Wage recommendation is referred back to the Council by the Minister for reconsideration, the Council shall comply with the procedures for making minimum wage recommendations set out in this part of the Act.

### **32. Regulation Making Power**

Subject to the provisions in [Part 4](#_PART_4_-) of this Act, the Minister may make Regulations with respect to the discharge of the Council’s functions relating to the minimum wage.

### **33. Offences**

It shall be an offence for an employer to provide a worker with a wage, terms or conditions of employment less favourable than the relevant Minimum Wage Order or entitlement prescribed in this Act.

# ***PART 5 - APPOINTMENTS, POWERS AND DUTIES OF OFFICERS***

### **34. Object of this Part**

The object of this Part is to establish the personnel necessary for administering this Act, including the staffing of the Mediation Service, Employment Relations Tribunal and the Employment Division of the Court.

### **35. Appointments**

1. Within the Ministry, there shall be a Commissioner of Labour and such other labour officers and labour inspectors as shall be necessary or expedient for the purposes of this Act, who shall be public servants.
2. Labour inspectors appointed in accordance with subsection (1) shall have sufficient stability of employment, independent of changes in government and improper external influences, to ensure independence and impartiality in their functions.

### **36. Administration of this Act**

(1) The Commissioner of Labour, labour officers and labour inspectors are responsible for the administration of the provisions of this Act.

(2) The Commissioner of Labour must provide a certificate of designation to an officer appointed for the purposes of this Act.

(3) When exercising any function under this Act, an officer designated under subsection (2) must, if required by a person affected by the exercise of such function, produce the certificate of identity to that person.

### **37. Delegation by Commissioner of Labour**

The Commissioner of Labour may delegate in writing to a public officer the exercise of any powers and the performance of any duties in relation to a matter or thing provided for by this Act, other than in relation to the Employment Division of the Court.

### **38. Commissioner of Labour may call for information**

The Commissioner of Labour may, in writing, require an employer to provide written information necessary for the effective administration of this Act, including returns and statistics on employment and other related matters, whether periodically or otherwise. An employer who contravenes this section commits an offence.

### **39. Institution of proceedings**

The Commissioner of Labour, or a labour officer or labour inspector authorised in writing by the Commissioner of Labour, may⎯

1. recommend that the Director of Public Prosecutions institute proceedings in the Tribunal in respect of breaches of this Act;
2. institute and prosecute proceedings in the Tribunal in respect of breaches of this Act; and
3. appear in the Tribunal on behalf of a worker or institute civil proceedings on behalf of a worker against the worker’s employer in respect of a matter or thing or cause of action arising out of or in the course of the employment of the worker.

### **40. Powers and functions of labour officers and labour inspectors**

(1) The functions of the Commissioner of Labour, labour officers or labour inspectors are to:

(a) ensure compliance with the provisions of this Act;

(b) advise and assist employers and workers on particular or general employment relations matters under this Act;

(c) provide information, advice, awareness or training to employers and workers or their organizations on matters under this Act; and

(d) publish an annual labour inspection report including statistics on inspection visits, recorded breaches of the Act and penalties issued.

(2) The functions of the Commissioner of Labour and labour officers may also include formulating enterprise or national policies, codes and strategies on employment relations matters.

### **41. Right of entry and inspection**

(1) The Commissioner of Labour, a labour officer or labour inspector may at any time -

1. enter, inspect and examine a workplace where or about which a worker is employed or where there is reason to believe that a worker is employed;
2. require an employer or a trade union as the case may be, to produce any worker employed by the employer and any documents or records which the employer is required to keep under this Act or any other documents or records relating to the employment of the worker;
3. interview the employer or a worker on a matter connected with employment or this Act, and may seek information from any other person whose evidence is considered to be necessary; or
4. inquire from an employer or a person acting on the employer’s behalf regarding matters connected with the carrying out of this Act.

(2) The Commissioner of Labour, labour officer or labour inspector,

(a) must not enter a private dwelling house without the consent of the occupier; or

(b) without the consent of the occupier, may enter a private dwelling house that there are reasonable grounds to believe is a workplace, with an order for daytime entry made by the Industrial Registrar on a date when the occupier could reasonably be in attendance; or

(b) on the occasion of a visit or inspection, must notify the employer or the employer’s representatives of his or her presence, unless the Commissioner of Labour, labour officer or labour inspector considers that such notification may be prejudicial to the performance of his or her duties.

(3) The Commissioner of Labour, a labour officer or labour inspector may copy or make extracts from a document or records in the possession of an employer which relate to a worker.

(4) The Commissioner of Labour, a labour officer or labour inspector must make known to the employer and a representative of workers, or trade union (as the case may be) any action required as result of any inspection of a workplace.

**(**5) It shall be an offence for any person –

(a) to refuse to comply with a request of a labour officer or labour inspector; or

(b) make a false statement to a labour officer or labour inspector; or

(c) prevent a labour officer or labour inspector from undertaking any functions.

### **42. Demand Notices**

(1) A labour officer or labour inspector may, issue a demand notice where the labour officer or labour inspector believes on reasonable grounds that an employer is failing, or has failed to comply with any provision of this Act.

(2) A demand notice for the purposes of subsection (1) must state:

(a) the relevant provision of the Act that the labour officer or labour inspector reasonably believes that the employer is failing or has failed to comply with; and

(b) the reasons for the labour officer or labour inspector’s belief that the employer is failing, or has failed to comply with the provision; and

(c) the nature and extent of the employer’s failure to comply with the provision; and

(d) the steps the employer must take to comply with the provision; and

(e) the date before which the employer must comply with the provision.

(3) A demand notice may be enforced by a labour inspector or labour officer applying for a compliance order under [section 208.](#_208._Power_to)

(4) An employer may, within 28 days of the demand notice being issued to them, lodge with the Tribunal an objection to the notice.

(5) In considering an employer objection lodged in accordance with subsection (4), the Tribunal must determine—

(a)  whether the employer is failing, or has failed, to comply with the specified provision of the relevant Act; and

(b) the nature and extent of the employer's failure to comply with the provision; and

(c)  the nature and extent of any loss suffered by any worker as a result of the employer's failure to comply with the provision (if applicable).

(6) The Tribunal may make compliance orders, vary, or rescind the demand notice as it thinks fit.

### **43. Interests and confidentiality**

(1) The Commissioner of Labour, labour officer or labour inspector,

1. must not have any direct or indirect interest in a workplace under his or her supervision, for the purposes of applying the provisions of this Act;
2. must not make use of or reveal, including after leaving Government service, any manufacturing or commercial secrets, working processes or confidential information which may come to his or her knowledge in the course of his or her duties; or
3. must treat as confidential the source of a complaint bringing to his or her notice a defect or breach of legal provisions relating to conditions of work and the protection of workers while engaged in his or her work, and must give no intimation to the employer or the employer’s representative whether a visit or inspection was made in consequence of the receipt of a complaint from within the organisation or workplace.

(2) A person who contravenes subsection (1) commits an offence.

# **PART 6 – FORMATION OF CONTRACTS OF EMPLOYMENT**

### **44. Object of this Part**

The object of this Part is to describe contracts of employment and to specify the circumstances in which such contracts may be oral or written and how they subsist.

### 

### **45. Employment to be in accordance with this Act**

No person may employ a worker and no worker may be employed under a contract of employment except in accordance with this Act.

### **46. Employment with more favourable terms**

Nothing in this Act prevents the application by individual agreement or collective agreement between the parties of terms and conditions, which are more favourable to the worker than those contained in this Act.

### **47. Misrepresenting employment as an independent contracting arrangement**

(1) An employer that employs, or proposes to employ an individual, must not represent to the individual that the contract of employment under which the individual is, or would be employed by the employer is a contract for services under which the individual performs, or would perform, work as an independent contractor.

(2) An individual who believes that subsection (1) has been contravened, may lodge an employment dispute against the employer or potential employer under [Part 17](#_PART_17_–_1).

(3) In any determination of an employment dispute lodged pursuant to subsection (2), the burden of establishing that the individual is not a worker or a potential worker, lies with the employer.

(4) In any employment dispute lodged pursuant to subsection (2), the Tribunal or Employment Division of the Court must determine whether an employment relationship existed or would have existed, by considering all relevant matters including whether the worker or potential worker would have:

1. carried out the work under the instructions or control of another party;
2. been integrated in the organization of the enterprise;
3. performed the work solely for the benefit of another person;
4. carried out the work personally;
5. had specified working hours or working duration;
6. had a specified workplace;
7. had their tools, materials, machinery and travel expenses provided by the person requesting the work;
8. received periodic remuneration;
9. received some payment in kind;
10. had an entitlements to leave; and
11. had an absence of financial risk from the work.

### **48. Contract of employment, oral or written**

(1) Subject to subsection (2), any contract of employment, other than a contract which by this Act or any other law is required to be made in writing, may be an oral or written contract.

(2) In any employment dispute determined by the Tribunal or the Employment Division of the Court about the application or interpretation of a worker’s contract of employment, should that contract not be in writing and signed by the worker and the employer, then the employer bears the burden of establishing the terms and conditions of that contract of employment .

1. This Part, unless the contrary intention appears, applies to both an oral and a written contract of employment.

### **49. Certain contracts to be in writing**

**(**1) If a contract of employment of a worker with an employer, or a person acting on the employer’s behalf -

1. is made for an indefinite duration or for a fixed term in excess of one month;
2. is a foreign contract of employment or as specified in the Regulations; or
3. is a contract made between an employer within the Republic of Vanuatu and a foreign worker to be performed within the Republic of Vanuatu;

the contract must be in writing.

1. Where subsection (1) requires any contract of employment to be in writing, before signing that contract the employer must advise the person:

(a) that by signing the contract he or she will become legally bound by the terms of the contract; and

(b) not to sign the contract unless he or she understands and agrees to the terms of the contract; and

(c) that he or she may get independent legal advice on the contract at their own cost, or advice on the contract from their union representative or seek further information from the Ministry on legislative entitlements.

1. Upon the recommendation of the Council, the Minister may prescribe by Order any information or document that must be provided by an employer to a person prior to signing a contract of employment.
2. Within 7 days of a person entering into a written contract of employment, the employer must give the person a signed copy of that contract.
3. No person shall enlist or recruit any person for employment under any foreign contract of employment unless the person is authorised in writing by the Commissioner of Labour.
4. A person who contravenes subsection (5) commits an offence and is liable on conviction to a fine not exceeding VT1,000,000 or to a term of imprisonment not exceeding 4 years or both.

### 

### **50. Form and content of contract**

1. A written contract must be signed by the parties and, as a minimum, contain the particulars set out in Schedule 1.

(2) It is prohibited and constitutes an offence where:

(a) a contract of employment requires a worker to undergo a medical examination as a condition of employment; or

(b) a medical examination is required during the course of a worker’s employment

and that medical examination comprises or includes screening for HIV/AIDS status, sexually transmitted diseases or pregnancy.

### **51. Probationary period**

(1) Every contract of employment for an unspecified period shall be subject to a probationary period of 15 days. This period may be increased to a maximum of 3 months by agreement between the parties to the contract.

(2) During the probationary period a contract of employment may be terminated by either party without notice at any time.

### **52.** **# Place holder #**

# **PART 7 – TERMINATION OF CONTRACTS OF EMPLOYMENT**

## Division 1 – Termination of Employment

### **53. Object of this Part**

The object of this Part is to specify the circumstances in which contracts of employment may be terminated.

### **54. Termination only for valid reason**

(1) Subject to subsection (2), each party to a contract is conclusively presumed to have entered into a contract for an indefinite duration.

(2) Subsection (1) does not apply ⎯

1. to a contract for a fixed period, which is presumed to terminate at the end of that fixed period;
2. to a contract for a fixed task, which is presumed to terminate upon completion of the fixed task;
3. to a daily contract where the wages are paid daily, which is presumed to terminate at the end of each working day; or
4. to a contract engaging a worker on a casual basis, which is presumed to terminate at the end of each working shift.

(3) A contract of employment of indefinite duration to which subsection (1) applies or a contract for a fixed period where that fixed period has not yet expired, shall not be terminated unless there is a valid reason for such termination. A reason will only be valid if it:

1. relates to the worker’s capacity or conduct and [sections 58](#_58._Termination_for) and 36 have been complied with; or
2. was due to serious misconduct of the worker and [section 56](#_56._Summary_dismissal) has been complied with; or
3. was due to the genuine redundancy of the worker’s position and [sections 61](#_61._Termination_for) and 36 have been complied with; and
4. is not an unlawful reason under [section 55](#_55._Unlawful_termination) of this Act.

### 

### **55. Unlawful termination**

(1) Subject to subsection (2), termination of a contract of employment for an unlawful reason will not constitute a valid reason for the purpose of [section 54](#_54._Termination_only).

(2) Unlawful reasons for termination of a contract of employment include the following reasons and reasons similar to the following reasons:

1. any prohibited ground of discrimination set out in sub[section 7(3)](#_7._Fundamental_Rights);
2. temporary absence from work because of illness or injury;
3. trade union membership or participation in trade union activities outside working hours or, with the [employer](http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/s12.html#employer)'s consent, during working hours;
4. non-membership of a trade union;
5. the filing of a complaint, or the participation in proceedings, against an [employer](http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/s12.html#employer) involving alleged violation of laws or regulations or recourse to competent administrative authorities;
6. absence from work during maternity leave; and
7. any action taken to claim rights or entitlements administered by the Vanuatu National Provident Fund.

(3) In any employment dispute under [Part 17](#_PART_17_–_1) of this Act where a worker alleges that his or her contract of employment was terminated for an unlawful reason, the burden of proving the existence of a valid reason for the termination shall rest on the employer.

### **56. Summary dismissal**

(1) Subject to subsections (2) and (3), no employer may dismiss a worker, who has completed the probationary period, without notice, except in cases of serious misconduct of such a nature that it would be unreasonable to require the employer to permit the worker to continue in their employment during the notice period due to a breakdown in the necessary relationship of mutual trust and confidence.

(2) Serious misconduct in the course of employment includes but is not limited to the following circumstances or circumstances similar to the following circumstances –

1. engaging in reckless conduct that is a serious and imminent risk to the health or safety of another person;
2. theft or fraud by the worker;

(d) violence or the assault of another person or threats of violence;

1. deliberate falsification of skills or qualifications during the employment application or promotion process;
2. being under the influence of intoxicating liquor or a drug (except a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), to the extent that a worker is unable to undertake their duties or poses a risk of harm to themself or others.

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

### **57. Right to wages on dismissal for lawful cause**

If a worker is summarily dismissed, the worker must be paid on dismissal the wages due up to the time of the worker’s dismissal.

### **58. Termination for reasons related to capacity or conduct**

To constitute a valid reason for the purpose of subsection 30(3)(a), prior to termination of the contract of employment for reasons of capacity or conduct, the worker must have been:

1. warned about any unsatisfactory capacity or conduct; and
2. provided with an opportunity and reasonable assistance to improve their capacity or conduct; and

(c) given a reasonable opportunity to respond to any issues raised about their capacity or conduct; and

1. afforded a reasonable opportunity for a representative, or trade union representative, to be present or represent their interests with respect to a proposed termination; and
2. notified of the reason for the termination; and
3. provided with notice of termination in accordance with [section 59](#_59._Provisions_as).

### **59. Provisions as to notice**

(1) Subject to this section and [section 60](#_60._Further_provisions), a contract for an indefinite duration may, in the absence of a specific written agreement as to notice between the parties to the contrary, be terminated by either party ⎯

*Notice of termination entitlement proposed by employers*

1. if the worker has been employed for less than one year, by one week of notice;
2. if the worker has been employed for more than one year but less than three years, by two weeks of notice;
3. if the worker has been employed for more than three years but less than five years, by three weeks of notice; or
4. if the worker has been employed for more than five years, by four weeks of notice.

*Notice of termination entitlement proposed by workers*

1. if the worker has been employed for less than 3 years, by 2 weeks of notice; or
2. if the worker has been employed for more than 3 years, by four weeks of notice.

(2) Where the termination of the contract of employment is at the employer’s initiative:

1. a valid reason for the termination must be provided in accordance with [section 54](#_30._Termination_only) of this Act;
2. payment in lieu of notice may be provided, at the employer’s discretion.

(3) The notice required under subsection (1) and any reason required to be given under [section 54](#_30._Termination_only), must be given in writing.

.

(4) A worker given notice of termination by his or her employer in accordance with this section, shall be provided with a reasonable amount of time off work at times convenient to both parties and without loss of pay, so that the worker may look for other employment.

### **60. Further provisions as to termination of contracts**

(1) Upon the termination of a contract of employment, the employer must pay to the worker all wages and benefits then due to the worker by the end of the following working day.

(2) If payment is made in lieu of notice the payment must include the wages and benefits that would have been payable to the worker if the worker had worked during the period of notice.

(3) Upon termination of a worker’s contract or dismissal of a worker, the employer must provide a certificate to the worker stating the nature of employment and the period of service.

## Division 2 – Redundancy

### **61. Termination for reasons of genuine redundancy**

(1) Before a worker’s contract of employment is terminated by reason of redundancy, an employer must:

(a) comply with the requirements for the provision of information and consultation set out in [section 62](#_62._Provision_of);

(b) comply with the requirements for the provision of redundancy pay set out in [section 63](#_63._Redundancy_pay); and

(c) comply with any requirements with respect to redundancy under any applicable collective agreement or under any contract of employment.

(2)  Termination of a contract of employment for [redundancy](http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/s12.html#genuine_redundancy) will not constitute a valid reason for the purpose of subsection 30(3)(c) if it would have been reasonable in all of the circumstances for the worker to be redeployed in a similar or equivalent position within:

          (a)  the [employer](http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/s12.html#employer)'s [enterprise](http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/s12.html#enterprise); or

          (b)  the [enterprise](http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/s12.html#enterprise) of an [associated](http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/s12.html#associated_entity) [entity](http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/s12.html#associated_entity) of the [employer](http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/s12.html#employer).

(3) For the purposes of subsection (2), in determining whether an alternative position is similar or equivalent to the worker’s existing position, consideration should be given to the duties, remuneration, responsibility level and location of the two positions.

### **62. Provision of information and consultation**

If an employer contemplates the termination of one or more worker’s contracts of employment by reason of redundancy, the employer must ⎯

1. as early as possible, consult with workers and their representatives, on measures to be taken to avert or to minimise the terminations and on measures to mitigate the adverse effects of any terminations on the workers concerned, such as action to attempt to find alternative employment or retraining; and
2. not less than 28 days before the proposed date in which the terminations take place, provide the workers, their representatives and the Commissioner of Labour with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.

### **63. Redundancy pay**

(1) Subject to this section, if an employer terminates a worker’s contract of employment for reasons of redundancy, the employer must pay to the worker:

(a) 4 week’s wages as redundancy pay for the first year of service; and

(b) 2 week’s wages as redundancy pay for each completed year of service after the first year.

