



Tonga

EMPLOYMENT RELATIONS BILL 2020



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Arrangement of Sections

Section

PART I – PRELIMINARY		9
1	Short title and commencement.....	9
2	Interpretation.....	10
3	Purpose.....	14
4	Scope.....	14
PART II – ADMINISTRATION		14
5	Administration	14
6	Commission	15
7	Functions and powers of the Minister.....	16
8	Delegation of powers	16
9	Functions and powers of the Chief Executive Officer	16
10	Establishment of the Labour Division	17
PART III – REGISTRATION OF EMPLOYEE AND EMPLOYER ASSOCIATIONS		18
11	Registrar of associations	18
12	Registration of employee and employer associations	18
PART IV – EMPLOYMENT RELATIONS ADVISORY COMMITTEE		18
13	Employment Relations Advisory Committee	18
14	Membership	19
15	Functions of the Committee.....	20
16	Secretariat	21
17	Term of office	21
18	Rules and procedures of the Committee	21

PART V – EMPLOYMENT AGREEMENTS	21
19 Employment agreement.....	21
20 Employment agreement to contain minimum conditions.....	22
21 Duty of employer to provide work.....	22
22 Right of appeal.....	22
23 Foreign employees.....	23
PART VI – FUNDAMENTAL RIGHTS AND PRINCIPLES AT WORK	23
24 Forced labour.....	23
25 Freedom from discrimination.....	23
26 Equal remuneration for work of equal value.....	23
27 Freedom of association.....	23
PART VII – HOURS OF WORK	24
28 Regular hours of work.....	24
29 Additional hours of work subject to overtime.....	24
30 Total hours of work.....	25
31 Special provisions applying to shift work.....	25
32 Rest breaks and weekly rest.....	25
33 Exemption for certain contracts of service.....	25
34 Penalty for non-compliance.....	26
PART VIII – MINIMUM WAGES	26
35 Establishment of minimum wages.....	26
36 Review of minimum wages.....	26
37 Procedure for minimum wage reviews.....	26
38 Criteria for minimum wage reviews.....	27
39 Minimum wage reports.....	27
40 Effect of a minimum wage order.....	27
41 Notice of minimum wage.....	27
PART IX – EMPLOYMENT OF CHILDREN	28
42 Application of this Part.....	28
43 Definition under this Part.....	28
44 Minimum age for employment.....	28
45 Non-hazardous work.....	28
46 Register of employed children.....	28
PART X – PAYMENT AND PROTECTION OF WAGES	29
47 Wage periods.....	29
48 Authorised deductions.....	29
49 Remuneration other than wages.....	29
50 Interest on advances.....	30
51 Wages statement.....	30
52 Employment records.....	30

53	Inspection of employment records.....	31
54	Non-payment of wages	31
55	No wages on detention or imprisonment	31
56	Repatriation upon death of an employee	32

PART XI – HOLIDAYS AND LEAVE **32**

57	Holidays and leave entitlements	32
58	Duration of paid annual holidays	32
59	Proportionate paid annual leave.....	32
60	Annual leave pay on termination of employment.....	33
61	Continuity of employment	33
62	Paid annual leave to be given within a certain period.....	33
63	Wages for annual holidays.....	33
64	Public holidays.....	34
65	Sick leave.....	34
66	Casual leave	34
67	Maternity leave	34
68	Restriction on termination.....	35

PART XII – EQUAL EMPLOYMENT OPPORTUNITIES **35**

69	Prohibited grounds of discrimination.....	35
70	Discrimination in employment	36
71	Sexual harassment.....	36
72	Employer liability in certain circumstances.....	37
73	Policies to eliminate sexual harassment.....	37

PART XIII – OCCUPATIONAL SAFETY AND HEALTH **37**

74	Duties of employers	37
75	Duties of employees.....	38
76	Duties of the Ministry	38

PART XIV – TERMINATION OF EMPLOYMENT **39**

77	Probationary period.....	39
78	Termination by an employer	39
79	Further provisions relating to unlawful termination	40
80	Summary dismissal	40
81	Termination for reasons relating to capacity or conduct.....	41
82	Provision of notice	41
83	Further requirements as to termination of contracts	41
84	Termination for reasons of redundancy	42
85	Provision of information	42
86	Redundancy pay.....	43
87	Transfer of contract.....	43