(2) Notwithstanding subsection (1) and a worker’s length of service, an employer is not required by this Act to pay any worker more than 6 months wages as redundancy pay.

(3) A worker is not entitled to the payment specified in subsection (1) unless the worker has completed at least one year of service with the employer.

(4) Subject to subsection (5), a worker is not entitled to the payment specified in subsection (1) if the employer obtains and the worker accepts, suitable alternative employment for the worker, and the new employer provides the worker with continuity of service.

(5) A worker’s entitlement to redundancy pay in accordance with subsection (1) is maintained until the worker signs a written contract of employment with the new employer accepting the alternative employment.

(6) Notwithstanding subsection (2), nothing in this Act prevents an employer giving to a worker a redundancy payment in excess of that required to be given by this Act.

(7) For the purposes of section 308 of the Companies Act, Cap. 191 redundancy pay shall be deemed to be wages.

## 

## Division 3 – Severance Allowance

### **64. Severance allowance**

(1) In addition to notice of termination and redundancy pay entitlements set out in [Divisions 1](#_Division_1_–_1) [and 2](#_Division_2_–_1), a worker may be entitled to a severance allowance, in accordance with this [Division 3.](#_Division_3_–)

(2) Subject to [section 65](#_65._When_severance), where a worker has been in the continuous employment of an employer for a period of not less than 12 months commencing before, on or after the date of commencement of this Act, and –

1. the employer terminates the worker’s employment; or
2. the worker retires on or after reaching the age of 55 years; or
3. the employer retires the worker on or after reaching the age of 55 years; or
4. where the worker has been in continuous employment with the same employer for a continuous period of not less than 10 consecutive years, the worker resigns in good faith; or
5. the worker ceases to be employed by reason of illness or injury and is certified by a medical practitioner to be unfit to continue to work,

the employer shall pay severance allowance to the worker under [section 66](#_66._Amount_of) of this Act.

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

(a) a worker who works for his or her employer on 4 or more days in any week shall be deemed, in respect of that week, to have been in continuous employment;

(b) no worker shall be held to have ceased to be in the continuous employment of an employer by reason of his or her participation in a strike which is not unlawful;

(c) where a worker ceases to be in the employment of one employer and enters the employment of another under [section 65(4)](#_42._When_severance), his or her employment by the first and second employer shall be deemed to be continuous employment.

(3) For the purposes of section 308 of the Companies Act [Cap. 191] severance pay shall be deemed to be wages.

### **65. When severance allowance not due**

(1) Severance allowance shall not be payable to a worker who has been recruited outside Vanuatu and is not ordinarily resident in Vanuatu.

(2) A worker shall not be entitled to severance allowance if the worker is dismissed for serious misconduct as provided in [section 56](#_56._Summary_dismissal).

(3) Where –

(a) an employer dies and the worker is employed or offered employment by the personal representative of the deceased forthwith after the death;

(b) employment by a partnership ceases on the dissolution of the partnership, and the worker is employed or offered employment by a member of the dissolved partnership or a new partnership forthwith after the dissolution;

(c) employment by a body corporate ceases on the dissolution of that body and the worker is employed or offered employment by some other corporate body in accordance with an enactment or a scheme of reconstruction forthwith after the dissolution; or

(d) employment ceases on the disposal of the goodwill, or of the whole or a substantial part of the business as a going concern, or of that part of the business in which the worker is employed and the worker is employed or offered employment by the person who acquires the goodwill or business or part of the business forthwith after the disposal,

on terms and conditions which are not less favourable than those of the former agreement, the worker shall not be entitled to severance allowance.

(4) Where a worker to whom an offer is made in any of the circumstances specified in subsection (3) accepts the offer, the worker shall be deemed to have entered the employment of the person by whom the offer is made forthwith upon the cessation of his or her employment with the first employer.

(5) Where a worker is deemed to be in continuous employment in accordance with [section 64 (2)](#_64._Severance_allowance) and that continuous employment is terminated in circumstances in which severance allowance is payable, the employer in whose service the employee was employed immediately before the termination shall be deemed to be the employer during the whole of the period and shall be liable to pay severance allowance accordingly.

(6) An employer who is liable to pay severance allowance under subsection (5) shall –

(a) be entitled to deduct any period and to make any deduction which any previous employer would have been entitled to deduct or to make had the previous employer become liable to pay severance allowance; and

(b) be exempt from any liability to pay the allowance in respect of any period for which any previous employer was exempt from such liability.

### **66. Amount of severance allowance**

(1) Subject to the provisions of this [Division 2](#_Division_2_–_1), the amount of severance allowance payable to a worker shall be calculated in accordance with subsection (2).

(2) Subject to subsection (4) the amount of severance allowance payable to a worker shall be –

(a) for every period of 12 months – 1 months’ remuneration; and

(b) for every period less than 12 months, a sum equal to one-twelfth of the appropriate sum calculated under paragraph (a) multiplied by the number of months during which the worker was in continuous employment.

(3) Where remuneration is fixed at a rate calculated on work done or includes any sum paid by way of commission in return for services, the remuneration shall, for the purposes of this section, be computed in the manner best calculated to give the rate at which the worker was being remunerated over a period not exceeding 12 months prior to the termination of his or her employment.

(4) The court shall, where it finds that the termination of the employment of a worker was unjustified, order that the worker be paid a sum up to 6 times the amount of severance allowance specified in subsection (2).

(5) Any severance allowance payable under this Act shall be paid on the termination of the employment.

(6) The court may, where it thinks fit and whether or not a claim to that effect has been made, order an employer to pay interest, at a rate not exceeding 12 per cent per annum from the date of the termination of the employment to the date of payment.

(7) For the purposes of this section the remuneration which shall be taken into account in calculating the severance allowance shall be the remuneration payable to the worker at the time of the termination of his or her employment.

### **67. Deductions from severance allowances**

(1) An employer may deduct from any severance allowance payable –

(a) in the case of a worker who is retired on or after attaining the age of 55 years:

(i) half the amount of any gratuity due at the age of 55 years from any pension fund;

(ii) any gratuity granted at the age of 55 years by the employer;

(iii) 5 times the amount of any annual pension granted at the age of 55 years from any pension fund mentioned in paragraph (a)(i) above; and

(iv) 10 times the amount of any annual pension granted at the age of 55 years by the employer;

(b) in any other case –

(i) any gratuity granted by the employer at the time of termination of the worker’s employment; and

(ii) any contribution made to any pension fund mentioned in paragraph (a)(i) above by the employer.

(2) For the purpose of this section "pension" fund means any provident or pension fund or seminal scheme (other than the Vanuatu National Provident Fund established by and under the Vanuatu National Provident Fund Act [Cap. 189], as amended from time to time) which fund is specifically approved by the Commissioner.

# **PART 8 - PAYMENT OF WAGES AND WAGES PROTECTION**

### **68. Objects of this Part**

The object of this Part is to ensure the payment of wages at set intervals is safeguarded, authorised deductions are allowed and requirements for maintaining wage records are prescribed; and

### 

### **69. Payment of wages**

(1) Payment of wages must be at intervals that are reasonably appropriate to the nature of the contract of employment and in any event must not be less frequent than:

(a) twice a month for workers whose wages are calculated by the hour, day or week; or

(b) once a month for workers whose remuneration is fixed on a monthly, annual or piece work basis.

1. Subject to subsection (3), wages must be paid to a worker in cash.

(3)  An employer may,—

(a) with the written consent of a worker; or

(b) on the written request of a worker,—

pay to that worker by postal order, money order, specified cheque, or lodgement at a financial institution to the credit of an account standing in the name of that worker or in the name of that worker and some other person or persons jointly, any wages that have become payable to that worker.

### **70. Interest on advances**

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

### **71. Wages statement**

(1) When paying a worker at regular intervals in accordance with [section 71](#_71._Wages_statement), an employer must provide the worker with a written or electronic statement containing the following particulars in respect of the relevant wage period ⎯

1. the worker’s name;
2. the nature of employment or job classification;
3. the days or hours worked at normal rates of pay;
4. the rate of wages;
5. the wage period;
6. the hours of overtime worked during a wage period and the rate of wages payable for the overtime;
7. the gross earnings of the worker;
8. Allowances, loadings or other sundry payments due to the worker;
9. deductions made from the gross earnings of the worker;
10. the net amount due to the worker after all deductions have been made in respect of each wage period;
11. employment number, Vanuatu National Provident membership number, taxation identification number or any other form of identification; and
12. any other prescribed information.

(2) In addition to the requirements for the provision of a wages statement set out in subsection (1), an employer must inform a worker whenever any changes to the conditions related to that worker’s wages take place.

1. An employer that contravenes subsections (1) or (2) commits an offence.

### **72. Wages and time record**

(1) An employer in relation to any worker employed under a contract of employment under this Act, must keep a wages and time record showing, for each worker ⎯

the name of the worker;

the date of birth;

the worker’s address;

the kind of work on which the worker is usually employed;

the contract of employment or collective agreement under which the worker is employed;

the classification or designation of the worker according to which the worker is paid;

their hours of work;

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

the worker’s accrued entitlements to paid leave under [Part 10](#_PART_10_-_1);

any payment made [section 92](#_92._Entitlement_to); and

other prescribed particulars.

### **73. Inspection of wage records**

An employer must, upon request made at any reasonable time by a labour officer or 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 a worker employed by that employer at any time in those 6 years.

### **74. Authorised deductions from wages**

(1) Subject to this section, an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction.

(2) Subject to subsections (3) and (4), an employer may deduct from the wages of a worker ⎯

1. an amount due to be paid by a worker in respect of any tax, or other deduction imposed by law;
2. with written consent, an amount due by the worker;
   1. under a provident fund, school fund, pension fund, sports fund, superannuation scheme, life insurance or medical scheme, credit union, trade union, co-operative society or other funds or schemes of which the worker is a member; and
   2. must on behalf of the worker pay the amount so deducted to the person empowered to collect the amount or entrusted with the management of the fund, scheme, trade union or cooperative society;
3. make deductions from the wages of a worker to the extent of an over-payment made during the immediately preceding 3 months by the employer to the worker by the employer’s mistake.
4. Any other lawful deduction at the request in writing of the worker.

***Subsection (3) was requested by workers at the May 2012 tripartite consultation but has not been finally agreed to by the employers***

(3) An employer is required to deduct union dues from a worker’s wages and to pay that amount to the relevant trade union, when the employer is requested by a worker to do so in accordance with subsection (2)(b).

1. Deductions made under subsections 2(b), (c) or (d) shall not exceed one third of the worker’s wages for that pay interval.

### **75. Offences**

An employer that contravenes any section in this Part commits an offence.

# **PART 9 - HOURS OF WORK AND OVERTIME**

### **76. Object of this Part**

(1) The objects of this Part are to:

(a) specify the weekly and daily hours of work; and

(b) make provision for overtime pay.

### **77. Hours of Work**

(1) Subject to subsections (2) and (3), a contract of employment must fix at not more than 44 the maximum number of hours (exclusive of overtime) to be worked in a week by a worker bound by that contract.

(2) If the number of hours (exclusive of overtime) fixed by a contract of employment, to be worked by a worker in a week, is as prescribed by subsection (1), the parties must fix the daily working hours so that those hours are worked on not more than 6 days of the week and do not exceed more than 10 hours on any day.

(3) The maximum hours worked by a worker per week may be varied by a Minimum Wage Order or collective agreement provided that -

(a) any variation to the number of hours worked does not pose a risk to the health or safety of a worker, or to the safety of any other person, taking into account the nature of the worker’s job and the need for all workers to be provided with adequate time for leisure and rest; and

(b) overtime is paid with respect to hours in excess of that set out in [section 77](#_88._Hours_of)(1).

(4) A worker, other than a casual worker or a piece worker, must be paid their agreed wages for all hours that they are expected to be available for work and do so make themselves available for work.

(5) An employer is prohibited from standing down a worker, other than a casual worker or a piece worker, without pay for any reason, including any claim by the employer that there is insufficient work to carry out.

### **78. Meal and tea breaks**

Every worker who works for more than 6 consecutive hours in 1 day shall be entitled to a break of one hour for a meal and a tea break of 20 minutes, or two tea breaks of 10 minutes each.

### 

### **79. Overtime pay**

(1) If work is carried out in excess of the hours of work specified in [section 77](#_77._Hours_of), the worker shall be paid at the following overtime rates:

(a) for the first 4 hours, at a minimum rate equal to one-and-a-quarter times the normal hourly rate;

(b) for work in excess of 4 hours, at a minimum rate equal to one-and-a-half times the normal hourly rate;

(c) for work in excess of the normal weekly hours of work that is carried out between 8 pm and 4 am, a minimum rate equal to one-and three-quarter times the normal hourly rate for these time periods.

(2) If work is carried out on a public holiday or on a Sunday, a worker shall be entitled to be paid at a rate equal to one-and-a-half times the normal hourly rate.

(3) A worker may only be required to work overtime in accordance with this section, if such overtime will not pose a risk to the health or safety of the worker, or to the safety of any other person, taking into account the nature of the worker’s job and the need for all workers to be provided with adequate time for leisure and rest

# **PART 10 - HOLIDAYS AND LEAVE**

### **80. Object of this Part**

The objects of this Part are to:

* 1. provide a statutory entitlement to paid leave in certain circumstances; and
  2. provide an entitlement to paid maternity leave, nursing breaks and employment protection to ensure that women are not disadvantaged in employment due to pregnancy or child birth.

### **81. Application of this Part**

(1) This Part applies to all workers other than casual workers.

(2) This Part applies to part-time workers on a pro-rata basis.

(3) This Part applies to piece workers subject to any additional provisions for the

calculation of entitlements, prescribed by Regulations.

### **82. Continuity of employment**

For the purposes of this Part, employment is deemed to be continuous, if a worker’s contract of employment is terminated and the same worker re-engaged in the same workplace within a month of termination.

### **83. Paid annual holidays**

(1) An employer must give to a worker paid holidays in accordance with this Act.

(2) An employer may give to a worker paid annual holidays in excess of those required to be given by this Act.

(3) After each year of employment with an employer, a worker must be given 20 working days holiday and must be paid in respect of such holiday the wages the worker would have been paid for the time the worker would normally have worked during that period.

1. After the first 6 months of employment with an employer, a worker is entitled to take annual holidays on a pro rata basis.
2. If a worker is entitled to a paid annual holiday under this section, the employer must permit the worker to take the annual holiday in one unbroken period or, at the request of the worker, in two or more periods, one of which must be an uninterrupted period of one working week, unless otherwise provided in a collective agreement applicable to the worker and employer concerned.
3. Any public holiday falling within a worker’s annual holiday shall not be counted as part of the worker’s annual holiday entitlement provided for by subsection (3).

### **84. Holiday pay on termination of employment**

(1) If a worker’s employment is terminated –

1. after a period exceeding one month and less than one year from the date of commencement of employment; or
2. after a period of employment following the completion of a year in respect of which the paid annual holiday has been taken,

the employer must, on or before the date of the termination, pay to the worker a sum equal to not less than 1 2/3 day’s wages for each completed month of the period of employment.

(2) If a worker has completed one year’s continuous service with an employer and the employment is subsequently terminated, the employer must, if the worker has not taken the paid annual holiday earned in respect of the year, on or before the date of such termination, pay to the worker the wages due in respect of the paid annual holiday, together with a sum equal to not less than 1 2/3 day’s wages in respect of each completed month of employment following the completion of the last year in respect of which the worker has earned a paid annual holiday.

(3) If an employer or worker gives notice of termination of the contract of employment in accordance with this Act, payment to the worker of all or any part of the wages on account of the paid annual holiday to which the worker is entitled must be deemed not to be payment of all or any part of the worker’s wages in respect of the period during which the worker is, under this Act or by custom or agreement or under the worker’s contract of employment or collective agreement, entitled to continue in the employment after giving notice.

### **85. Paid holiday to be given within certain period**

(1) A worker is entitled to all leave earned, and such leave must not be forfeited.

(2) If an employer elects to close a section or sections of the employer’s establishment for a fixed period in any year, all or part of the paid annual holiday may, by agreement between the parties, be taken before the completion of the year in respect of which the paid annual holiday may be due.

(3) Notwithstanding subsection (1), an employer may agree in writing with all or any of the workers that paid annual holidays 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.

### **86. Wages in respect of annual holiday to be paid in advance**

Wages in respect of the paid annual holiday must be paid in advance of or on the payday immediately preceding the holiday.

### **87. Public holidays**

The days (referred to as public holidays) as designated by the President’s Office may be kept as public holidays in all workplaces.

### **88. Special public holidays**

The Minister may, by notice in the *Gazette*, appoint a special day or any part of a day to be kept as a public holiday in all workplaces.

### **89. Payment for public holidays**

(1) Subject to subsection (2), a worker must be paid in respect of each public holiday for the number of hours (exclusive of overtime) which the worker would normally have worked on that day had it not been a public holiday.

(2) If a worker, other than a shift worker, works on a public holiday the worker must be paid for all work undertaken on that day, in addition to the entitlement under subsection (1).

(3) Subsection (1) does not apply to a worker unless –

1. the worker worked for the employer during the last working day preceding the public holiday; and
2. the worker presents himself or herself for work on the first working day after the public holiday.

(4) Subsection (3) is deemed to have been complied with if the worker is excused from work by the employer or is prevented from attending work by sickness or injury verified by a medical certificate or is prevented from attending work by any other cause acceptable to the employer.

### **90. Sick leave**

(1) Where a worker who has completed more than 3 months continuous service with the same employer and who 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.

(2) The sick leave entitlement can be accumulated but for no longer than 3 years.

(3) For a worker to be entitled to sick leave, the worker must ⎯

1. as soon as reasonably practicable notify the employer of his or her absence and the reason for it; and
2. produce, if requested by the employer, a written certificate signed by a medical practitioner, certifying the worker’s incapacity for work.

(4) A medical practitioner who knowingly issues a medical certificate to a worker whom the medical practitioner knows is capable of work commits an offence as does the worker who sought the medical certificate.

### **91. Compassionate leave**

A worker who has completed more than 3 months continuous service with the same employer is entitled to 3 days paid compassionate leave in a year, in addition to any other leave entitlement.

### **92. Entitlement to maternity leave**

(1) A woman employed in a workplace who expects to give birth is entitled to maternity leave for a period of 14 consecutive weeks provided that she furnishes to her employer a certificate from a medical practitioner or registered nurse confirming her pregnancy and specifying the expected date of delivery of a child.

(2) All maternity leave shall be paid at a rate of pay not less than 66% of the remuneration the woman would have earned had she had been at work.

(3) A woman may take maternity leave at any time before or after confinement provided that at least 6 weeks of her maternity leave is taken immediately after the birth of a child.

(4) For the purposes of this section, if a woman is absent from work for a period of more than 14 consecutive weeks she is not entitled to wages in respect of the days in excess of 14 weeks except by way of agreement with her employer.

(5) A woman who returns to her employment after maternity leave– must be appointed to the same or equivalent position held prior to proceeding on maternity leave, without any loss of salary, wages, benefits or seniority.

(7) For the purposes of nursing a child during her working hours, an employer shall allow a woman worker nursing breaks of:

(a) one hour for every four hours worked, where the child is aged up to 6 months; and

(b) half an hour for every four hours worked, when the child is aged between 6 and 12 months .

(8) Nursing breaks for the purposes of subsection 8 shall be counted as hours worked for the purposes of calculating remuneration.

### **93. Restriction on termination**

(1) An employer must not terminate a woman’s employment by reason of being pregnant.

(2) If a woman’s employment is terminated while she is pregnant, the burden of disproving that the termination was related to pregnancy rests with the employer.

(3) No employer shall give notice of dismissal to a woman who is absent following the birth a child, who remains absent as a result of an illness arising out of pregnancy or childbirth that is certified by a medical practitioner rendering her unfit to work, provided that such absence shall not exceed 3 months.

(4) If a woman is terminated under subsection (3) she is deemed to have been employed up to and including her period of maternity leave for the purpose of determining her period of employment under this Part.

### **94. Conditions contrary to this Part void**

A condition in any contract of employment providing less favourable entitlements to those set out in Part is void.

### **95. Record of leave and entitlement**

**(**1) An employer employing any worker must at all times keep a record showing in the case of each worker ⎯

1. the name of the worker;
2. the dates of the commencement and termination of the worker’s employment;
3. all leave entitlements;
4. the dates on which all leave is taken; and
5. the amount paid to the worker in respect of the leave to which the worker is entitled.

(2) The record of paid leave may be incorporated in the wages record that the employer is required to keep under this or any other Act.

(3) An employer that does not observe any provision of this Part commits an offence.

### **96. Offences**

An employer who fails to comply with any of the provisions of this Part commits an offence.

# **PART 11 – EQUAL EMPLOYMENT OPPORTUNITIES**

### **97. Object of this Part**

(1) The object of this Part is to provide equal opportunities in employment by –

(a) prohibiting discrimination on particular grounds of actual or supposed personal characteristics or circumstances;

(b) prohibiting sexual harassment in the workplace;

(c) ensuring equal rates of remuneration for work of equal value by male and female workers; and

(d) making provision for special measures of protection or assistance.

### **98. Discrimination in employment matters**

(1) If an applicant for employment or a worker is qualified for work of any description, an employer or a person acting or purporting to act on behalf of an employer must not ⎯

1. refuse or omit to employ the applicant on work of that description which is available;
2. offer or afford the applicant or the worker less favourable terms of employment, conditions of work, or other fringe benefits, and opportunities for training, promotion, and transfer that are made available to applicants or workers of the same or substantially similar capabilities employed in the same or substantially similar circumstances on work of that description;
3. terminate the employment of the worker, or subject the worker to any detriment, in circumstances in which the employment of other workers employed on work of that description would not be terminated, or in which other workers employed on work of that description would not be subjected to such detriment; or
4. retire the worker, or to require or cause the worker to retire or resign, subject to any written law or contract of employment imposing a retirement age,

by reason of any of the prohibited grounds of discrimination set out in sub[section 7(3)](#_7._Fundamental_Rights) or by reason of the worker’s involvement in the activities of a union.

(2) If a worker reports an employment dispute under [Part 17](#_PART_16_–) in relation to action by an employer falling within subsection (1) the burden of proof is on the employer to establish that its actions were not by reason of any of the prohibited grounds of discrimination set out in sub[section 7(3)](#_7._Fundamental_Rights).

(3) For the purposes of subsection (1), a worker is deemed to be involved in the activities of a union if, at any time within 12 months before the action complained of, that worker -

1. was an officer of a union or branch of it, or was a member of the committee of management of a union or branch, or was otherwise an official or representative of an organisation or branch;
2. had acted as a negotiator in collective bargaining;
3. had represented a union or branch of it in negotiations between employers and workers;
4. was involved in the formation or proposed formation of a union;
5. had made or caused to be made a claim for some benefit of a collective agreement or individual contract of employment either for that worker or any other worker or had supported the claim, whether by giving evidence or otherwise;
6. had submitted another employment grievance to that worker’s employer; or
7. had participated in a strike.

(4) If a worker has been involved in the activities of a union within 12 months before the action complained of, the burden of proof is on the employer to establish that action falling within subsections 1(a) or (1)(b) was not by reason of the worker’s involvement in those activities.

(5) For the purposes of this section a representative of a union includes a person authorised or recognised, either expressly or impliedly, to represent the union or some of the members of a union, whether as a worker or otherwise.

### **99. Exceptions in relation to inherent requirements of the position**

(1) Subject to this section, this Act does not prohibit any distinction, exclusion or preference made based on an objective assessment of the worker or job applicant’s individual capacity to perform the inherent requirements of a particular job.

(2) The inherent requirements of a particular job may include but are not limited to the worker or job applicant’s individual capacity to –

* 1. perform the tasks or functions which are a necessary part of the particular job; or
  2. meet productivity and quality requirements for the particular job; or
  3. work effectively in the team or other type of work organisation concerned with that particular job; or
  4. work safely in carrying out that particular job.

1. The exception to prohibited discrimination set out in subsection (1) will not apply where reasonable accommodations could be made to allow a worker or job applicant to perform the inherent requirements of a particular job.
2. Subsection (3) does not prevent different treatment based on physical disability if the position is such that the person could perform the duties of the position satisfactorily only with the aid of special services or facilities and it is not reasonable to expect the employer to provide those services or facilities.

### **100. Exceptions in relation to special measures**

(1) A person may take a special measure for the purpose of promoting or realising substantive equality for members of a group with a particular attribute, including a ground set out in sub[section 7(3)](#_7._Fundamental_Rights).

(2) A person does not discriminate against another person by taking a special measure.

(3) A special measure must-

(a) be undertaken in good faith for achieving the purpose set out in subsection (1); and

(b) be reasonably likely to achieve the purpose set out in subsection (1); and

(c) be a proportionate means of achieving the purpose set out in subsection (1); and

(d) be justified because the members of the group have a particular need for advancement or assistance.

(4) A measure is taken for the purpose set out in subsection (1) if it is

taken-

(a) solely for that purpose; or

(b) for that purpose as well as other purposes.

(5) A person who undertakes a special measure may impose reasonable restrictions on eligibility for the measure.

(6) A person who undertakes a special measure has the burden of proving that the measure is a special measure.

(7) On achieving the purpose set out in subsection (1), the measure ceases to be a special measure.

### **101. Sexual harassment**

(1) Sexual harassment is a form of sex discrimination prohibited under [section 7(3)](#_7._Fundamental_Rights) of this Act.

(2) An employer is liable under this section, together with a worker who sexually harasses another worker if the employer fails to take the reasonable steps necessary to prevent sexual harassment of the employer’s worker.

(3) An employer must develop and maintain a policy to prevent sexual harassment in his or her workplace, consistent with any national policy guidelines under subsection (4).

(4) The Minister may direct the Council to develop a national policy guideline for preventing sexual harassment in workplaces.

(4) Where a complaint of sexual harassment has been made by a worker under this section, the worker’s previous sexual experience or reputation must not be taken into account by the employer or a court or tribunal.

### **102. Prohibition of victimisation**

A person must not victimise another person as defined in [section 103](#_103._Definition_of).

### **103. Definition of victimisation**

(1) A person victimises another person if the person subjects or threatens to subject the other person to any detriment because the other person, or a person associated with the other person-

(a) has reported an employment dispute under Part 16 of this Act on grounds of unlawful discrimination or sexual harassment; or

(b) has made a complaint of unlawful discrimination or sexual harassment against any person under this Act; or

(c) has given evidence or information, or produced a document, in connection with any proceedings under this Act related to unlawful discrimination or sexual harassment; or

(d) has refused to do anything that would contravene a provision of this Part 9.

(2) In determining whether a person victimises another person it is irrelevant-

(a) whether or not a factor in subsection (1) is the only or dominant

reason for the treatment or threatened treatment provided that it is a

substantial reason;

(b) whether the person acts alone or in association with any other person.

### **104. Offence of discriminatory advertising**

(1) An employer must not-

(a) publish or display; or

(b) authorise the publication or display of-

A job advertisement or other notice that indicates, or could be reasonably

understood as indicating, that the employer intends to engage in any conduct

that would contravene section 92.

(2) An employer who contravenes subsection (1) commits an offence.

# **PART 12 - CHILDREN**

### **105. Objects of this Part**

(1) The objects of this Part are -

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

(b) to establish the circumstances and ages at which children may work; and

(c) to confer certain rights on children and provide protection in view of their vulnerability to exploitation.

### **106. Minimum age for employment**

(1) A child under the age of 14 must not be employed or work in any capacity, except in light work as prescribed by [section 107](#_107._Minimum_age).

(2) The minimum age for employment applies to all types of work including domestic work, work in family undertakings, work in agriculture, work as a self-employed person, work as an apprentice, and maritime work.

(3) Work engaged in by a child under the age of 14 in schools, as part of an authorised programme of education, will not contravene this section.

(4) A person who in contravention of this section employs or otherwise causes to work, a child under the age of 14 commits an offence and is liable on conviction to a fine not exceeding VT500,000, or to a term of imprisonment not exceeding 2 years or both.

### **107. Minimum age for light work**

(1) A child aged 12 or 13 must not be employed or work in any capacity, except in light work that:

(a) is unlikely to be harmful to the health and development of the child;

(b) will not affect the child’s school or vocational training attendance;

(c) will not affect the child’s ability to benefit from schooling or vocational training; and

(d) complies with the prescribed requirements for light work.

(2) Upon the recommendation of the Council, the Minister may prescribe by Order the requirements for light work, including the permissible times and hours of work, the activities that may be carried out and the conditions under which these activities may be performed.

### **108. Minimum age for hazardous work**

(1) A child under the age of 18 must not engage in any hazardous work or work that which by its nature or the circumstances under which it is carried out is likely to jeopardise the child’s health, safety or morals.

(2) Upon the recommendations of the Council, the Minister may prescribe and periodically update by Order the types of hazardous work that children under the age of 18 are prohibited by this section from engaging in.

(3) A person who in contravention of this section employs or otherwise causes a child under the age of 18 to engage in hazardous work commits an offence and is liable on conviction to a fine not exceeding VT500,000, or to a term of imprisonment not exceeding 2 years or both.

### **109. Prohibition of the worst forms of child labour other than hazardous labour**

(1) The engagement of any child under the age of 18 in the following worst forms of child labour is prohibited:

(a) all forms of slavery or practices similar to slavery;

(b) sale or trafficking of children;

(c) debt bondage and serfdom;

(d) forced or compulsory labour;

(e) compulsory recruitment of children for use in armed conflict;

(f) use, procuring or offering of a child for prostitution;

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

(h) use, procuring or offering of a child for illicit activities; and

(i) use, procuring or offering of a child for the production or trafficking of illegal drugs.

(2) A person who in contravention of this section employs or otherwise causes a child under the age of 18 to engage in any of the worst forms of child labour commits an offence and is liable on conviction to a fine not exceeding VT1,000,000, or to a term of imprisonment not exceeding 5 years or both and may also be liable for prosecution under the Penal Code [Cap 135].

### **110. Employment of persons under 18 on ships**

(1) Subject to subsection (2), a child shall not be employed on any kind of work on a ship unless certified by a medical practitioner to be fit for such work.

(2) In urgent cases, a labour officer or labour inspector may permit the engagement of a child to work on a ship without prior medical examination, and in such case the employer shall at their own expense have the child medically examined at the first place of call at which there is a medical practitioner, and should such practitioner not attest the child as fit for the work, the employer shall at their own expense return the child as a passenger to the port or place where the child was engaged, or to the child’s home, whichever is the nearer.

### **111. Obligation to establish age of child worker**

(1) In any proceedings in respect of an offence under sections [106](#_103._Minimum_age), [107](#_104._Minimum_age), [108](#_108._Minimum_age), [109](#_109._Prohibition_of) or [110](#_110._Employment_of), the obligation to establish the age of the alleged child worker rests with the employer.

(2) Where in any proceedings in respect of an offence under sections [106](#_103._Minimum_age), [107](#_104._Minimum_age), [108](#_105._Minimum_age), [109](#_106._Prohibition_of) or [110](#_107._Employment_of), an employer is unable to establish the age of the alleged child worker, the Employment Division of the Court may itself determine the age of the child.

### **112. Register of child workers**

(1) For each worker under the age of 18 an employer must:

(a) keep a register of the child’s name, date of birth, sex, occupation, employment status, hours of work, school or vocational training attendance, rate of pay, employment commencement and termination dates; and

(b) produce the register for inspection when required by the Commissioner of Labour, labour inspector or a labour officer.

(2) An employer who fails to keep a register as required by subsection (1) or who fails to produce the register when requested to do so by the Commissioner, labour inspector or a labour officer, commits an offence.

### **113. Trade union rights for children**

(1) A child who is 12 years or over has the right to join a trade union and to vote in elections of that trade union.

# **PART 13 - INDUSTRIAL REGISTRAR**

### **114. Object of this Part**

The object of this Part is to provide for the appointment of an Industrial Registrar.

### **115. Appointment**

(1) The Judicial Service Commission shall appoint a public officer as the Industrial Registrar, who will be responsible for the performance of the duties and functions assigned to the Industrial Registrar by or under this Act or the Regulations.

(2) The Commissioner of Labour may provide such other officers as are necessary to assist the Industrial Registrar and the Tribunal to carry out their functions under this Act.

(3) The Industrial Registrar must act independently and is not subject to any direction or control by any person or body in exercising his or her duties and powers under this Act.

### **116. Protection of officers**

An officer appointed under [section 96](#_96._Offences) is not liable for anything done or omitted to be done, by the officer in good faith and without negligence in the exercise of any power or in the performance of any duty conferred or imposed by this Act.

# **PART 14 – REGISTRATION OF TRADE UNIONS AND EMPLOYER ORGANISATIONS**

## 

## Division 1 –Registration obligations

### **117. Objects of this Part**

(1) The objects of this Part are -

(a) to provide for the registration of trade unions and employer organisations; and

(b) to stipulate minimum requirements to be observed by trade unions and employer organisations, in their operations.

### **118. Application of this Part**

(1) Subject to this section, this [Part 14](#_PART_14_–) applies to all trade unions and employer organisations, other than a Chamber of Commerce and Industry established under the *Chambers of Commerce and Industry of Vanuatu Act* 1995.

(2) A Chamber of Commerce and Industry established under the *Chambers of Commerce and Industry of Vanuatu Act* 1995, may apply for registration as an employer organisation and the Industrial Registrar may grant such registration under [section 121](#_121._Registration).

(3) Notwithstanding registration of a Chamber of Commerce and Industry as anemployer organisation under subsection (2), the application of [Part 14](#_PART_14_–) to such an employer organisations is limited to [Division 1](#_Division_1_–Registration_1).

(4) Registration of a Chamber of Commerce and Industry as anemployer organisation under subsection (2) does not affect regulation of that Chamber of Commerce and Industry under the *Chambers of Commerce and Industry of Vanuatu Act* 1995 and to the extent of any inconsistency the relevant provision of the *Chambers of Commerce and Industry of Vanuatu Act* 1995 will apply.

### **119. Requirement of registration**

(1) All trade unions and employer organisations must be registered under this Act.

(2) Subsection (1) does not apply to a Chamber of Commerce and Industry established under the *Chambers of Commerce and Industry of Vanuatu Act* 1995 that has elected not to be registered under this Act.

### **120. Application for registration**

(1) All trade unions and employer organisations must apply to the Industrial Registrar for registration in the prescribed form.

(2) With the exception of Chambers of Commerce and Industry established under the *Chambers of Commerce and Industry of Vanuatu Act* 1995, all trade unions and employer organisations applying for registration in accordance with subsection (1) must comply with the procedures for application set out in [section 122](#_122._Procedure_for).

### 

### **121. Registration**

(1) The Industrial Registrar must register a trade union or an employer organisation applying under section 122, provided that the trade union or employer organisation meets the requirements for registration under sections 124 and 126 and does not satisfy any of the grounds for a refusal of registration under section 131 of this Act. .

(2) Subject to [sections 122](#_124._Procedure_for) and [124](#_124._Power_of), upon the receipt of an application under section [120](#_120._Application_for), the Industrial Registrar must, within 21 days of receipt of the application, decide whether the application meets the requirements for registration.

## Division 2 – Registration procedures

### **122. Procedure for registration**

(1) An application for registration as a trade union or employer organisation must be made to the Industrial Registrar in the prescribed form and signed by at least 5 members of the trade union or employer organisation applying for registration.

(2) An application under this section must be accompanied by 4 copies of the constitution and rules of the trade union or employer organisation, or the proposed trade union or proposed employer organisation, authenticated by the president and the secretary and accompanied by a statement of the following particulars ⎯

1. the names and occupations of the members making the application;
2. the name, of the trade union, proposed trade union, employer organisation or proposed employer organisation; and
3. the titles, names and occupations of the officers of the trade union, proposed trade union, employer organisation or proposed employer organisation.

### **123. Register of trade unions and employer organisations**

(1) The Industrial Registrar must keep a register of trade unions and employer organisations in a prescribed form containing −

1. the prescribed particulars relating to every registered trade union and employer organisation;
2. any alteration or change in the name, constitution, officers, location or postal address of a registered trade union or employer organisation; and
3. any other matters required to be contained in the register by this Act or the regulations.

(2) A copy of an entry in the register certified by the Industrial Registrar is, unless the contrary is shown, proof of the facts contained in the copy.

### **124. Power of Industrial Registrar to call for further particulars**

Upon receipt of an application under [section 120](#_122._Application_for), the Industrial Registrar may call for further information for the purpose of confirming that the application complies with this Act or that the trade union, proposed trade union, employer organisation or proposed employer organisation is entitled to registration under this Act.

### 

### **125. Alteration or change of name of trade union or employer organisation**

(1) If the name under which a trade union or employer organisation is proposed to be registered –

(a) is identical with the name of an existing registered trade union, registered employer organisation or any other registered body;

(b) in the opinion of the Industrial Registrar, so nearly resembles the registered name of a trade union, registered employer organisation or any other registered body as to be likely to deceive or mislead the public or the members of other trade unions, registered employer organisation or registered body; or

(c) is, in the opinion of the Industrial Registrar, undesirable,

the Industrial Registrar must request the applicant to alter the name of the trade union or employer organisation stated in the application, and must not register the trade union or employer organisation until the alteration has been made.