PART XV – EMPLOYMENT DISPUTES	43
88 Workplace dispute resolution.....	43
89 Time limit for raising a dispute.....	44
90 Meeting of the parties.....	44
91 Written statement.....	44
92 Written response.....	44
93 Reference to mediation services.....	45
94 Mediation services.....	45
95 Procedures for mediation services.....	46
96 Notice to attend mediation.....	46
97 Independence of mediation personnel.....	46
98 Code of ethics.....	47
99 Settlements.....	47
PART XVI – PROCEEDINGS	47
100 Proceedings where mediation fails.....	47
101 Jurisdiction of the Court.....	48
102 Determination of whether a person is an employee.....	48
103 Remedies.....	49
104 Compliance orders.....	49
105 Terms and conditions void if inconsistent with Act.....	50
PART XVII – ENFORCEMENT	50
106 Designation of a labour officer.....	50
107 Powers and functions of a labour officer.....	51
108 Interests and confidentiality.....	52
PART XVIII — SPOT FINES	52
109 Power to determine spot fine.....	52
110 Election of process.....	52
PART XIX – OFFENCES AND PENALTIES	53
111 General offences and penalties.....	53
112 Failure to provide a written contract.....	53
113 Offence to delay or obstruct an officer.....	53
114 Issuance of notice of spot fine and payment.....	54
PART XX – MISCELLANEOUS	54
115 Protection against civil or other criminal proceedings.....	54
116 Time for instituting proceedings for other offences.....	54
117 Regulations.....	54
118 Chief Executive Officer to keep registers.....	55
119 Savings.....	55

SCHEDULE 1	56
GOVERNMENT MINISTRIES AND AGENCIES COVERED BY THIS ACT	56
SCHEDULE 2	57
PERSONS EXCLUDED FROM THE SCOPE OF THIS ACT	57
SCHEDULE 3	58
RULES AND PROCEDURES OF THE EMPLOYMENT RELATIONS ADVISORY COMMITTEE	58
SCHEDULE 4	62
MINIMUM PARTICULARS OF AN INDIVIDUAL'S WRITTEN EMPLOYMENT AGREEMENT	62
SCHEDULE 5	63
DESIGNATION OF A LABOUR OFFICER: FULL POWERS	63
SCHEDULE 6	64
FORM OF IDENTIFICATION OF A LABOUR OFFICER	64
EXPLANATORY NOTES	65



EMPLOYMENT RELATIONS BILL 2020

A BILL FOR AN ACT TO ESTABLISH A LEGAL FRAMEWORK FOR EMPLOYMENT IN TONGA AND FOR RELATED MATTERS

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART I – PRELIMINARY

1 Short title and commencement

- (1) This Act may be cited as the Employment Relations Act 2020.
- (2) This A shall come into force on a date specified by notice in the Gazette as follows –
 - (a) Parts I (Preliminary), sections 5, 7, 8, 9 and 10 of Part II (Administration), VI (Fundamental Rights and Principles at Work), XVII (Enforcement), XVIII (Spot Fines) and XX (Miscellaneous) shall come into force immediately following enactment of this Bill; and
 - (b) all other remaining Parts of this Act shall come into force on one or more dates specified by the Minister in the Gazette.

2 Interpretation

In this Act, unless the context otherwise requires –

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

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

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

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

“Committee” means the Employment Relations Advisory Committee constituted under section 13;

“Court” means the Supreme Court of Tonga;

“day” unless otherwise stated in this Act, means calendar days;

“domestic employee” means a person employed in a private dwelling house and not in connection with a trade, business or profession carried on by the employer in the employer’s dwelling house;

“disability” for the purpose of section 69, means an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a physical or mental impairment;

“discrimination” means any distinction, exclusion or preference based on the grounds set out in section 69;

“dispute” means differences between an employee or an employer connected with the –

- (a) employment or non-employment;
- (b) terms and conditions of employment; or
- (c) application of the terms and conditions of contract of one or more employees under this Act;

“emoluments” for the purposes of this Act include, but are not limited to the following –

- (a) piece rates, overtime, bonus or other special payments;
- (b) allowances, fees, commission, or any other payment, whether in one sum or several sums, and whether paid in money or not;
- (c) the value of a house, accommodation or the supply of food, fuel, light, water or medical attendance, or amenity or services;
- (d) a contribution paid by the employer on the employer’s own account to a pension fund or a provident fund;