(2) The Industrial Registrar may, upon application by a registered trade union or employer organisation, change the name of the registered trade union or employer organisation if the change is supported, in a secret ballot, by more than 50% of all members entitled to vote.

(3) A change of name under subsection (2) does not affect rights or obligations or legal proceedings in respect of the registered trade union or registered employer organisation and such rights or obligations or legal proceedings continue as if done in respect of the newly named trade union or employer organisation.

### **126. Amalgamation of trade unions and employer organisations**

(1) If 2 or more registered trade unions or 2 or more registered employer organisation wish to amalgamate, those unions or employer organisations must apply to the Industrial Registrar for amalgamation.

(2) The amalgamation must be supported, in a secret ballot, by more than 50% of all members of each of the applicant trade unions or employer organisations.

(3) The Industrial Registrar may refuse an application for amalgamation if –

* 1. the proposed rules of the trade union or employer organisation to be formed by the amalgamation will not make adequate provision for all the matters specified in Schedule 2; or
  2. any of the purposes of the amalgamated trade union or employer organisation would be unlawful.

(4) Upon amalgamation, a notice of dissolution must be signed by the Secretary of each dissolved trade union or employer organisation and more than 5 voting members at the date of dissolution, and sent to the Industrial Registrar for registration of the dissolution, and the trade union or employer organisation ceases to be a body corporate.

(5) Upon amalgamation, all deeds, bonds, agreements and instruments effective against or in favour of a registered trade union or registered employer organisation that is amalgamated with another registered trade union or registered employer organisation, which are subsisting at that time will be effective against or in favour of the trade union or employer organisation formed by the amalgamation, and any proceedings or cause of action which existed or was pending will be effective against or in favour of the trade union or employer organisation formed by the amalgamation.

### **127. Refusal of registration**

(1) The Industrial Registrar may refuse to register a trade union or employer organisation if the Industrial Registrar is satisfied that ⎯

1. the principal objects of the persons seeking registration are not in accordance with those set out in the definition of “trade union” or “employer organisation” respectively;
2. the trade union or employer organisation is used for unlawful purposes;
3. the trade union or employer organisation has not complied with the requirements for the registration;
4. any of the objects in the constitution or rules of the trade union or employer organisation are unlawful or conflict with this Act;
5. the proposed rules of the trade union or employer organisation will not make adequate provision for the matters to be specified in Schedule 2; or
6. in the case of trade unions only, the trade union is under the domination of the employer, whether by financial or other means, with the purpose of placing the trade union under the control of the employer.

(2) If the Industrial Registrar refuses to register a trade union or employer organisation, the Industrial Registrar must notify the applicants in writing of the grounds of the refusal within 7 days from the date of the decision and the trade union or employer organisation is thereupon dissolved.

(3) A dissolution under subsection (2) takes effect at the end of the period specified in [section 139](#_139._Appeal_against) for bringing an appeal and ⎯

1. if no appeal is brought under that section within that period, the dissolution takes effect at the commencement of the day following the day on which that period expired; and
2. if an appeal is brought within that period the dissolution, if confirmed on appeal, takes effect on the determination of the appeal.

(4) It is not an offence for a person to act on behalf of a dissolved trade union or employer organisation for the purpose of ⎯

1. any proceedings brought by or against the union or employer organisation; or
2. dissolving the union or employer organisation and disposing of its funds and property in accordance with its constitution and rules.

### **128. Certificate of registration**

The Industrial Registrar, on registering a trade union or employer organisation under [section 121](#_123._Registration_1), must issue to the trade union or employer organisation a certificate of registration in the prescribed form and that certificate, unless proved to have been cancelled or withdrawn, is conclusive evidence that the trade union or employer organisation is duly registered.

### **129. Annual returns**

(1) The secretary of a registered trade union or registered employer organisation must provide to the Industrial Registrar on or before 30th September in each year an annual financial report.

(2) The Industrial Registrar may seek verification of an annual financial report provided in accordance with subsection (1), in circumstances where at least 10% of the members of the trade union or employer organisation have lodged complaints of financial impropriety. .

### **130. Constitution and rules**

(1) The rules of a registered trade union or registered employer organisation must provide for all the matters specified in Schedule 2.

(2) Four copies of a new rule and of an alteration to the constitution or rules of a registered trade union or registered employer organisation must be sent to the Industrial Registrar within 14 days of the making of the rule or alteration and must be registered by the Industrial Registrar upon payment of the prescribed fee.

(3) No new rule or alteration to the constitution or rules of a registered trade union or registered employer organisation may be registered by the Industrial Registrar if the new rule or alteration is in conflict with this Act.

(4) An alteration to the constitution or rules of a registered trade union or registered employer organisation takes effect from the date of registration by the Industrial Registrar unless some later date is specified in the rules.

### **131. Right of member to access constitution and rules**

A member of a trade union or employer organisation has the right to access or obtain a copy of the constitution and other rules of the registered trade union or registered employer organisation of which he or she is a member.

### **132. Registered office and postal address**

(1) A registered trade union or registered employer organisation must have an office and a postal address.

(2) The notice of the location of the office and of the postal address of the trade union or employer organisation must be given to the Industrial Registrar upon registration.

(3) The Industrial Registrar must be immediately informed of any change of the office or postal address of a registered trade union or registered employer organisation.

(4) A registered trade union or registered employer organisation which ⎯

1. operates without having notified the Industrial Registrar of the location of its office and its postal address;
2. fails to give notice of a change to the Industrial Registrar; or
3. operates at a place to which its office has been removed without having given notice of the change to the Industrial Registrar,

commits an offence.

### 

### **133. Cancellation or suspension of registration**

(1) The Industrial Registrar may, at the request of the trade union or employer organisation upon its dissolution, cancel the registration of a registered trade union or registered employer organisation.

(2) The Industrial Registrar must cancel the registration of a registered trade union or registered employer organisation if ⎯

1. the registration was obtained by fraud or misrepresentation;
2. any of the objects of the trade union or employer organisation, have become unlawful and the trade union or employer organisation fails to rectify any such unlawfulness within the period specified by the Industrial Registrar; or
3. the trade union or employer organisation has ceased to exist.

(3)The Industrial Registrar may suspend or cancel the registration of a registered trade union or registered employer organisation if ⎯

1. registration was obtained by mistake;
2. the trade union or employer organisation has been or is being used for an unlawful purpose or for a purpose inconsistent with its constitution or rules; or
3. officers of the trade union or employer organisation have persistently and wilfully failed to comply with the provisions of this Act or committed offences under this Act.

(4) If the registration of a trade union or employer organisation is suspended under this section the Industrial Registrar must, before the end of 4 months after the date of the suspension, either restore the registration or cancel the registration.

(5) Except in a case falling within subsection (1), the Industrial Registrar must give a trade union or employer organisation not less than 2 months’ notice in writing specifying the grounds on which the Industrial Registrar proposes to cancel or suspend its registration and inviting the trade union or employer organisation to show cause in writing within 2 months why the registration should not be cancelled or suspended.

(6) The notice to be served upon a trade union or employer organisation under subsection (8) must be served on any 2 officers from among the secretary, the president and the treasurer of the trade union or employer organisation and the Industrial Registrar must in addition advertise the intention to suspend or cancel the registration of the trade union or employer organisation in the *Gazette* and in at least one newspaper published in Vanuatu.

(8) The period of 2 months to show cause specified in subsection (6) commences from the date of publication in the *Gazette* under subsection (7).

(9) If cause is shown by the trade union or employer organisation under subsection

(6), the Industrial Registrar may hold an inquiry as the Industrial Registrar considers necessary in the circumstances.

(10) Where the Industrial Registrar is satisfied that there is no cause why the registration should be suspended or cancelled the Industrial Registrar must make an order to the effect that the registration should not be suspended or cancelled

(11) Where the Industrial Registrar is satisfied that the registration of the trade union or employer organisation should be suspended or cancelled, the Industrial Registrar must make the order and such order must –

1. be dated the date on which it was made;
2. specify briefly the grounds for suspension or cancellation; and
3. be forthwith served on the trade union or employer organisation.

### **134. Consequence of suspension of registration**

(1) If the registration of a registered trade union or registered employer organisation is suspended under [section 133](#_133._Cancellation_or), during the period of such suspension ⎯

1. the trade union or employer organisation ceases to enjoy the rights, immunities or privileges of a registered trade union or registered employer organisation;
2. its officers and members do not enjoy the rights or privileges accorded to the officers and members of a registered trade union or registered employer organisation; and
3. liabilities incurred by the trade union or employer organisation may be enforced against the trade union or employer organisation and its assets.

(2) If a trade union or employer organisation has lodged an appeal under [section 139](#_144._Appeal_against) against the decision to suspend its registration to the Employment Division of the Court, the decision to suspend the trade union or employer organisation is deemed to have been stayed until the determination of the appeal by the Employment Division of the Court.

### **135. Effect of cancellation of registration**

(1) Subject to subsection (2), a trade union or employer organisation whose registration has been cancelled under this Act, in addition to any other disability ⎯

1. ceases to exist as a body corporate, and the Industrial Registrar may, notwithstanding its rules appoint one or more persons to be liquidators of it;
2. ceases to enjoy any of the rights, immunities or privileges of a registered trade union or registered employer organisation, but without prejudice to any liability incurred by the trade union or employer organisation which may be enforced against the trade union or employer organisation and its assets, whether the liability is incurred before, on or after the date of cancellation of registration; and
3. is dissolved, and no person may after such cancellation take part in its management or organisation, or act or purport to act as an officer of the trade union or employer organisation except for the purpose of defending proceedings against the trade union or employer organisation, or of dissolving it and disposing of its funds or property in accordance with its rules and this Act.

(2) The cancellation of registration of a trade union or employer organisation takes effect as follows ⎯

1. if no appeal is brought within 28 days, on the day following the day the 28 days expire; or
2. if an appeal is brought, takes effect on the date of determination of the appeal, if appeal is not upheld.

### 

### **136. Powers of liquidator and Industrial Registrar in winding up**

(1) If a liquidator is appointed under [section 135(1)(a)](#_135.__Effect) any property (including books and documents) belonging to the trade union or employer organisation vests in the liquidator by his or her official name from the date of the appointment of the liquidator.

(2) After giving any indemnity, as the Industrial Registrar may direct, the liquidator may ⎯

1. bring or defend an action or other legal proceeding that relates to the property of the trade union or employer organisation, or that is necessary for the purpose of effectively winding up the trade union or employer organisation and recovering its property;
2. take possession of any books, documents or property belonging to the trade union or employer organisation;
3. sell the real and personal property and rights in action of the trade union or employer organisation by public auction or private contract;
4. appoint a legal practitioner to assist in the duties of the liquidator;
5. pay any creditors of the trade union or employer organisation in full or in part;
6. satisfy any debts or liabilities of the trade union or employer organisation and any liabilities capable of resulting in debts, and any claims, present or future, on the terms as may be agreed, and take security for the discharge of a debt, liability or claim and give a complete discharge in respect of it;
7. make a settlement with creditors of the trade union or employer organisation or persons claiming to be creditors of the trade union or employer organisation; and
8. prepare a proposal for the distribution of the assets of the trade union or employer organisation and, subject to the approval of the Industrial Registrar, distribute the assets accordingly.

(3) The exercise by the liquidator of the powers conferred by this section is subject to the control of the Industrial Registrar, and a creditor or member of the trade union or employer organisation may apply to the Industrial Registrar with respect to an exercise or proposed exercise of those powers.

(4) Without limiting subsection (2), the Industrial Registrar may ⎯

1. rescind or vary an order made by a liquidator or substitute a new order for it;
2. remove a liquidator from office;
3. make an order upon the assets of the trade union or employer organisation for the remuneration of a liquidator;
4. call for and inspect the books, documents or assets of a trade union or employer organisation;
5. by order in writing limit or restrict the powers of a liquidator;
6. at any time require accounts to be rendered to the Industrial Registrar by a liquidator;
7. refer a subject of dispute between a liquidator and a third party to the Employment Division of the Court, subject to the consent in writing of the third party; or
8. summon to meetings members of the trade union or employer organisation as may appear to the Industrial Registrar convenient for the purpose of winding up the affairs of the trade union or employer organisation.

(5) The Industrial Registrar, or a liquidator appointed under [section 135(1)(a)](#_140.__Effect), may summon and enforce the attendance of parties and witnesses and compel the production of documents in the same manner as is provided in the rules of the Tribunal.

### 

### **137. Closure of original liquidation on appointment of liquidator**

Notwithstanding the rules of the trade union or employer organisation, if a liquidator has been appointed under [section 135(1)(a)](#_140.__Effect) ⎯

1. all funds and assets of the trade union or employer organisation that are necessary to be applied to the cost of the liquidation and the discharge of the liabilities of the trade union or employer organisation, must be realised and converted into money;
2. following discharge of the cost of the liquidation and other liabilities, , then in such manner as may be provided by the rules of the trade union or employer organisation, or failing such provision, in the manner as the Industrial Registrar directs, remaining assets may be handed over to any successor trade union or employer organisation or may be converted to cash for distribution;
3. when the liquidation of the trade union or employer organisation has been closed and a creditor has not claimed or received what is due to the creditor under the proposed distribution, notice of the closing of the liquidation must be published in the *Gazette* and any claims against the funds of the trade union or employer organisation will be disallowed when 2 years have elapsed from the date of the publication; and
4. any surplus remaining after the application of the funds to the purposes specified in paragraph (b)must be paid to the Consolidated Fund.

### **138. Notification in Gazette**

(1) The Industrial Registrar must give notice in the *Gazette* of any of the following matters within 28 days of its occurrence ⎯

1. an application for registration by a trade union or employer organisation;
2. the registration or refusal of registration by a trade union or employer organisation;
3. the cancellation or suspension of registration of a trade union or employer organisation;
4. the registration of a change of name of a registered trade union or registered employer organisation;
5. the amalgamation of 2 or more registered trade unions or registered employer organisations; or
6. the dissolution of any registered trade union or registered employer organisation.

### **139. Appeal against decisions of Industrial Registrar**

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

### **140. Certain Acts do not apply**

(1) Subject to this Act, the following Acts do not apply to any registered trade union or registered employer organisation -

(a) the Co-operatives Act (Cap. 152); or

(b) the Companies Act (Cap. 191).

# **PART 15 - RIGHTS AND LIABILITIES OF TRADE UNIONS AND EMPLOYER ORGANISATIONS**

### **141. Object of this Part**

The object of this Part is to enable registered trade unions and employer organisations to function fully as social partners and as legal entities capable of incurring legal obligations.

### **142. Trade Unions and Employer Organisations not unlawful**

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

1. a member or an officer of the trade union or employer organisation liable to criminal prosecution for conspiracy or otherwise;
2. an agreement or trust void or voidable.

### 

### **143. Immunity from civil suit**

No suit or other legal proceedings may be instituted and maintained in a court of law against a registered trade union or an officer or member of the trade union, or against a registered employer organisation or officer or member of the employer organisation, in respect of an act done in contemplation or in furtherance of an employment dispute.

### **144. Registered trade union and employer organisation as corporate bodies**

(1) Subject to subsection (2), the registration of a trade union or employer organisation renders it a body corporate by the name under which it is registered, and, subject to this Act, confers on it perpetual succession and may –

(a) hold real or personal property;

(b) enter into contracts;

(c) sue and be sued;

(d) do any other thing a person can legally do; and

(e) do any other thing necessary for the purpose of its constitution.

### **145. Access to workplaces**

(1) A representative of a registered trade union, authorised in writing by the trade union and with the consent of the employer, which shall not be withheld unreasonably, has the right to enter a workplace for the purpose related to the trade union’s business without disrupting the work arrangements of the employer–

1. to discuss trade union business with trade union members;
2. to recruit workers as trade union members; or
3. to provide information on the trade union and trade union membership to any worker on the premises.

### 

# **PART 16 – COLLECTIVE BARGAINING**

### **146. Objects of this Part**

The objects of this Part are-

1. to provide for a duty of good faith in relation to collective bargaining;
2. to provide for a code of good faith to assist the parties to understand what good faith means in collective bargaining;
3. to recognise the view of parties to collective bargaining as to what constitutes good faith; and
4. to promote orderly collective bargaining.

## Division 1 – Good Faith

### 

### **147. Good faith in bargaining for collective agreement**

(1) The duty of good faith requires a trade union and an employer or employer organisation bargaining for a collective agreement to do, at least, the following things –

(a) the trade union and the employer or employer organisation must use their best endeavours to enter into an arrangement, as soon as possible after the initiation of bargaining, that sets out a process for conducting the bargaining in an effective and efficient manner;

(b) the trade union and the employer or employer organisation must meet each other, from time to time, for the purposes of the bargaining;

(c) the trade union and the employer or employer organisation must consider and respond to proposals made by each other;

(d) the trade union and the employer or employer organisation -

(i) must recognise the role and authority of any person chosen by each to be its representative or advocate;

(ii) must not, directly or indirectly, bargain about matters relating to terms and conditions of employment with persons whom the representative or advocate are acting for, unless the trade union or the employer or employer organisation agree otherwise; and

(iii) must not undermine or do anything that is likely to undermine the bargaining or authority of the other in the bargaining; and

(e) the trade union and the employer or employer organisation must provide to each other, on request and in accordance with [section 149](#_156._Providing_information), information that is reasonably necessary to support or substantiate claims or responses to claims made for the purposes of the bargaining.

(2) Subsection (1) (b) does not require a union and an employer to continue to meet each other about proposals that have been considered and responded to.

(3) The matters about which a trade union and an employer or employer organisation may continue to meet each other in good faith include –

(a) the provisions of a code of good faith that are relevant to the circumstances of the trade union and the employer or employer organisation which is consistent with the code of good faith developed under [section 150](#_157._Code_of_1);

(b) the provisions of any agreement about good faith entered into by the trade union and the employer or employer organisation;

(c) the proportion of the employer’s workers who are the members of the trade union and to whom the bargaining relates; and

(d) any other matter considered relevant, including background circumstances and the circumstances of the trade union and the employer or employer organisation.

(4) For the purposes of subsection (3)(d), “circumstances”, in relation to a trade union and an employer or employer organisation, include –

(a) the operational environment of the trade union and the employer or employer organisation; and

(b) the resources available to the trade union and the employer or employer organisation.

(5) This section does not limit the application of the duty of good faith in relation to bargaining for a collective agreement.

### **148. Duty of good faith does not require concluded collective agreement**

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

(a) to agree on any matter for inclusion in a collective agreement; or

(b) to enter into a collective agreement.

### **149. Providing information in bargaining for collective agreement**

(1) This section applies for the purpose of [section 147](#_147._Good_faith)(1)(e).