- (e) a travelling allowance or the value of a travelling concession;
- (f) a sum payable to the employee to defray special expenses incurred by the employee by the nature of the employee's employment; or
- (g) a gratuity payable on discharge or retirement;

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

“employee” subject to section 102, means a person engaged under an employment agreement by an employer and includes an apprentice, learner, domestic employee or part-time employee, but does not include a –

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

“Employees Association” means an association of employees within a particular sector, registered in accordance with regulations made under this Act;

“employer” means a person or legal entity who employs a person under an employment agreement;

“Employers Association” means an association of employers within a particular sector, registered in accordance with regulations made under this Act;

“employment agreement” means a written or verbal contract, expressed or implied, to employ a person for a fixed or for an indefinite period;

“employment” means the performance by an employee of an employment agreement;

“family” for the purpose of section 69 means the spouse or any biological or legally adopted child of the employee;

“forced labour” for the purposes of this Act, means any work or service that is extracted from a person under the threat of penalty and is not offered voluntarily, but does not include –

- (a) any work or service that is exacted as part of a school's compulsory educational programme;
- (b) any work or service exacted in accordance with compulsory military service for work of a purely military character;
- (c) any work or service which forms part of the normal civic, traditional or religious obligations of a person;
- (d) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the work or service is carried out under the supervision and control of a public authority and the person is not hired or placed at the disposal of private individuals, companies or associations;

- (e) any work or service exacted by a person or the Government or a legal entity under an Act in the case of an emergency that would endanger the existence or well-being of the whole or part of the people of Tonga; or
- (f) communal services of a kind performed by members of the community in the direct interest of the community, in accordance with communal rules or customary practice;

“Gazette” means the Tonga Government Gazette;

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

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

“Hazardous Child Labour list” means the list recommended by the Ministry and approved by Cabinet, specifying types of work that a child is prohibited from engaging in;

“Immigration Division” means the Division established under, or pursuant to the Immigration Act;

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

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

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

“Managing Authority” for the purposes of this Act shall have the same meaning as the Education Act;

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

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

“Minister” means the Minister responsible for labour;

“Ministry” means the Ministry responsible for labour;

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

“**part-time work**” for the purposes of this Act, refers to work that is not more than 15 hours per week;

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

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

- (a) Ministry or a Department of the Government;
- (b) recognised community council;
- (c) public enterprise; or
- (d) government owned company;

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

“**public service employee**” for the purposes of this Act means a chief executive officer and employee in a Government Ministry or Agency listed Schedule 1;

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

“**registered medical practitioner**” means a person duly registered under the Medical and Dental Practice Act;

“**Registrar**” for the purposes of this Act shall mean the Registrar of Employees Associations and Employers Associations appointed under section 11;

“**Remuneration Authority**” means the Authority established under the Remuneration Authority Act;

“**remuneration**” means wages or salary, as well as any additional emoluments whatsoever payable, directly or indirectly, whether in cash or kind, by the employer to the employee and arising out of the employee’s employment.

“**ship**” means a vessel of any type whatsoever operating in the marine environment, but does not include a ship owned by His Majesty’s Armed Forces or Tonga Police;

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

“**week**” means a period of seven consecutive days;

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

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

3 Purpose

The purpose for this Act is to establish a legal framework governing employment in the Kingdom.

4 Scope

(1) This Act shall apply to every employer and employee in a workplace in the Kingdom, except as stated in subsections (2), (3), (4), (5) and (6).

(2) All Parts in this Act shall apply to an employee of a Government Ministry or Government Agency listed in Schedule 1,

Except for Part XV (Employment Disputes) and Part XVI (Proceedings) which shall not apply, but instead, grievance and disputes measures under Part IV (Code of Conduct, Dispute and Disciplinary Procedure) and Part VA (Public Service Tribunal) of the Public Service Act shall apply.

(3) All Parts in this Act shall apply to an employee of the Ministry of Education who is employed by the Ministry under section 10 of the Education Act,

Except for Part XV (Employment Disputes) and Part XVI (Proceedings) which shall not apply, but instead, grievance and disputes measures under Part IV (Code of Conduct, Dispute and Disciplinary Procedure) and Part VA (Public Service Tribunal) of the Public Service Act shall apply.

(4) All Parts in this Act shall apply to an employee of a non-Government school who is employed by a Managing Authority or non-Government entity.

(5) All Parts in this Act shall apply to an employee of a church, religious organisation or religious entity who is employed in the commercial business or commercial arm of the church, religious organisation or religious entity.

(6) Notwithstanding subsection (1), this Act in its entirety shall not apply to the following —

- (a) a person listed under Schedule 2;
- (b) an employee of a society that is incorporated under the Incorporated Societies Act; and
- (c) an employee of a trust or society that is incorporated under the Charitable Trusts Act.

PART II – ADMINISTRATION

5 Administration

The Minister shall be responsible for the administration of this Act.

6 Commission

- (1) The Cabinet shall, on the recommendation of the Minister and the Employment Relations Advisory Committee, establish one or more Commissions to consider and recommend particular matters set out in this Act, including but not limited to the following –
 - (a) establishing minimum wages for particular sectors or to apply nationally;
 - (b) establishing the minimum conditions for leave entitlements, including annual leave, maternity leave, sick leave, casual leave, and holiday pay;
 - (c) establishing rules governing the employment of children including recommendations on the Hazardous Child Labour List;
 - (d) establishing occupational safety and health standards to apply nationally or for specific sectors;
 - (e) establishing minimum occupational safety and health standards; and
 - (f) any other matter which is referred to the Commission under this Act.
- (2) A Commission shall be constituted for a period of not more than 2 years and membership in a Commission shall be for the same term.
- (3) Members of each Commission, including the chair, shall be appointed by the Cabinet based on the recommendations of the Employment Relations Advisory Committee, provided that –
 - (a) there shall be no less than 3 and no more than 5 members on each Commission;
 - (b) a member of a Commission shall not be a current member of the Employment Relations Advisory Committee established under section 14;
 - (c) a member of a Commission must hold relevant knowledge or expertise on the issue being considered;
 - (d) in the appointment of Commission members, due consideration shall be given to gender balance in the membership of a Commission;
 - (e) terms of reference for each Commission must be clearly established by the Employment Relations Advisory Committee and approved by Cabinet; and
 - (f) once a Commission has presented its final written report to the Minister and the Employment Relations Advisory Committee, the Commission shall be dissolved.
- (4) A Commission that is established to consider minimum wages must include in its membership a representative from the Remuneration Authority.
- (5) A Commission shall consult widely with all relevant stakeholders when determining an issue under subsection (1) and shall allow for written and oral submissions.
- (6) When seeking to determine –

- (a) minimum wages under subsection (1)(a); and
 - (b) minimum conditions for leave entitlement under subsection (1)(b),
the Commission shall consult closely with relevant stakeholders to ensure that minimum wages and leave entitlements proposed are appropriate for the Kingdom.
- (7) Recommendations of a Commission that are approved by the Cabinet shall be formalised through regulations made under this Act.

7 Functions and powers of the Minister

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

8 Delegation of powers

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

9 Functions and powers of the Chief Executive Officer

- (1) Functions of the Chief Executive Officer under this Act include the following –
 - (a) exercise of any functions delegated by the Minister under section 8(1);
 - (b) consider the employment of foreign employees in accordance with section 23;

- (c) in consultation with the Public Service Commission, appoint public officers to the Mediation Unit established under section 94, including an independent mediator;
 - (d) develop a Code of Ethics for the Division under section 98;
 - (e) recommend to the Minister suitable officers for designation as labour officers under section 106;
 - (f) carry out functions of chair of the Employment Relations Advisory Committee in Part III; and
 - (g) establish and maintain the registers of the Ministry under section 118.
- (2) The Chief Executive Officer shall have such powers as provided under this Act for the discharge of his functions.

10 Establishment of the Labour Division

- (1) The Labour Division of the Ministry is hereby established.
- (2) The head of the Labour Division shall be a senior officer of the Ministry and the Division shall consist of such labour officers designated by the Minister under this Act.
- (3) Functions of the Labour Division shall include, but not be limited to the following –
 - (a) develop, review and maintain a national labour policy for the Kingdom;
 - (b) advise Cabinet through the Minister on policy matters pertaining to labour and employment relations;
 - (c) advise Cabinet through the Minister on international labour instruments and commitments of the Kingdom under agreements to which it is a party;
 - (d) advise and assist employers and employees on a particular or general labour and employment relations matter under this Act;
 - (e) provide information, advice, awareness and training to –
 - (i) employers;
 - (ii) employees;
 - (iii) employer and employee associations,on employment relations matters under this Act;
 - (f) ensure full compliance of employers and employees with respective obligations under this Act;
 - (g) in consultation with the national office responsible for statistics –
 - (i) conduct a labour market survey within 12 months of the commencement of this Act, and at least once every two years thereafter; and

- (ii) establish and maintain a database of statistics relating to the labour market in the Kingdom;
- (h) consider applications from foreigners for employment in the Kingdom in close consultation with the Immigration Division of Government; and
- (i) encourage and promote the principle of good faith and harmonious employment relationships.