(2) A request by a trade union or an employer or employer organisation to the other for information must-

(a) be in writing;

(b) specify the nature of the information requested in sufficient detail to enable the information to be identified;

(c) specify the claim or the response to a claim in respect of which information to support or substantiate the claim or the response is requested; and

(d) specify a reasonable time within which the information is to be provided.

(3) A trade union or an employer or employer organisation must provide the information requested-

(a) direct to the other; and

(b) to an independent reviewer, appointed by consent, if the trade union or the employer or employer organisation providing the information reasonably considers that it should be treated as confidential information.

(4) The independent reviewer must advise the parties of his or her opinions within a reasonable time, and if the independent reviewer determines the information is confidential, it must only be used for the bargaining concerned and not disclosed to a third party unless the parties decide otherwise.

### 

### **150. Code of good faith**

(1) The Minister may direct the Council to develop a code of good faith, the object of which is to provide guidance about the application of the duty of good faith under this Part in relation to collective bargaining.

(2) The Tribunal or the Employment Division of the Court may, in determining whether or not the parties to collective bargaining have dealt with each other in good faith in bargaining for a collective agreement, have regard to the code.

### **151. Breakdown in bargaining**

(1) Should, notwithstanding the efforts of parties to bargain in good faith, there be a break down in the bargaining process, then any party may report to the Industrial Registrar an employment dispute under [Part 17](#_PART_17_–_1) of this Act.

## Division 2 - Bargaining

### 

### **152. Initiation of bargaining**

(1) Bargaining for a new collective agreement or variation of an existing collective agreement may be initiated by –

1. one or more registered trade unions, with one or more employers or registered employer organisations; or
2. one or more employers or registered employer organisations, with one or more registered trade unions.

(2) An employer that is a member of an employer organisation bound by a collective agreement, is similarly bound by that collective agreement to the extent that the collective agreement covers that employers’ workers.

### **153. How bargaining initiated**

(1) A trade union or employer or employer organisation initiates bargaining for a collective agreement by giving to the intended party or parties to the agreement a notice that complies with subsection (2).

(2) A notice complies with this subsection if –

1. it is in writing and signed by the trade union or the employer or employer organisation giving the notice or its duly authorised representative;
2. it identifies each of the intended parties to the collective agreement;
3. it identifies the intended coverage of the collective agreement;
4. only one notice is required, on the day it is given;
5. if more than one notice, on the day the last notice is given; and
6. where there is multiplicity of parties, the initiating party must give notice to all other parties.

### **154. Bargaining where there is no collective agreement**

If there is no applicable collective agreement in force between a trade union or unions and an employer or employers or employer organisation, either party may initiate bargaining for a collective agreement at any time.

### **155. Bargaining for variation of collective agreements**

If there is an existing collective agreement in force between a trade union or unions and an employer or employers or employer organisation, either party may initiate bargaining for variation of the collective agreement as follows –

(a) if there is only one applicable collective agreement in force, a trade union or employer m or employer organisation must not initiate bargaining unless the party gives 28 days written notice to the other party; or

(b) if there is more than one applicable collective agreement in force that binds more than one trade union or more than one employer or employer organisation, or both unless the party gives 60 days written notice to all the parties.

### **156. Bargaining for collective agreements with expiry dates**

(1) If there is only one applicable collective agreement in force a trade union or employer or employer organisation must not initiate bargaining for a new collective agreement earlier than 60 days before the date on which the collective agreement expires.

(2) If there is more than one applicable collective agreement in force that binds more than one trade union or more than one employer or employer organisation or both that are intended to be parties to the bargaining, the trade union or employer or employer organisation must not initiate bargaining –

(a) 120 days before the date on which the last applicable collective agreement expires; or

(b) 60 days before the date on which the first applicable collective agreement expires,

whichever is the later date.

(3) For the purposes of this section, an applicable collective agreement is in force between a trade union and an employer or employer organisation if the agreement binds workers whose work is intended to come within the coverage clause in the collective agreement being bargained for.

### **157. Consolidation of bargaining**

(1) This section applies if –

1. an employer or employer organisation received 2 or more notices under [section 152](#_152._Who_may) from different trade unions; and
2. the notices relate, in whole or in part, to the same type of work.

(2) The employer or employer organisation may, within 28 days after receiving the first notice, request each trade union concerned to consolidate the bargaining initiated by each notice into bargaining for a single collective agreement.

(3) Each trade union receiving a request under subsection (2) must, within 28 days after receiving the request, consider the request.

(4) A trade union that does not agree to a request under subsection (3) retains the right to initiate bargaining under [section 152](#_159._Who_may_1).

(5) In the case of those trade unions that agree to the request, the bargaining initiated by each notice must be consolidated into a single collective agreement.

1. If a trade union agrees to the request under subsection (3), the notice under [section 152](#_159._Who_may_1) is treated as having lapsed.

(7) If a trade union does not agree to the request under subsection (3), either party may lodge an employment dispute with the Industrial Registrar.

## Division 3 - Collective agreements

### 

### **158. When a collective agreement comes into force and expires**

(1) Subject to [section 160](#_167.__Form), a collective agreement comes into force on the date specified in the agreement as the date on which it comes into force or if no such date is specified, the date on which the last party to the agreement or its duly authorized representative, signs the agreement.

(2) A collective agreement may provide that one or more of its provisions come into effect on different dates.

(3) Where a collective agreement provides for an expiry date it expires on the date specified in the agreement.

### **159. Continuation of collective agreement after specified expiry date**

A collective agreement that would otherwise expire as provided in [section 158](#_158._When_a)(3), continues in force for a period not exceeding 12 months, if the trade union initiated collective bargaining before the collective agreement expired, for the purpose of replacing the collective agreement.

### **160. Form and content**

(1) A collective agreement has no effect unless -

(a) it is in writing;

(b) it is signed by each trade union and employer or employer organisation that is a party to the agreement; and

(c) it is registered by the Industrial Registrar.

(2) A collective agreement may contain such provisions as the parties to the agreement mutually agree on.

(3) A collective agreement must contain –

(a) a clause setting out the workers, trade unions, employers and employers’ organisations covered by the collective agreement;

(b) a clause providing for non-discrimination under the collective agreement on any of the grounds set out in [section 7](#_7._Fundamental_Rights) of this Act;

(c) a clause providing for equal remuneration for work of equal value for women and men under the collective agreement;

(d) clause relating to disciplinary procedures;

(e) a procedure relating to the settlement of employment disputes at a workplace level as provided in [section 165](#_165._Settlement_at);

(f) a clause dealing with the rights and obligations of the workers and employer if the work of any of the workers were to be contracted out, or the business or part of the business of the employer concerned were to be transferred or sold, for the purpose of protecting workers bound by the agreement from being disadvantaged;

1. a clause providing how the agreement can be varied; and
2. a clause providing for the expiry of the agreement.

### **161. Deduction of union fees**

(1) A collective agreement is to be treated as if it contains a provision that requires an employer that is bound by the agreement to deduct, with the consent of a trade union member, the member’s trade union fee from the member’s salary or wages on a regular basis during the year.

(2) A collective agreement making provision for the deduction of trade union fees shall exclude or vary the effect of subsection (1).

(3) Trade union fees deducted from a member’s salary or wages must be paid to the trade union concerned in a manner agreed to by the trade union.

### **162. Application of collective agreement**

(1) A collective agreement that is in force binds and is enforceable by-

1. the trade union and the employer or employer organisation that are the parties to the agreement; and
2. a worker-

(i) who is employed by an employer that is a party to the agreement; (ii) who is or becomes a member of a trade union that is a party to the agreement; and

if the registration of a trade union or employer organisation that are parties to a collective agreement are cancelled or suspended, the collective agreement continues to bind the employer or employers who are parties to the agreement, and the workers who are members of the trade union bound by the collective agreement.

(2) If the trade union or employer organisation’s registration is cancelled as a result of the trade union’s or employer organisation’s amalgamation with one or more other trade unions or employer organisation, the collective agreement binds the amalgamated trade union or employer organisation.

### **163. Copy to be delivered to Industrial Registrar**

(1) The parties to a collective agreement must, within 28 days after it is made, lodge a signed copy of the agreement with the Industrial Registrar for registration.

(2) The copy of the agreement delivered to the Industrial Registrar must include any document referred to, or incorporated by reference, in the collective agreement, unless the document is publicly available.

(3) A collective agreement in force at the commencement of this Act is deemed to have been made and registered under this Act.

(4) On receipt of the collective agreement the Industrial Registrar ⎯

1. must notify the parties of any matter which the Industrial Registrar is satisfied is contrary to this Act or any other written law; or
2. subject to paragraph (a), may issue a certificate of registration in the prescribed form and must notify the parties that the agreement has been registered.

(5) The provisions of a collective agreement must be an implied condition of contract between a worker and an employer to whom the collective agreement applies.

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

# **PART 17 – EMPLOYMENT DISPUTES**

### **164. Object of this Part**

The object of this Part is to set out procedures for the resolution of employment disputes.

### 

### **165. Settlement at a workplace level**

(1) A contract of employment or collective agreement must contain a procedure for settling employment disputes in the workplace.

(2) The procedure required by subsection (1) must be ⎯

1. an agreed procedure that is not inconsistent with the requirements of this Part; or
2. if there is no agreed procedure, the model procedure set out in Schedule 3.

(3) Subject to subsection (4), the parties to a contract of employment or collective agreement must first attempt to resolve the dispute according to the agreed procedure referred to in subsection (2)(a) or the model procedure set out in Schedule 3, prior to an employment dispute being reported to the Industrial Registrar under this Act.

(4) A worker may dispense with the requirement to first attempt to resolve the employment dispute under this section, where the employment dispute relates to:

(a) the termination of a worker’s contract of employment;

(b) alleged unlawful discrimination against a worker or job applicant; or

(c) alleged sexual harassment of a worker,

and the worker believes that an attempt to settle the employment dispute at the workplace level would either be unproductive or impractical.

### **166. Report to Industrial Registrar**

(1) Should an employment dispute fail to be resolved at a workplace level within a reasonable time in accordance with [subsection 165](#_165._Settlement_at) (3) or should the employment dispute be exempt from this requirement in accordance with [subsection 165](#_165._Settlement_at) (4), then subject to subsections (5) and (6) the employment dispute may be reported to the Industrial Registrar for the purposes of seeking mediation services by –

1. a worker, alleged worker, former worker or job applicant who is a party to the employment dispute;

(b) an employer or alleged employer who is a party to the employment dispute;

1. a registered trade union that is a party to the employment dispute or is representing a worker in the employment dispute; or
2. an employer organization that is a party to the employment dispute or is representing an employer in the employment dispute.

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

(3) Where an employment dispute relates to the termination of a worker’s contract of employment, it must be reported to the Industrial Registrar within 28 days of the worker being provided with notice of termination, provided that the Industrial Registrar may extend this period where the delay to report was caused by mistake or other good reason.

(4) The party reporting an employment dispute or that party’s representative must, within 3 days of reporting the dispute to the Industrial Registrar, provide a copy of that report to each party to the employment dispute.

(5) A worker employed under the Police Act may elect to have an employment dispute determined under Part 5 of that Act, or under [Part 17](#_PART_17_–_1) of this current Act but may not make a claim for resolution of the employment dispute under both pieces of legislation.

(6) A worker employed under the Police Act who has elected to refer a dispute to the Police Services Commission established under Part 3 of that Act, is precluded from referring that same dispute to the Industrial Registrar under [Part 17](#_PART_17_–_1) of this Act.

### **167 .Reference to Mediation Service**

(1) The Industrial Registrar must refer an employment dispute to the Mediation Service within 7 days of receiving a report of an employment dispute under [section 162](#_169._Application_of).

(2) The Industrial Registrar may refrain from referring an employment dispute to the Mediation Service, if the Industrial Registrar believes on reasonable grounds that sufficient attempts to resolve the employment dispute under [section 165](#_165._Settlement_at) have not been undertaken.

(3) The Mediation Service must schedule the mediation within 14 days of it being referred by the Industrial Registrar, provided that this period may reasonably be extended with the consent of all parties.

### **168. Reference to Employment Tribunal**

(1) The provision of mediation services must first be exhausted before an employment dispute may be referred to the Tribunal.

(2) Mediation services will be considered to be exhausted when:

1. the mediator certifies that there is no prospect of resolving the employment dispute by mediation; or
2. where no further mediation services have been scheduled by the Mediator, 7 days after mediation services were last provided, whichever is the earlier.

(3) Subject to subsection (4), either party may refer the employment dispute to the Tribunal for determination.

(4) A party referring an employment disputes to the Tribunal in accordance with subsection (3), must do so within 28 days of the exhaustion of the mediation services as prescribed by subsection (2), provided that the Industrial Registrar may extend this period where the delay to refer was caused by mistake or other good reason.

(5) The Tribunal must schedule the employment dispute for hearing within 20 days of its referral, provided that this period may reasonably be extended with the consent of all parties.

### **169. Decision by the Tribunal to be made without delay**

The Tribunal must make its decision on a matter referred to it under this Part without delay and, in any case, within 40 days from the date of the completion of the hearing.

### **170. Decision may be retrospective**

A decision concerning an employment dispute, which is made or effected by the Tribunal, may be made so as to have retrospective effect.

### 

### **171. Right of appeal**

A party aggrieved by a decision of the Tribunal under this Part, may only appeal to the Employment Division of the Court in accordance with Division 5 of [Part 21](#_PART_21_–) of this Act.

# **PART 18 – STRIKES AND LOCKOUTS**

### **172. Objects of this Part**

(1) The objects of this Part are-

(a) to recognise that the requirement that a trade union and employer or employer organisation must deal with each other in good faith, does not preclude certain strikes and lockouts being lawful;

(b) to define lawful and unlawful strikes and lockouts; and

1. to ensure that where a strike or lockout is threatened in an essential service that there is an opportunity for a mediated solution to the problem.

### **173. Secret ballot a prerequisite to strike**

(1) No strike shall take place prior to:

(a) a secret ballot being conducted by the trade union of its members

threatening the strike action; and

1. the trade union providing the Industrial Registrar and the respective employers with at least 10 days written notice of the results of that secret ballot and of the proposed strike action.

(2) The procedures to be followed for a secret ballot under subsection (1) are –

(a) the ballot paper must state all the issues on which a strike mandate is sought;

1. each issue must be supported by more than 50% of the votes cast;
2. the secret ballot must be carried out by the Secretary of the trade union or the Secretary’s delegate; and
3. within 48 hours of conducting the ballot the Secretary of the trade union or the Secretary’s delegate, must notify the Industrial Registrar in writing of the result of the ballot.

(3) A secret ballot for a strike mandate under this section is valid for 12 months from the date of notification of the Industrial Registrar of the results.

### 

### **174. Notice prerequisite for lockout**

(1) No lockout for any reason shall take place unless the employer gives 10 days written notice to the Industrial Registrar and the respective trade unions.

(2) A notice under subsection (1) is valid for 6 months from the date of the notice.

### **175. Unlawful strikes or lockouts**

Participation in a strike or lockout is unlawful if the strike or lockout –

1. occurs while a collective agreement binding the workers participating in the strike or affected by the lockout is in force, unless it relates to a matter which is not covered by the existing collective agreement or variation to the collective agreement;
2. 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 –
3. at least 21 days have passed since the bargaining was initiated;
4. on the date bargaining was initiated, the workers were bound by the same collective agreement and that collective agreement has expired; or
5. on that date the workers were bound by different collective agreements and at least one of those collective agreements has expired;
6. relates to a dispute reported under [section 166](#_166._Report_to) and is being processed in accordance with this Act;
7. takes place in contravention of [section 173](#_173._Secret_ballot) or [174](#_174._Notice_prerequisite);
8. takes place in contravention of [section 182](#_182._Strikes_in), [183](#_183._Lockouts_in) or [184](#_184._Notices); or

takes place in contravention of a settlement by a Mediator or a decision of a Tribunal or the Employment Division of the Court

### **176. Lawful strikes or lockouts on grounds of safety or health**

Participation in a strike or lockout is lawful on grounds of health and safety, only if the workers who strike have, or the employer who locks out has, exhausted the health and safety dispute resolution procedures set out under the Health and Safety at Work Act.

### **177. Effect of lawful strikes or lockouts**

Lawful participation in a strike or lockout does not give rise –

1. to an action founded on tort;
2. to an action for the grant of an injunction; or
3. to any action or proceedings –
   1. for the breach of a contract of employment;
   2. for a penalty or conviction under this Act; or
   3. for the grant of a compliance order.

### **178. Court may order discontinuance of strike or lockout**

Where there is a strike or lockout –

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

1. an employer, in the case of the strike;

may apply to the Employment Division of the Court for an injunction to discontinue the strike or lockout on grounds that the strike or lockout is unlawful in accordance with this [Part 18](#_PART_17_–).

### **179. Employers not liable for wages**

(1) A worker who takes strike action or is lawfully locked out, is not entitled to any remuneration in respect of the period of that strike action or lawful lockout.

(2) On the resumption of work by the worker, the worker’s services must be treated as continuous, despite the period of the strike or lawful lockout, for the purposes of rights and benefits that are conditional on continuous service.

### 

### **180. Prohibition of expulsion of members**

(1) A person refusing to take part or to continue to take part in a strike or lockout, which under this Act is unlawful, must not under the constitution or rules of his or her trade union or employer organisation, be –

1. expelled from that trade union or employer organisation;
2. liable to a fine or penalty;
3. deprived of a right or benefit to which he or she was or is or her representatives was entitled; or
4. directly or indirectly disadvantaged.

(2) No provisions of a written law limiting the proceedings which may be entertained by the Employment Division of the Court, and nothing in the constitution or rules of a trade union or employer organisation requiring the settlement of disputes in any manner shall apply to a proceeding for enforcing a right or exemption secured by this section.

(3) In the proceedings under subsection (2), the Employment Division of the Court may, instead of ordering a person who has been expelled from membership of a trade union or employer organisation to be restored to membership, order that the person be paid compensation or damages out of funds of the trade union or employer organisation.

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# **PART 19 – PROTECTION OF ESSENTIAL SERVICES, LIFE AND PROPERTY**

### **181. Object of this Part**

The object of this Part is to prescribe the circumstances in which workers or employers engaged in essential services listed in Schedule 4 may undertake a strike or lockout.

### 

### **182. Strikes in essential services**

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

(a) conduct a secret ballot in accordance with [Section 173](#_180_.Secret_ballot); and

1. in writing, give at least 28 days’ notice of strike to the employer and a copy to the Industrial Registrar.

(2) The notice of strike must –

(a) be signed by the trade union;

1. state the date and time on which the strike is contemplated and the place or places where the contemplated strike will occur;
2. state the category of workers who will strike;
3. state the estimated duration of the strike; and
4. be served by hand, registered mail or courier.

(3) If –

* + - * 1. the notice of strike does not comply with this section; or
        2. the strike does not take place as notified under subsection (2),

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

### **183. Lockouts in essential services**

(1) No employer engaged in an essential service may lock out workers in that essential service unless–

1. the lockout is lawful under this Act;
2. the employer gives 28 days’ notice to the Industrial Registrar and the trade union; and
3. the lockout notice in paragraph (b) is posted in all premises used for the purposes of that service in some conspicuous place where the notice may conveniently be read by persons employed in that essential service.

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

1. the nature of the proposed lockout, including whether or not it will be continuous;
2. the place or places where the proposed lockout will occur;
3. the date and time on which the lockout will begin; and
4. the names of the workers who will be locked out.

### 

### **184. Notices**

(1) An employer in an essential service must display in all premises used for the purposes of that service, a copy of [section 183](#_192._Lockouts_in) and [Schedule 4](#_SCHEDULE_4) in some conspicuous place where the notice may conveniently be read by persons employed in that essential service.

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

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

### **185. Offences for breaches of service affecting essential services**

(1) A person who breaks his or her contract of employment in respect of services set out in Schedule 4, knowing or having reasonable cause to believe that the probable consequences of so doing, either alone or in combination with others, will be ⎯

1. to deprive the public, or a section of the public wholly or to a great extent of an essential service, or substantially to diminish the enjoyment of that service by the public or by a section of the public; or
2. to endanger human life or cause serious bodily injury or to expose valuable property whether real or personal, to destruction, deterioration or serious damage, commits an offence.

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

### **186. Requirement for mediation services**

(1) Where a notice of intention for a strike or lockout in an essential service is given, the Industrial Registrar must ensure that mediation services are provided as soon as possible to the parties to the proposed strike or lockout for the purpose of assisting the parties to avoid the need for the strike or lockout.

(2) Where mediation fails, the Industrial Registrar shall refer the matter to the Tribunal.

### **187. Minister may refer strike or lockout in essential services to the Court**

(1) Where there is a lawful strike or lockout in an essential service and:

1. the dispute has not been resolved through the provision of mediation services or other means; and
2. neither party reports the dispute under [section 173](#_173._Report_to); and
3. the Minister is satisfied that the continuance of the strike or lockout is not in the public interest or will jeopardise or likely to jeopardise the life or livelihood of the nation, economy or public safety,

the Minister may, refer the employment dispute to the Employment Division of the Court.

(2) If a dispute is referred to the Employment Division of the Court under subsection (1), the Minister may order the discontinuance of the strike or lockout while that matter is proceeding.

# **PART 20 – INSTITUTIONS**

### **188. Objects of this Part**

(1) The objects of this Part are to establish institutions and procedures that -

(a) support successful employment relationships and the obligations of good faith;

1. recognise that employment relationships are more likely to be successful if differences in those relationships are resolved promptly by the parties themselves;
2. recognise that if differences in employment relationships are to be resolved promptly, information and assistance need to be available at short notice to the parties to those relationships;
3. recognise that the procedures for problem solving need to be flexible;
4. recognise that there will always be some cases that require judicial intervention;
5. recognise that judicial intervention needs to be that of a decision making body that is not inhibited by strict procedural requirements; and

(g) where the parties are unable to resolve differences, provide for mediation and adjudication to be invoked to resolve such matters in a timely manner;

## Division 1 – Mediation Service

### 

### **189. Mediation Service**

(1) The Judicial Service Commission must establish a Mediation Service to provide mediation services in accordance with this Act, consisting of the following suitably qualified public officers–

(a) a Chief Mediator responsible for the daily management of the Mediation Service; and

(b) other Mediators, as required.

(2) In this section, “suitably qualified” means a person who satisfies the requirements of the Judicial Service Commission for relevant qualifications, mediation training and experience.

(3) In appointing members of the Mediation Service the Judicial Service Commission must consider recommendations for appointment made by the Council.

(4) Mediation services may include –

(a) the facilitation of a mediation, conciliation or other consultation process;

(b) the provision of general information about employment rights and obligations;

(b) the provision of information about what services are available about disputes and employment grievances;

(c) other services that assist the smooth conduct of employment relationships;

(d) other services (of a type that can address a variety of circumstances) to, promptly and effectively, resolve employment disputes; and

(e) services to resolve any problem relating to contracts of employment associated with the fixing of new terms and conditions of employment.

(5) For the purposes of subsection (4), mediation services may be provided as follows -

(a) by a telephone, facsimile, internet, e-mail service, teleconferencing, or any other means (whether as a means of explaining where information can be found or as a means of actually providing the information or of otherwise seeking to resolve the employment relationship); or

1. by publishing pamphlets, brochures, booklets, or codes;
2. by providing awareness and training on ways and means of, promptly and effectively, resolving employment disputes; and
3. by any other means the Chief Mediator thinks fit.

(6) Any of the mediation services may be provided –

(a) by a combination of the ways described in subsection (5); or

(b) in such other ways as the Chief Mediator thinks fit to best support the objects of this Act.

### **190. Procedures for mediation services**

(1) Where mediation services are provided, the Mediator who provides the service decides what services are appropriate to the particular case in accordance with any prescribed procedures.

(2) The Mediator, in providing mediation services –

(a) may, having regard to the objects of this Act and the needs of the parties, follow such procedures, whether structured or unstructured, or do such things as he or she considers appropriate to resolve the employment dispute promptly and effectively; and

(b) may receive any information, statement, admission, document, or other material, in any way that he or she thinks fit, whether or not it would be admissible in judicial proceedings.

(3) A party to proceedings before a Mediator may appear personally or be represented by a registered trade union or registered employer organization.

(4) No legal practitioner shall be allowed to represent a party during mediation.

### **191. Consent to settlement by Mediator**

(1) Should other mediation services be provided under [section 189](#_189._Mediation_Service) fail to reach an agreed settlement and if all parties to the mediation consent, then the Mediator may hear the parties to an employment dispute and determine and endorse terms of settlement for it.

(2) Where the terms of settlement are endorsed by the Mediator under subsection (1), the settlement is deemed to be a final and binding decision.

(3) Except for enforcement purposes, no party may seek to bring the terms of settlement determined and endorsed by the Mediator under subsection (1) before the Tribunal or any court, whether by action, appeal, application for review or otherwise.

### 

### **192. Confidentiality**

(1) Except with the consent of the parties or the relevant party –

(a) the Mediator who provides mediation;

(b) a person to whom mediation services are provided;

(c) a person employed or engaged by the Ministry; or

(d) a person who assists either the Mediator or a person to whom mediation services are provided –

must keep confidential any statement, admission, or document created or made for the purposes of the mediation and any information that, for the purposes of the mediation, is disclosed orally in the course of the mediation.

(2) No Mediator may give evidence in any proceedings about-

(a) the provision of the mediation; or

(b) anything, related to the provision of the mediation, which comes to his or her knowledge in the course of the provision of the mediation.

(3) No evidence is admissible in any court, or before any person acting judicially, of any statement, admission, document, or information that, by subsection (1), is required to be kept confidential.

(4) Where mediation is provided for the purpose of assisting persons to resolve any problem in determining or agreeing on new terms and conditions of employment, subsections (1) and (3) do not apply to any statement, admission, document, or information disclosed or made in the course of the provision of any such mediation.

(5) Nothing in this section –

(a) prevents the discovery or affects the admissibility of any evidence merely because the evidence was presented in the course of the provision of mediation;

(b) prevents the gathering of information by the Ministry for research or educational purposes as long as the parties and the specific matters in issue between them are not identifiable;

(c) prevents the disclosure by any person employed or engaged by the Ministry or any other person employed or engaged by the Ministry of matters that need to be disclosed for the purposes of giving effect to this Act; or

(d) applies in relation to the functions performed, or powers exercised, by any person under subsection (2).

### 

### **193. Settlements**

(1) Where an employment dispute is resolved through mediation under than under [section 192](#_192._Confidentiality), the Mediator must –

(a) ensure that the parties to the settlement sign the terms of the settlement; and

(b) endorse the terms of settlement.

(2) Where the terms of settlement are signed and endorsed under subsection (1), the settlement is deemed to be a final and binding decision.

(3) Except for enforcement purposes, no party may seek to bring the terms of settlement under this section before the Tribunal or any court, whether by action, appeal, application for review, or otherwise.

### **194. Mediation not to be challenged**

No mediation may be challenged or called in question in any proceedings on the grounds-

(a) that the nature and content of the mediation was inappropriate; or

(b) that the manner in which the mediation services were provided was inappropriate.

### **195. Independence of mediation personnel**

(1) The Industrial Registrar must ensure that Mediators–

(a) are able to act independently, in deciding how to handle or deal with any particular dispute or employment grievance or aspect of it; and

(b) are independent of any of the parties to whom mediation services are being provided in a particular case.

(2) The Industrial Registrar, in managing the overall provision of mediation services, is not prevented by subsection (3) from giving general instructions about the manner in which, and the times and places at which, mediation services are to be provided.

(3) Any such general instructions may include general instructions about the manner in which mediation services are to be provided in relation to particular types of matters or particular types of situations or both.

### **196. Code of Ethics**

(1) The Industrial Registrar shall, in consultation with the Tripartite Labour Advisory Council, develop a code of ethics on standards to guide Mediators in performing their duties and functions under this Act.

(2) In carrying out their functions under this Act, all Mediators will be bound by this code of ethics, as amended from time to time by the Industrial Registrar on the advice of the Tripartite Labour Advisory Council.

## 

### **197. Notice to attend mediation**

(1) Where a matter is referred to the mediation services, a notice shall be issued to all parties to appear before the Mediator at a place and time specified in the notice.

(2) A party that fails to appear before the Mediator as required, without reasonable excuse, under subsection (1) commits an offence and is liable on conviction to a fine not exceeding VT100,000.

## Division 2 –Employment Relations Tribunal

### 

### **198. Establishment of Employment Relations Tribunal**

(1) This section establishes the Employment Relations Tribunal.

(2) The Tribunal has the jurisdiction, powers and functions conferred on it by this Act or any other written law.

### **199. Membership**

(1) The Employment Relations Tribunal consists of the following–

(a) a legal practitioner with not less than 3 years practice, preferably in employment relations, as the Tribunal Chief; and

(b) 2 other members of the Tribunal who may or may not be legally qualified persons.

(2) For the purposes of exercising its jurisdiction, the Tribunal consists of one member only, subject to subsection (3).

(3) The Tribunal Chief may, in writing, nominate up to 3 members, including the Tribunal Chief, to hear and determine the matter.

### **200. Appointments**

(1) The Judicial Service Commission appoints the Tribunal Chief and other members of the Tribunal.

(2) In appointing the Tribunal Chief and other Tribunal members the Judicial Service Commission must consider recommendations for appointment made by the Tripartite Labour Advisory Council.

(3) In appointing members of the Tribunal and in making recommendations for appointment, the Judicial Service Commission and the Tripartite Labour Advisory Council respectively, must take into account diversity of gender and ethnic representation.

### **201. Qualification**

Persons to be appointed as members of the Tribunal must have relevant qualifications or significant experience in employment relations and any other criteria that may be specified by the Minister.

### **202. Term of office**

(1) The Tribunal Chief and other members of the Tribunal are appointed for a term not exceeding 5 years.

(2) A member of the Tribunal is eligible for reappointment.

(3) A member of the Tribunal may be appointed on a part-time basis.

### **203. Vacation and resignation**

(1) The Judicial Service Commission may remove the Tribunal Chief or other members of the Tribunal, for bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Commission.

(2) In the case of alleged misconduct, the Judicial Service Commission may, appoint a committee consisting of a legal practitioner qualified for appointment as a judge and 2 lay members to conduct the hearing of the misconduct and make recommendations to the Commission.

(3) A member of the Tribunal may, by notice in writing addressed to the Judicial Service Commission, resign from office.

### **204. Remuneration**

(1) The Tribunal Chief and other members of the Tribunal are entitled to remuneration and other allowances as determined by the Judicial Service Commission.

(2) Tribunal members appointed on a part time basis shall be entitled to the prescribed remuneration on a pro rata basis.

### **205. Protection of members**

(1) A member of the Tribunal, in the performance of the member’s duties under this Act, has the same protection as is given under section 28 of the Courts Act (Cap. 122) to judicial officers.

(2) For the avoidance of doubt as to the privileges and immunities of members of the Tribunal, parties, representatives, and witnesses in the proceedings of the Tribunal, it is deemed that the proceedings are judicial proceedings.

### **206. Functions of Tribunal**

(1) The general function of the Tribunal is to assist employers and their representatives and workers and their representative trade unions to achieve and maintain effective employment relations, in particular, by adjudicating and determining any employment dispute between parties.

(2) The Tribunal may, in relation to any matter, assist parties to amicably settle the matter and the settlement must be signed by the parties and endorsed by the Tribunal as a binding decision.

(3) Nothing in this Act requires the Tribunal to provide mediation assistance in a matter as a prerequisite to adjudication.

### **207. Jurisdiction of Tribunal**

(1) The Tribunal has jurisdiction ⎯

(a) to adjudicate on employment disputes;

(b) to adjudicate on of the existence of an employment relationship;

1. to adjudicate on an objection to an order for entry to a private dwelling house issued by the Industrial Registrar, to the occupier of the private dwelling house in accordance with [section 41](#_41._Right_of) of this Act;
2. to adjudicate on an objection to a demand notice issued by a labour officer or labour inspector to an employer in accordance with [section 42](#_42._Demand_Notices) of this Act;
3. to adjudicate on all actions under this Act for the recovery of wages or other money;
4. to adjudicate on all actions involving entitlements and related matters provided for by this Act;
5. to order a party to bargain in good faith in accordance with the requirements set out in [Part 16](#_PART_16_–_1) of this Act or any code of good faith developed under [section 150](#_157._Code_of_1);
6. to make a compliance order under [section 208](#_208._Power_to);
7. to adjudicate on actions for breach of a contract of employment;
8. to adjudicate on a question connected with the construction of a contract of employment, which arises in the course of proceedings properly brought before the Tribunal;
9. to adjudicate on a question connected with the interpretation or application of a collective agreement;
10. to adjudicate on a question connected with the construction of a provision of this Act or any other written law, which arises in the course of proceedings properly brought before the Tribunal, notwithstanding that the question concerns the meaning of the Act under which the Tribunal is constituted or under which it operates in a particular case;
11. to adjudicate on matters referred to the Tribunal by the Commissioner of Labour;
12. to adjudicate on matters referred to it by the Mediation Service or any party to the mediation;
13. to hear and determine any appeal referred to it under this Act;
14. to adjudicate on matters relating to equal employment opportunities under [Part 11](#_PART_11_–);
15. to adjudicate on any matter relating to trade unions or their members or employer organizations or their members, including whether the rules of a trade union or employer organization comply with the provisions of this Act;
16. to hear and determine any appeal against a demand notice issued under [section 42](#_22._Demand_Notices) of this Act; and
17. to exercise other powers and functions as are conferred on it by this Act or any other written law.

(2) Subject to subsection (3), the Tribunal has power –

(a) to adjudicate on matters within its jurisdiction relating to claims up to VT2,000,000; and

(b) to hear and determine offences under this Act, as are prescribed by regulations.

(3) The Tribunal has powers to impose fines not exceeding VT100,000, should the Tribunal seek the imposition of fines in excess of VT100,000 or to impose a term of imprisonment, the Tribunal may refer the matter to the Employment Division of the Court for sentencing.

(4) The members of the Tribunal who are not legally qualified have powers to adjudicate on matters within its jurisdiction relating to claims up to VT500,000, however they do not have jurisdiction to hear and determine matters under subsection (2)(b).

### 

### **208. Power to order compliance**

(1) If a person has not observed or complied with –

(a) a provision of this Act;

(b) a contract of employment;

(c) a demand notice issued by a labour officer or a labour inspector; or

(b) an order, determination, direction, decision or requirement made or given under this Act by the Tribunal or a member of the Tribunal,

the Tribunal may, by order, require a party to a proceeding to do or cease to do a specified thing or activity, for the purpose of preventing further non-compliance with the provision, contract, demand notice, order, determination, direction, decision or requirement, and must specify a time within which that order is to be obeyed.

(2) The Tribunal may on the application of a party to the proceedings or on its own motion, exercise the power under subsection (1).

(3) The Tribunal may, on the application of the person who is required to obey the order, extend the time specified under subsection (1).

(4) If the Tribunal makes an order of the kind described in subsection (1), that order -

(a) may be subject to any terms and conditions the Tribunal thinks fit, including conditions as to the actions of the applicant; and

(b) may be expressed to continue in force until a specified time or the happening of a specified event.

(5) If the Tribunal makes an order of the kind described in subsection (1) in any proceedings, it may then adjourn the proceedings, without imposing a penalty or making a final determination in the proceedings, to enable the order of the Tribunal to be complied with while the proceedings are adjourned.

(6) If a person fails to comply with a compliance order made under this section, the person prejudicially affected may apply to the Employment Division of the Court for the exercise of its powers to enforce the compliance order.

### **209. Further powers of Tribunal**

Without limiting any other power of the Tribunal whether under this Part or otherwise, the Tribunal may determine –

(a) the respective value of work performed, through the implementation of job evaluation, based on objective criteria free from gender bias, to determine if equal has been provided for work of equal value by male and female workers;

(b) questions relating to the implementation of equal remuneration for men and women for work of equal value, including with respect to the use of objective job evaluation methods, that may be referred to it pursuant to this Part;

(c) such questions, including the interpretation of this Part, in relation to an instrument that is referred to it by a party to an instrument or the representative of a party, or a labour officer or labour inspector; or

(d) other questions and give rulings as may be necessary for the exercise of its jurisdiction under this Part.

### 

### **210. Recovery of wages and other money**

(1) Without affecting other remedies for the recovery of wages or other money payable by an employer to a worker under a contract of employment, if –

1. there has been default in payment to a worker of wages or other money; or
2. payment of wages or other money has been made at a lower rate than that legally payable under this Act or a contract of employment,

the whole or any part, as the case may require, of the wages or other money may be recovered under this Act by the worker or by a labour officer or a labour inspector on behalf of the worker by action commenced in the prescribed manner in the Tribunal, notwithstanding any acceptance or express or implied agreement by the worker to payment at a lower rate.

(2) An action under this section may be commenced within 2 years of the day on which the money became due and payable.

### **211. Failure to keep or produce records**

If a claim is brought before the Tribunal under [section 210](#_210._Recovery_of) to recover wages or other money payable to a worker, the worker or labour officer or labour inspector may produce evidence to show that the defendant employer failed to keep or produce a wages and time record in respect of that worker as required by this Act and that the failure prejudiced the worker’s ability to bring an accurate claim under this Act.