PART III – REGISTRATION OF EMPLOYEE AND EMPLOYER ASSOCIATIONS

11 Registrar of associations

- (1) The Minister, on the recommendation of the Chief Executive Officer, shall appoint a Registrar of Associations under this Act.
- (2) The Registrar shall consider applications for the registration of associations in accordance with criteria established in regulations made under this Act.
- (3) Upon registration, the Registrar shall issue a registered association with a certificate of registration.
- (4) The Minister shall, with the consent of Cabinet, establish any fees which the Registrar may charge in relation to the implementation and administration of this Part.

12 Registration of employee and employer associations

In order to be –

- (a) recognised by the Ministry; and
- (b) eligible for nomination to the Employment Relations Advisory Committee,

an Employees Association or Employers Association must be registered in accordance with regulations made under this Act.

PART IV – EMPLOYMENT RELATIONS ADVISORY COMMITTEE

13 Employment Relations Advisory Committee

An Employment Relations Advisory Committee is established.

14 Membership

- (1) The Committee shall consist of the following Members, appointed in writing by the Minister with the consent of Cabinet –
 - (a) Chief Executive Officer of the Ministry (chair);
 - (b) three members representing the Government;
 - (c) three members nominated from employer associations registered under this Act;
 - (d) three members nominated from employee associations registered under this Act; and
 - (e) one member nominated from the Forum of Directors of Education.
- (2) In the absence of the chair, the representatives of the Government will nominate a government member to be the acting chair for the meeting.
- (3) The Committee may, from time to time, co-opt one or more additional members with technical knowledge or local knowledge and expertise, to attend a meeting of the Committee as a co-opted member, provided that a co-opted member –
 - (a) shall not constitute the quorum of the Committee; and
 - (b) shall not be entitled to vote on any matter or issue considered by the Committee.
- (4) The Chair will ensure that a member of the Committee who is nominated under sub-section 1(c), 1(d) or 1(e) meets the following criteria –
 - (a) is a person over the age of 18 years;
 - (b) is not a member of the Legislative Assembly;
 - (c) has either –
 - (i) a tertiary degree or qualification; or
 - (ii) specific industry knowledge of at least 5 years;
 - (d) has a good working knowledge of labour, employment relations and commerce in the Kingdom; and
 - (e) does not have a criminal record in the Kingdom or abroad.
- (5) The Cabinet shall consider the list of nominees provided in sub-sections (1)(c), 1(d) and 1(e) to ensure that –
 - (a) they meet the criteria in subsection (4);
 - (b) the members of the Committee are representative of employees and employers in the Kingdom; and
 - (c) due regard be given to gender balance in the Committee.
- (6) If a nominee does not fit the criteria in sub-section (4), the Cabinet shall request an alternative nominee from the relevant associations in (1)(c), 1(d) or 1(e).

- (7) If there is a vacancy in the membership of the committee, a transaction effected during the vacancy period is not invalidated by reason only of the vacancy, provided there is a quorum.
- (8) If a person who is a member of the Committee registers as a candidate for an election to the Legislative Assembly, that person is deemed to have resigned from his position on the Committee and the Ministry will follow the provisions for replacement of that member.
- (9) A person who is appointed as a new member due to the vacancy of a position on the Committee under subsection (7) shall be appointed for a full term of 2 years.