### **212. Procedures**

(1) The procedure of the Tribunal is subject to this Act.

(2) In all proceedings, the Tribunal must act fairly.

(3) Where it would assist in the resolution of an employment dispute or claim under this Act, the Tribunal may ask questions of, or request documents to be produced by, one or more parties. The independent acts of the Tribunal to ascertain information in this way will not be considered unfair for the purpose of subsection (2), provided that the questions or documents relate to matters in the proceeding.

(4) Sittings of the Tribunal may be held at times and places fixed by a member of the Tribunal.

(5) Sittings of the Tribunal may be adjourned from time to time and from place to place by a member of the Tribunal, whether at a sitting or at a time before the time fixed for the sitting.

(6) An officer of the Tribunal must keep and maintain a record of all sittings of the Tribunal.

(7) The applicant may not, withdraw a matter before the Tribunal without the written consent of the other parties or prior leave of the Tribunal.

### **213. Referral of question of law**

(1) The Tribunal may, in proceedings before it for adjudication, refer a question of law to the Employment Division of the Court for its opinion and may for that purpose defer adjudicating upon, and adjourn, the proceedings subject to receiving that opinion.

(2) A reference under subsection (1) must be made in the prescribed manner.

(3) If the Employment Division of the Court makes a determination on the question of law, the Employment Division of the Court may refer the matter back to the Tribunal for a decision in accordance with the determination.

### 

### **214. Transfer of proceedings to the Employment Division of the Court**

(1) A party to the proceedings may apply to the Tribunal to have the proceedings transferred to the Employment Division of the Court for the hearing and determination of the matter.

(2) The Tribunal may order the transfer of the proceedings to the Employment Division of the Court if the Tribunal is of the opinion that ⎯

(a)an important question of law is likely to arise; or

(b)the case is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Employment Division of the Court.

(3) If the Tribunal declines to transfer proceedings to the Employment Division of the Court, the party concerned may seek special leave of the Employment Division of the Court for an order that the proceedings be transferred to the Employment Division of the Court and the Employment Division of the Court must apply the criteria that govern the Tribunal’s decision under subsection (2).

(4) An order for transfer of proceedings to the Employment Division of the Court under this section may be made with any conditions as the Tribunal or Employment Division of the Court may impose.

(5) If an order for transfer is made under subsection (2), the Employment Division of the Court may, if it considers that the proceedings were not properly transferred, order that the Tribunal adjudicate on the proceedings at the first instance.

## Division 3 – Employment Division of the Court

### **215. Establishment of the Employment Division of the Court**

(1) This section establishes the Employment Division of the Court of Vanuatu.

(2) The Employment Division of the Court consists of at least one judge designated by the Judicial Service Commission to exercise the jurisdiction of the Employment Division of the Court.

(3) A judge designated under to constitute the Employment Division, will be an existing judge and will remain a judge of the Supreme Court of Vanuatu.

(4) The Judicial Service Commission is responsible for ensuring that any judge designated as constituting the Employment Division is suitably qualified to exercise that jurisdiction.

(5) The Registrar of the Supreme Court of Vanuatu will similarly act as the Registrar of the Employment Division, provided that the Commissioner of Labour may provide such other staff as are necessary to assist the Registrar in carrying out his or her functions under this Act.

### 

### **216. Jurisdiction of the Employment Division of the Court**

(1) The Employment Division of the Court has jurisdiction ⎯

*(a)* to hear and determine appeals conferred upon it under this Act or any other written law;

*(b)* to hear and determine offences against this Act;

*(c)* to hear and determine all actions for the recovery of penalties under this Act;

*(d)* to hear and determine questions of law referred to it by the Tribunal;

*(e)* to hear and determine applications for leave to have matters before the Tribunal removed into the Court under [section 214](#_214._Transfer_of)(3);

*(f)* to hear and determine matters transferred under [section 214](#_214._Transfer_of);

1. to hear and determine a question connected with a contract of employment which arises in the course of proceedings properly brought before the Court;
2. to hear and determine an action founded on a contract of employment;
3. subject to subsection (2) and in proceedings founded on a contract of employment to make any order that the Tribunal may make under any written law or the law relating to contracts*;*
4. to hear and determine a question connected with the construction of this Act or of any other Act, being a question that arises in the course of proceedings properly brought before the Court, notwithstanding that the question concerns the meaning of the Act under which the Court is constituted or under which it operates in a particular case;
5. to order compliance with this Act;
6. to hear and determine an application for a discontinuance of an order in respect of an unlawful strike or lockout under this Act;
7. to hear and determine proceedings founded on tort relating to this Act; or

*(n)* to exercise other functions and powers as are conferred on it by this or any other written law.

(2) In exercising its authority under subsection (1)*(h)* to make an order cancelling or varying a contract of employment or a term of a contract of employment, the Court must, notwithstanding anything in subsection (1)*(h)*, make an order only if an order should be made and any other remedy would be inappropriate or inadequate.

(3) In all matters before it, the Court has full and exclusive jurisdiction to determine them in a manner and to make decisions or orders, not inconsistent with this Act or any other written law or with the contract of employment.

(4) No decision or order of the Court, and no proceedings before the Court, may be held to be invalid for want of form, or be void or in any way vitiated by reason of an informality or error in form.

### **217. Power of Employment Division of Court to order compliance**

(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,

the Employment Division of the 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 Employment Division of the Court by subsection (1) may be exercised by the Employment Division of the Court -

(a) on the application of a party to the proceedings; or

(b) of its own motion.

(3) The Employment Division of the Court may extend the time specified under subsection (4) 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 Employment Division of 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 Employment Division of the 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 Employment Division of the 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 Employment Division of the Court, on an application under [section 208](#_208._Power_to)(6), is satisfied that a person has failed to comply with the compliance order under [section 208](#_208._Power_to), the Employment Division of the Court may do one of 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 sealed accordingly;

(c) order that the person in default be sentenced to imprisonment for a term not exceeding 3 months;

1. order that the person in default be fined a sum not exceeding VT1,000,000; or
2. order that the property of the person in default be sequestered.

### **218. Sittings**

(1) Sittings of the Employment Division of the Court must be held at times and places as are from time to time fixed by a judge.

(2)Sittings may be fixed either for a particular case or generally for a class of cases then before the Employment Division of the Court and ready for hearing.

(3) The Employment Division of the Court may be adjourned from time to time and from place to place by a judge or by the Registrar of the Employment Division of the Court, whether at a sitting or at a time before the time fixed for the sitting.

### **219. Case stated**

In a matter before the Employment Division of the Court, a judge may, on the judge’s own motion or on application by a party, state a case for the Court of Appeal on a question of law arising in the matter, excluding a question as to the construction of a contract of employment.

## Division 4 – Other General Provisions

### **220. Appearance of parties**

(1) A party to a proceeding before the Tribunal or Employment Division of the Court may ⎯

1. appear personally;
2. be represented by a representative whom the Tribunal or the Court is satisfied has authority to act; or
3. subject to subsection (2), be represented by a legal practitioner,

and may produce before the Tribunal or the Employment Division of the Court witnesses, documents, books, and other evidence as the party thinks fit.

(2) A party to a proceeding before the Tribunal may only be represented by a legal practitioner with leave of the Tribunal granted on grounds of:

(a) the complexity of the issues in the proceeding;

(b) the legal issues to be decided in the proceeding;

(c) the public interest in legal representation in the proceeding; or

(d) the relative ability of the parties to represent themselves in the proceeding.

(3) In any proceedings, the Tribunal or the Employment Division of the Court may, with leave of the Tribunal or the Employment Division of the Court, allow a person who, in the opinion of the Tribunal or the Employment Division of the Court, is entitled to be heard, to appear or to be represented.

(4) The Tribunal or the Employment Division of the Court may order any person to appear or to be represented before it.

### **221. Employment dispute remedies**

(1) If the Tribunal or the Employment Division of the Court determines that a worker has an employment dispute, it may, in settling the dispute, order one or more of the following remedies —

(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;

(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 had not occurred; or

(iii) loss of any personal property.

(2) If the remedy of reinstatement is provided by the Tribunal or the Employment Division of the Court, the worker must be reinstated immediately or on such a date as is specified by the Tribunal or the Employment Division of the Court and, notwithstanding an appeal against the determination of the Tribunal or the Employment Division of the Court, the provisions for reinstatement must, unless the Tribunal or the Employment Division of the Court otherwise orders, remain in force pending the determination of the appeal.

### **222. Evidence**

(1) In proceedings brought before the Tribunal, the Tribunal may accept and admit evidence it thinks fit.

(2) The Tribunal is not bound by the strict rules of evidence.

(3) The Tribunal or the Employment Division of the Court may, if it thinks fit, dispense with evidence on matters on which all parties to the proceedings have agreed in writing.

(4) A person summoned under this section as a witness who refuses or neglects, without sufficient cause, to appear or to produce documents required by the summons to be produced is liable on conviction by the Employment Division of the Court to a fine not exceeding VT100,000.

(5) No person summoned under this section as a witness is liable to a fine under subsection (4) unless there has been paid or tendered to that person at the time of the service of the summons, or at some other reasonable time before the hearing, the sum in respect of that person’s reasonable expenses as is for the time being prescribed for witnesses.

### **223. Power to summons and produce documents**

(1) Without prejudice to subsections (1), (2) and (3) of [section 222](#_222._Evidence), the following provisions must apply with respect to evidence in proceedings before the Tribunal or the Employment Division of the Court ⎯

(a)on the application of any of the parties, the Registrar of the Employment Division of the Court must issue a summons to a person to appear and give evidence before the Tribunal or the Employment Division of the Court;

(b)the summons must be in the prescribed form, and may require the person to produce before the Tribunal or the Employment Division of the Court books, papers, or other documents in that person’s possession or under that person’s control in any way relating to the proceedings;

(c)all documents produced before the Tribunal or the Employment Division of the Court, whether produced voluntarily or pursuant to a summons, may be inspected by the Tribunal or the Employment Division of the Court, and also by the parties as the Tribunal or the Employment Division of the Court allows, but the information obtained must not, unless the Tribunal or the Employment Division of the Court in its discretion so directs, be made public, and the parts of the documents as, in the opinion of the Tribunal or the Employment Division of the Court, do not relate to the matter at issue may be sealed;

(d)subject to the discretion of the Tribunal or the Employment Division of the Court, a person attending the Tribunal or the Employment Division of the Court on a summons, and every other person giving evidence before the Tribunal or the Employment Division of the Court is entitled, as against the party calling that person, to a sum for that person’s expenses and loss of time according to the scale for the time being in force with respect to witnesses;

(e)a person present in the Employment Division of the Court or before the Tribunal who is required to give evidence but refuses to be sworn or to give evidence is liable on conviction by the Tribunal or the Employment Division of the Court to a fine not exceeding VT100,000;

(f)for the purpose of obtaining the evidence of witnesses at a distance the Employment Division of the Court, or, while the Employment Division of the Court is not sitting, the judge has all necessary powers and functions relating to the taking of evidence at a distance, but evidence may be taken at a distance by a duly authorised officer of the Ministry, by the Industrial Registrar or by the Registrar of the Employment Division of the Court;

(g) the Tribunal or the Division of the Court may take evidence on oath, and for that purpose the judge, the Industrial Registrar, the Registrar of the Employment Division of the Court, or any other person acting under the express or implied direction of the Tribunal or the Employment Division of the Court, may administer an oath;

(h) on an indictment for perjury it is sufficient to prove that the oath was administered as aforesaid;

(i)a party to the proceedings must be competent and may be compelled to give evidence as a witness; and

(j)the Tribunal or the Employment Division of the Court in its discretion may order that all or a part of its proceedings may be taken down in shorthand or recorded in any other manner.

### **224. Power to proceed if parties fail to attend**

If, without good cause shown, a party to proceedings before the Tribunal or the Employment Division of the Court fails to attend in person or by representation, the Tribunal or the Employment Division of the Court may act as fully in the matter before it as if that party had duly attended or been represented.

### 

### **225. Validation of informal proceedings**

(1) If anything which is required or authorised to be done by this Act is not done within the time limit for doing it, or is done informally, the Employment Division of the Court or the Tribunal may, if the matter is within its jurisdiction, on the application of a person interested, order the extension of time within which the thing may be done, or validating the thing informally done.

(2) The power under subsection (1) does not include the power to make an order in respect of judicial proceedings already instituted in another court of law, other than the Employment Division of the Court.

### **226. Powers to join as parties**

(1) In order to enable the Employment Division of the Court or the Tribunal to dispose of a matter effectively, it may, at any stage of the proceedings, on its own motion or upon application, and upon terms as it thinks fit, by order ⎯

(a) direct parties to be joined or struck out;

(b) amend or waive an error or defect in the proceedings;

(c) subject to this Act, extend the time within which anything is to be done or may be done; or

1. generally give directions as are deemed necessary or expedient in the circumstances.

### **227. Costs in the Tribunal**

(1) A party to proceedings under [this Act](http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/s12.html#this_act) in the Tribunal may only be ordered by the Tribunal to pay the costs and expenses incurred by another party to the proceedings in accordance with subsection (2).

(2)   The party may be ordered to pay the costs only if the Tribunal is satisfied that:

(a)  the party instituted the proceedings vexatiously or without reasonable cause; or

(b) the party's unreasonable act or omission caused the other party to incur the costs.

### **228. Power to prohibit publication**

The Tribunal or the Employment Division of the Court may, with or without conditions, order that a part of any evidence given before it or the name of a witness not be published.

### **229. Rules of the Tribunal and Employment Division of the Court**

(1) The Chief Justice may from time to time make rules for the purpose of regulating the practice and procedure of the Tribunal or the Employment Division of the Court.

(2) In the absence of such rules, or where no provision is made for a particular circumstance –

(a) the Civil Procedure Rules (2002) apply to the proceedings before the Tribunal and the Employment Division of the Court.

## Division 5 – Appeals

### **230. # Placeholder #**

### **231. Appeals from Industrial Registrar**

(1) A decision of the Industrial Registrar that is subject to appeal under this Act lies as of right to the Tribunal.

(2) An appeal from a decision of the Industrial Registrar must be made by way of a notice of motion filed with the Registry of the Tribunal within 28 days from the date of receipt of the decision by the proposed appellant.

(3) An appeal under this section is to be heard and determined by the Tribunal.

### **232. # Placeholder #**

### **233. Appeals from Tribunal to the Employment Division of the Court**

(1) A party to proceedings under this Act before the Tribunal who is aggrieved by a decision of the Tribunal may, subject to subsections (3) and (4), appeal as of right or by leave to the Employment Division of the Court.

1. An appeal to the Employment Division of the Court must be made in the prescribed manner within 28 days of the date of the decision of the Tribunal.

(3) A notice of appeal must specify ⎯

(a) the grounds of appeal;

*(b)* the decision or the part of the decision appealed from; and

*(c)* the precise form of the order which the appellant proposes to seek from the Employment Division of the Court;

(4) An appeal by an aggrieved party from a decision of the Tribunal lies as of right to the Employment Division of the Court -

(a) on any error of law arising; or

(b) on grounds of jurisdictional error.

(5) An appeal by an aggrieved party from any other decision of the Tribunal shall only lie to the Employment Division of the Court with leave, where the Employment Division of the Court is satisfied that it is in the public interest to grant such leave.

(6) No appeal shall lie –

(a) from a decision allowing an extension of time; or

(b) from any decision of the Tribunal where it is provided by this Act that the decision is final.

(7) For the purposes of hearing and determining any appeal, the Court has all the power, authority and jurisdiction of the Tribunal and such other authority vested in a superior Court.

(8) The Employment Division of the Court hearing and determining an appeal may -

*(a)* determine the appeal by confirming, modifying, or reversing the decision or a part of that decision of the Tribunal or by setting the decision of the Tribunal aside and substituting its own decision.

*(b)* refer the matter with or without any direction to the Tribunal to reconsider, either generally or in respect of specified matters, the whole or a part of the matter to which the appeal relates.

(9) Where a matter on appeal is referred back to the Tribunal, the Tribunal must hear and dispose of the matter without delay.

### **234. Appeals to Court of Appeal**

(1) An appeal from the Employment Division of the Court shall lie to the Court of Appeal, with leave of the Court of Appeal.

(2) For the purposes of an appeal to the Court of Appeal, the rules of that Court apply, with necessary modifications*.*

(3) An appeal from the Employment Division of the Court must be filed within 28 days of the delivery of the decision or judgement.

(4) A notice of appeal must not operate as a stay of proceedings in respect of the decision to which the appeal relates unless the Employment Division of the Court or the Court of Appeal so orders.

## PART 21 – OFFENCES

### **235. Offence to delay or obstruct officer**

(1) A person who –

(a) wilfully delays or obstructs the Commissioner, or a labour officer, or labour inspector exercising a power or performing a duty conferred by this Act;

(b) fails to comply with a direction, requirement, request, demand or inquiry of the Commissioner of Labour, a labour officer or a labour inspector made or given in accordance with the powers conferred by this Act; or

(c) conceals or prevents a person from appearing before or being examined by such officer or inspector,

commits an offence and is liable on conviction to a fine not exceeding VT500,000 or to a term of imprisonment not exceeding 12 months.

(2) A person who –

(a) makes or causes to be made or knowingly allows to be made an entry in a record required under this Act to be kept by employers, which the person knows to be false in a material particular, or produces or provides; or

(b) causes or allows to be produced or provided, a wages sheet, record, list or information which the person knows to be false in a material particular,

commits an offence and is liable on conviction to a fine not exceeding VT500,000 or to a term of imprisonment not exceeding 12 months or both.

### **236. Offence to exact forced or compulsory labour**

A person who unlawfully exacts forced labour in contravention of section 7(1) commits an offence and is liable on conviction to a fine not exceeding VT1,000,000 or to a term of imprisonment not exceeding 5 years or both.

### **237. Payment of wages**

(1) An employer who –

(a) fails to pay wages in accordance with the workers’ contract of employment except where the employer proves that he or she acted in good faith or took reasonable steps to pay the wages;

(b) upon demand in writing by the Commissioner of Labour, a labour officer or a labour inspector, fails within 28 days of the demand to pay any wages due to a worker;

(c) fails to pay wages within 24 hours of the end of a contract period or on termination of a contract, where the payment of wages is provided for at the end of the contract period.

(d) pays or agrees to pay the wages of a worker otherwise than in the currency which is legal tender at the place where the wages are paid;

(e) makes a deduction from the wages of a worker in the nature of a fine, or due to poor or negligent work;

(f) imposes conditions upon the expenditure of the worker’s wages;

(g) except where expressly permitted by this Act or any other law, makes a deduction or makes an agreement or contract with a worker for a deduction from the wages to be paid by the employer to the worker, or for a payment to the employer by the worker;

(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 contract of employment,

commits an offence and is liable on conviction –

(i) for an individual, to a fine not exceeding VT1,000,000 or to a term of imprisonment not exceeding 5 years or both; or

*(*ii*)* for a corporation to a fine not exceeding VT1,000,000.