15 Functions of the Committee

- (1) Functions of the Committee include but are not limited to –
 - (a) consult on labour and employment policies referred to it by the Ministry and make recommendations to the Minister on it;
 - (b) considering any employment issue or matter referred to it by the Minister, any member of the Committee or the Secretariat and advising the Minister on it;
 - (c) providing recommendations to the Minister for the establishment of a Commission to consider one or more matters set out under section 6 of this Act;
 - (d) consulting and discussing matters referred to it by the Ministry in relation to the International Labour Organisation, including advising the Minister, as necessary, on –
 - (i) ratification, implementation and denunciation of any Conventions and Recommendations of the International Labour Organization;
 - (ii) reporting requirements to the International Labour Organisation and assist the Ministry to fulfil this obligation;
 - (iii) proposals or matters to be discussed at the International Labour Organization or resolutions or conclusions adopted by the International Labour Conference, or issues addressed by other tripartite regional or international conference; and
 - (iv) implementation and evaluation of technical cooperation activities of the International Labour Office;
 - (e) consult on programmes to promote the principles of good faith and harmonious employment relationships;
 - (f) consult and advise the Minister on any policy measures or programmes affecting the economic and social interests of employees and employers; and
 - (g) consider any other matter lawfully referred to it by the Minister or Ministry from time to time.

- (2) The Committee may from time to time and in writing, co-opt a person to the Committee to provide advice on any issue,

Provided that a person who is co-opted to the Committee shall not be entitled to vote on any matter that is being considered by the Committee and shall not constitute the quorum.

- (3) The Committee may, from time to time, establish subcommittees for the purpose of undertaking its functions under subsection (1).

16 Secretariat

- (1) The Secretariat to the Committee shall be provided by the Ministry through the Head of the Labour Division or person acting on his behalf.
- (2) For the purposes of section 15(1)(b), the Secretariat shall be responsible for the initial assessment of issues or matters referred to the Secretariat for the consideration by the Committee.

17 Term of office

Except for the chair, a member of the Committee shall hold office for a term of up to two years.

18 Rules and procedures of the Committee

- (1) Rules and procedures of the Committee are outlined in Schedule 3.
- (2) The Committee may alter its rules and procedures from time to time.

PART V – EMPLOYMENT AGREEMENTS

19 Employment agreement

- (1) An employment agreement between an employer and an employee which is for a duration of two months or more shall be in writing.
- (2) An employment agreement between an employer and an employee which is for a duration of less than two months may be a verbal or written contract, provided that it is not required by this or any other Act, to be in writing.
- (3) Unless specifically stated, this Part applies to both a written and a verbal employment agreement.
- (4) A person who does not comply with the requirement in subsection (1) shall be liable to a spot fine issued under this Act.

20 Employment agreement to contain minimum conditions

- (1) A written employment agreement must be signed by an employer and an employee and must contain the minimum particulars prescribed in Schedule 4 of this Act.
- (2) If a condition of employment or process provided for in –
 - (a) an employment agreement;
 - (b) an agreement; or
 - (c) any other Act,is less favourable for an employee than the conditions and processes set out in this Act, the matters stated in this Act shall prevail.
- (3) Nothing in this Act shall prevent an employment agreement or the application of any Act that provides conditions of employment or processes that are more favourable to an employee than those contained in this Act.

21 Duty of employer to provide work

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

22 Right of appeal

- (1) An employer may appeal a decision of the Ministry in relation to the application of section 20(2).

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

23 Foreign employees

- (1) The Chief Executive Officer, in consultation with the Principal Immigration Officer, shall establish a process for the consideration of the employment of foreign employees in the Kingdom.
- (2) The process by which subsection (1) is to be conducted shall be prescribed in regulations made under this Act.

PART VI – FUNDAMENTAL RIGHTS AND PRINCIPLES AT WORK

24 Forced labour

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

25 Freedom from discrimination

An employer shall not discriminate against any employee or prospective employee on the grounds specified in section 69 of this Act.

26 Equal remuneration for work of equal value

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

27 Freedom of association

- (1) Every employee or employer has a right to establish an association in cooperation with others, without any discrimination, for the promotion and protection of economic and social interests and to join any such association of their choice.
- (2) Detailed rules regarding the functions of and the right to establish an Employees Association or Employers Association shall be established by regulations.

PART VII – HOURS OF WORK

28 Regular hours of work

- (1) The following general rules shall apply to an employee –
 - (a) regular hours of work each day shall be fixed at no more than eight hours;
 - (b) regular hours of work each week must be fixed at no more than 40 hours; and
 - (c) regular hours of work shall not take place on more than six days in a week.
- (2) Notwithstanding subsection (1), an employer may deviate from the general rule if –
 - (a) sector specific rules are established in regulations following consideration of this section by a Commission;
 - (b) the nature of the work is shift work in accordance with section 31; or
 - (c) with the agreement of the employee –
 - (i) the overtime payment of an employee is built into the salary of the employee, calculated at the applicable overtime rate and contained in the employee’s signed employment agreement; or
 - (ii) the employee is provided with time off in lieu, which shall be commensurate with the hours of overtime.
- (3) An employee who does not agree to work hours that are additional to the normal hours of work must not be treated unfavourably by the employer.