### **238. Offence by employer relating to workers’ property**

(1) An employer commits an offence if –

(a) before or after the termination of the contract of employment; and

(b) upon demand made by the worker, the Commissioner of Labour, a labour officer or labour inspector,

without lawful cause, the employer refuses to deliver to the worker or permit the worker to take, any property owned by the worker that is lawfully in the employer’s possession or control (whether in any land, premises or thing) without the employer having reasonable cause for believing that the property was lawfully detained commits an offence and is liable on conviction to a fine not exceeding VT250,000.

### **239. Offence by worker relating to money owed to employer**

A worker who owes money to the employer in respect of wages or benefits in kind received in advance and leaves the service of the employer with intent not to return thereto under circumstances from which it appears that the worker intended to defraud the employer commits an offence, and is liable on conviction to a fine not exceeding VT250,000, or to a term of imprisonment not exceeding 2 years or both.

### **240. Offences where strikes or lockouts are unlawful**

(1) A trade union, employer or employer organisation that has been or is engaged in an unlawful strike or lockout commits an offence.

(2) A person who, in connection with an unlawful strike or lockout, causes, procures, counsels or in any way encourages, persuades or influences others to take part in the unlawful strike or lockout commits an offence.

(3) If a person who commits an offence under this section was at the time of the offence an officer or official of an organisation of employers or workers, or was purporting to act as an officer or official, it is a sufficient defence to the organisation that the person committed the offence without its authority.

(4) If an officer or official, or person purporting to act as an officer or official of an organisation of employers or workers commits an offence with the authority of that organisation, it is a sufficient defence to a person who at the time of the offence was an officer or official of that organisation that the offence was committed without the person’s consent or connivance or that the person exercised all reasonable diligence to prevent the commission of the offence.

(5) A person who ceases work or refuses to continue work, being work which in terms of that person’s employment the person is bound to do, in circumstances which gives rise to reasonable suspicion that the person is taking part in or acting in furtherance of an unlawful strike commits an offence.

(6) It is a sufficient defence to an offence under subsection (5) that the person ceased work, or refused to continue work, for causes wholly unconnected with that strike.

(7) No term of imprisonment may be imposed on a worker or employer convicted of any offence under this section, unless such conduct leading to the conviction under this section also constituted an offence under the Penal Code [Cap 135] and conviction for such other offence was liable to a term of imprisonment.

### **241. Misuse of money or property of a trade union or employer organisation**

(1) If, on complaint made by a member of a registered trade union or employer organisation, the Employment Division of the Court is satisfied that a person ⎯

1. has in his or her possession or control property of a trade union or employer organisation, without authority under the constitution and rules of the trade union or employer organisation; or
2. has unlawfully expended or withheld money of the trade union or employer organisation,

the Employment Division of the Court may order the person to deliver the property to the trade union or employer organisation, or to pay to the trade union or employer organisation the money unlawfully expended or withheld.

(2) A complaint under subsection (1) must not be entertained if unless the Employment Division of the Court is satisfied that the complainant is, or was on the date of the complaint, a member of the trade union or employer organisation in respect of whose property the complaint is made.

(3) A person bound by an order made under subsection (1) who fails to comply within the time specified in the order commits an offence and is liable on conviction to a fine not exceeding VT1,000,000 or to a term of imprisonment not exceeding 4 years or both.

### **242. Failure to give notice or produce document**

(1) A registered trade union or employer organisation which fails to give notice, or to send or produce a document which it is required by or under this Act to give, send or produce, commits an offence and is liable on conviction to a fine not exceeding VT500,000.

(2) If an offence has been committed by a registered trade union or employer organisation under subsection (1) every officer of the trade union or employer organisation and every person required by the rules of the trade union or employer organisation to give the notice or send or produce the document also commits an offence and is liable on conviction to a fine of VT10,000, unless the officer or person satisfies the Employment Division of the Court that he or she was ignorant of the failure which is the subject of the charge.

### **243. Offences by company or corporation**

(1) Where an offence against this Act committed by a company or corporation is proved to have been committed with the consent or connivance of, or to have been attributable to a wilful neglect on the part of an officer of the company or corporation or person purporting to act as such an officer, that officer or person also commits the offence and is liable to the penalty for that offence.

(2) Where in proceedings under this Act it is necessary to establish the intention of a company or corporation, it is sufficient to show that an officer, worker or agent of the company or corporation had that intention.

(3)In this section, “officer” in relation to a company or corporation means ⎯

1. a director, secretary or executive officer of the company or corporation; or
2. a person in accordance with whose directions or instructions the directors of the company or corporation are accustomed to act; or
3. a person concerned in the management of the company or corporation.

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### **244. Intimidation or annoyance**

(1) A person who, with a view to compelling any other person to do or abstain from doing an act which the other person has a legal right to do or abstain from doing under [Part 19](#_PART_18_–) or [20](#_PART_20_–_1), wrongfully and without legal authority ⎯

uses violence to or intimidates the other person or the person’s children or family, or injures or damages the person’s property;

persistently follows the other person about from place to place;

hides any tools, clothes, or other property owned or used by the other person, or deprives the person of, or hinders the person in the use of, them;

watches or besets the house or other place where the other person resides, works, carries on business or happens to be, or is at the approach to that house or place; or

follows the other person with 2 or more further persons in a disorderly manner in or through any street or road,

commits an offence and is liable on conviction to a fine not exceeding VT500,000 or to a term of imprisonment not exceeding 2 years or both.

(2) For the purpose of subsection (1)(d), a person besets a house or place if the person attends at or near it in the manner or in such number as would constitute an offence.

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### **245. Peaceful picketing and prevention of intimidation**

(1) It is lawful for one or more persons acting on their own behalf or on behalf of a registered trade union or of an individual employer or firm in contemplation or furtherance of an employment dispute to attend at or near a place where a person works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading a person to work or abstain from working.

(2) If one or more persons attend at or near a house or place where a person resides, carries on business or happens to be-

for the purpose of obtaining or communicating information or of persuading or inducing a person to work or abstain from working; and

in such numbers or in such manner as to be calculated to intimidate any person in that house or place, to obstruct the approach to or the entry to or exit from it, or to lead to a breach of the peace,

that person or persons commit an offence and are liable on conviction of a fine not exceeding VT250,000 or to or to a term of imprisonment not exceeding 12 months or both.

### 

### **246. General penalty**

A person who commits an offence for which no particular penalty is prescribed is liable on conviction ⎯

1. for an individual, to a fine not exceeding VT500,000 or to a term of imprisonment not exceeding 2 years;
2. for a company or corporation or trade union, to a fine not exceeding VT2,500,000; and
3. where applicable, to disqualification from holding a post as an officer of a trade union for 5 years from the date of conviction for the offence.

### 

### **247. Exemption of employer on conviction of actual offender**

(1) If –

1. an employer is charged with an offence under any of the provisions of this Act, the employer is entitled, upon information duly laid, to have any other person whom the employer alleges to be the actual offender charged and brought before the Employment Division of the Court at the time appointed for hearing of the charge; and
2. after the commission of the offence has been proved, the employer proves to the satisfaction of the Employment Division of the Court that the employer has used due diligence to enforce the provisions of this Act; and
3. that other person has committed the offence in question without the employer’s knowledge, consent or connivance,

the other person must be convicted of the offence and the employer must be exempt from the penalty.

(2) If, at the time of investigating the offence, a labour officer or labour inspector is satisfied that, the employer has used due diligence to enforce the provisions of this Act and another person has committed the offence, the labour officer or labour inspector must proceed against that other person other than the employer.

(3) The provisions of this section do not apply for offences and misconduct concerning sexual harassment.

## PART 22 - MISCELLANEOUS

### **248. Prohibition of action of tort**

An action against a registered trade union or employer organisation or any of its members or officials on behalf of themselves and all other members of the trade union or employer organisation, in respect of a tortious act alleged to have been committed by or on behalf of the trade union or employer organisation, must not be entertained by any court.

### **249. Protection against civil and criminal proceedings**

No action or proceeding, civil or criminal, lies against the Commissioner of Labour or a labour officer, labour inspector or body established by or under this Act, for anything done or omitted in good faith in the exercise or purported exercise of a function under this Act by the Commissioner of Labour or the labour officer, labour inspector or body.

### **250. Conspiracy in disputes**

(1) An agreement by 2 or more persons to do or procure an act in contemplation or furtherance of an employment dispute is not conspiracy if the act when committed by one person would not be a crime.

(2) An act done pursuant to an agreement or in combination by 2 or more persons, if done in contemplation or furtherance of an employment dispute, is not actionable unless the act if done without the agreement or in combination would be actionable.

(3) Nothing in this section exempts a person found guilty of a conspiracy for which it is a crime imposed by any other written law.

(4) Nothing in this section affects the law relating to riot, unlawful assembly, breach of the peace, sedition, or a crime against the Government.

(5) For the purpose of this section, “crime” means an offence for the commission of which the offender is liable to imprisonment.

### **251. Time for instituting proceedings for offences**

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

### **252. Regulations**

(1) The Minister may, on advice of the Council, make regulations to give effect to the provisions of this Act, and in particular to make regulations for any of the following purposes —

(a) providing for the particulars to be contained in written contracts of service, for all other matters relating to their making, enforcement, transfer and cancellation;

(b) prescribing forms and notices with respect to the issue of demand notices by labour inspectors

(c) prescribing the hours of work of children;

(d) prescribing the records, registers, books, accounts and other documents to be kept and the information or returns to be rendered by employers and other persons in respect of workers including working children;

(e) prohibiting, restricting, controlling or regulating the employment of children in workplaces or specified occupations;

(f) regulating the enlisting, recruitment, engagement and the embarkation of workers to be employed under foreign contracts of service;

(g) the provision of forms, notices and other matters relating to applying for and taking paid maternity leave.

(h)providing for all matters relating to the return of workers from the place of employment to the place of engagement;

1. the manner in which trade unions and employer organisations and their constitutions and rules are to be registered and the fees payable for registration;
2. the manner in which and the qualifications of persons by whom the accounts of registered trade unions and employer organisations are to be audited;
3. the conditions subject to which inspection of documents kept by the Industrial Registrar will be allowed;
4. the creation, administration, protection, control, disposal and safe custody of the funds of registered trade unions and employer organisations;
5. the conduct of secret ballots;
6. prescribing procedures in the issuance of notices under this Act;
7. prescribing procedures and rules for resolution of employment related matters for mediation services;
8. prescribing procedures for authorisation of recruitment agents and private employment agencies for local or overseas employments;
9. prescribing fees and forms for the purpose of this Act;
10. regulating the employment conditions of seafarers;
11. prescribing procedures and requirements to facilitate and promote collective bargaining;
12. prescribing forms for reporting an employment dispute to the Industrial Registrar;
13. prescribing procedures relating to the functions of the Industrial Registrar where matters are reported for mediation;
14. prescribing all matters which are required to be prescribed by this Act;
15. prescribing the means by which entitlements for piece workers are to be calculated;
16. prescribing additional duties or functions of the Industrial Registrar; or
17. prescribing penalties for any offence under this Act.

(2) Regulations made under the provisions of subsection (1) may impose conditions, require acts or things to be performed or done to the satisfaction of the Commissioner of Labour, Industrial Registrar, Mediator, labour officer or labour inspector and empower the Commissioner of Labour or any such officer to issue orders either orally or in writing prohibiting acts or things from being performed or done or requiring acts or things to be performed or done, and prescribe periods or dates upon, within or before which the conditions must be fulfilled, and provide for appeals against orders, notices or directions.

(3) Regulations made under this Act may impose a fine not exceeding VT1,000,000 or a term of imprisonment not exceeding 2 years or both.

### **253. Repeals, consequential amendments and savings**

(1) The following Acts are repealed –

1. Employment Act (Cap. 160);
2. Trade Disputes Act (Cap. 162);
3. Trade Unions Act (Cap. 161);
4. Minimum Wage and Minimum Wages Board Act (Cap. 182).

(2) At the commencement of this Act, the existing members of the Council appointed under the Employment Act (Cap. 160) continue in office under the same terms and conditions as if they were appointed under this Act as members of the Council.

(3) At the commencement of this Act, any subsidiary legislation made under the Acts repealed under subsection (1) continues as if it were made under this Act to the extent that it is not inconsistent with this Act.

(4) At the commencement of this Act, any minimum wage Order made under the Minimum Wage and Minimum Wages Board Act (Cap. 182) continues as if it were made under this Act, until it is revised by a subsequent minimum wage Order made under this Act.

(5) At the commencement of this Act, the Commissioner of Labour appointed under the Employment Act (Cap 160) continues in office under the same terms and conditions as if appointed under this Act as the Commissioner of Labour.

(6) The Commissioner of Labour and any officer appointed under or for the purposes of administration of the Employment Act (Cap. 160) are deemed to have been appointed for the purposes of this Act.

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

(8) The commencement of this Act may not lawfully be used as justification for any reduction in a worker’s terms and conditions of employment. Where upon commencement of this Act any valid and in force contract of employment or collective agreement provides a worker with terms and conditions of employment more generous than those prescribed by this Act, those more generous terms and conditions of employment must continue to be provided to the worker until the lawful termination of that contract or collective agreement.

(9) A registered trade union in existence at the commencement of this Act continues to be a registered trade union and this Act applies to that trade union.

(10) A trade dispute or individual dispute on foot prior to the commencement of this Act, continues to proceed under the Trade Disputes Act [Cap 162] as in force at the time the dispute was referred to a labour officer under Part 2 or the Commissioner under Part 3.

(11) The Minister may make regulations for the purposes of other transitional matters.

### **254. Commencement**

This Act commences on a date to be proclaimed by publication in the Gazette.

# **SCHEDULE 1**

## PARTICULARS OF INDIVIDUAL WRITTEN CONTRACT OF EMPLOYMENT

**Name of Employer:**

**Name of Worker:**

**Position Description / Inherent Requirements of Position:**

**Employment type (full time / part time / casual):**

**Place of Work:**

**Hours of Work:**

**Wages/Salary:**

**Allowances:**

**Pay period:**

**Holidays and Leave:**

**Employment Dispute Procedure:**

**Other Entitlements:**

**Notice of termination:**

**Severance pay:**

**Applicable Minimum Wage Order or Collective Agreement:**

**Signed by:**

**Employer: Worker:**

**Date:**

# **SCHEDULE 2**

## PROVISIONS WHICH MUST BE MADE IN THE RULES OF A REGISTERED TRADE UNION

## OR REGISTERED EMPLOYER ORGANISATION

1. The name of the trade union or employer organisation and the location and postal address of its registered office.
2. The persons eligible for membership of the trade union or employer organisation .
3. The objects for which the trade union or employer organisation is established.
4. A list of officers of the trade union or employer organisation and the functions of each office.
5. A list of officers empowered to operate bank accounts.
6. The establishment of the executive committee and secretary, treasurer, and other officers of the trade union or employer organisation.
7. The manner of making, altering and rescinding rules.
8. The keeping of a register of members of the trade union or employer organisation.
9. Convening and conducting annual general meetings and extraordinary general meetings or annual delegates’ conferences whichever are more convenient, and the matters to be presented to the members of the trade union or employer organisation at such meetings, such as the presentation of audited accounts.
10. The annual or periodical audit of the accounts.
11. Provisions for keeping in a separate fund all moneys received or paid by the trade union or employer organisation in respect of any contributory provident fund or pension fund scheme.
12. The manner of the dissolution of the trade union or employer organisation and the disposal of the funds at the time of such dissolution.
13. The taking of decisions by secret ballot by voting members of the trade union or employer organisation on the following ⎯
14. the election of officers of the trade union or employer organisation;
15. the alteration of the rules of the trade union or employer organisation;
16. all matters relating to strikes and lock-outs;
17. dissolution of the trade union or employer organisation;
18. the amalgamation of the trade union with any other trade union, or employer organisation with any other employer organisation;
19. the federation of the trade union with any other union or with a trade union federation, or the federation of the employer organisation with any other employer organisation or with an employer organisation federation;
20. the imposition of levies.
21. The right of any member, who is not disqualified from voting, to a reasonable opportunity to vote.
22. The amount of subscriptions and fees payable by members.
23. A requirement that at any meeting of the trade union or branch, a quorum consists of not less than 20% of the voting members of the trade union, employer organisation or its branch.

# **SCHEDULE 3**

## STANDARD CLAUSES ON PROCEDURES FOR SETTLEMENT OF AN EMPLOYMENT DISPUTE

*Application of procedure*

1.The procedure set out in clauses 2 to 8 of this Schedule apply to an employment dispute.

*Persons who may invoke procedure*

2.A worker, union, employer or employer organisation that is a party to an employment dispute may invoke the procedure.

*Submission of an employment dispute to other party*

3. The party invoking the procedure must advise the other party or parties to the employment dispute of ⎯

1. the existence of the employment dispute; and
2. the basis of the employment dispute; and
3. the solution sought in respect of the employment dispute.

*Meetings*

4. The parties must then meet to discuss the employment dispute.

*Written statement*

5. If the parties fail to resolve the employment dispute, the party who invoked the procedure must within seven days give to the other party or parties a written statement setting out ⎯

1. the nature of the employment dispute;
2. the relevant facts in relation to the employment dispute; and
3. the solution sought in respect of the employment dispute.

*Response*

6.If one or more of the other parties are not prepared or able to provide the solution sought, and the employment dispute has not otherwise been settled, the other party must no later than the 7th day after the day of receiving the written statement of the employment dispute under clause 5, provide a written response setting out ⎯

1. that party’s view of the facts; and
2. the reason why that party is not prepared or able to provide the solution sought.

*Waiver of written statements*

7.If the parties agree in writing that the exchange of written statements under the preceding provisions is inappropriate or unnecessary, they may dispense with those parts of the procedure.

*Power to refer dispute to Industrial Registrar*

8.If -

1. the party invoking the procedure is not satisfied with the other party’s written response; or
2. the other party fails to provide, within the 7 day period required, a written response; or
3. 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 may report the employment dispute to the Industrial Registrar in the prescribed manner.

# **SCHEDULE 4**

## LIST OF ESSENTIAL SERVICES

1. Air/sea rescue services;
2. air traffic control services;
3. electricity services;
4. emergency services in times of national disaster;
5. fire Services;
6. emergency health services;
7. light house or other navigational safety services;
8. supply and distribution of fuel, petrol, oil, power and light essential to the maintenance of emergency services;
9. supply and reticulation of drinking water; and
10. Police Services.