29 Additional hours of work subject to overtime

- (1) An employee and employer may agree to overtime in addition to regular hours of work provided by section 28.
- (2) Overtime shall be paid at a rate no less than one and a quarter times the amount an employee would ordinarily be paid for undertaking the work to which overtime applies.
- (3) Notwithstanding subsection (2), with the agreement of the employee, the overtime payment may be –
 - (a) built into the salary package of that employee;
 - (b) calculated using the overtime rate of 1.25 x number of expected overtime hours; and
 - (c) contained in the person’s employment agreement,in which case the employer shall not be required to provide additional overtime payment within the agreed term of contract.

30 Total hours of work

- (1) An employee's total hours of work per week including ordinary hours and overtime must not exceed 48 hours except in special circumstances.
- (2) For the purposes of this section, special circumstances means -
 - (a) having regard to the circumstances, the employer cannot be reasonably be expected to use other measures to undertake the work; and
 - (b) there is no risk to safety or health of the employee of working additional hours.
- (3) Upon request by an employer, the Chief Executive Officer shall consider whether special circumstance exist, and if he deems that it is so, the Chief Executive Officer shall, in the prescribed form, grant an approval of the requested exemption under this section.

31 Special provisions applying to shift work

- (1) An employee who is engaged under an employment agreement in regular shift work may be required by the employer to work for more than the regular hours provided for in section 28(1), in which case the average number of hours worked over a period of one (1) month must not exceed 48 hours per week.
- (2) In relation to section 29, a shift employee who is scheduled to work in a regular shift on a Saturday or Sunday is considered to work on a normal working day and shall be paid at the ordinary rate of pay.
- (3) Section 64 shall apply to all employees under an employment agreement in regular shift work.

32 Rest breaks and weekly rest

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

33 Exemption for certain contracts of service

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

34 Penalty for non-compliance

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

PART VIII – MINIMUM WAGES**35 Establishment of minimum wages**

- (1) The Cabinet may, in accordance with section 6(1)(a) and through regulations made under this Act, prescribe minimum wages to be paid to –
 - (a) all employees in the Kingdom;
 - (b) employees in a particular occupation;
 - (c) employees in a particular sector or industry; or
 - (d) employees in a particular area in the Kingdom.
- (2) The minimum wage or minimum wages prescribed under subsection (1) shall be based on –
 - (a) recommendations of a Commission established under this Act to consider the issue of minimum wages; and
 - (b) those recommendations have, prior to being presented to Cabinet, been endorsed by the Committee and Minister.
- (3) Subject to section 38, the duration and scope of work of the Commission shall be clearly set out in its terms of reference.
- (4) Consideration for the establishment of, and any subsequent review of minimum wages, must be based on extensive stakeholder consultations throughout Tongatapu and the outer islands.

36 Review of minimum wages

The Employment Relations Advisory Committee shall ensure that a Commission carries out a review of minimum wages every three years from the date of first adoption of minimum wages under this Act.

37 Procedure for minimum wage reviews

- (1) In carrying out its functions under section 6(1)(a), the Commission shall –
 - (a) invite submissions from and consult with employee and employer representatives;
 - (b) invite submissions from any other interested parties as it thinks appropriate; and
 - (c) request relevant information and analysis from the Chief Executive Officer.

- (2) The Commission may engage technical experts or advisors to assist it to carry out this minimum wage review function.

38 Criteria for minimum wage reviews

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

- (a) needs of employees and their families, taking into account the general level of wages in the country, the cost of living and retirement benefits;
- (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment;
- (c) relevant poverty indices, consumer price indices and any other factors identified by the Committee and Ministry as being relevant for consideration by the Commission; and
- (d) any other information, including information submitted by representatives of employees and employers relating to the reasonableness of wages relating to any occupation, sector, industry or area.

39 Minimum wage reports

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

40 Effect of a minimum wage order

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

41 Notice of minimum wage

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

PART IX – EMPLOYMENT OF CHILDREN

42 Application of this Part

This Part applies whether or not a child is engaged under an employment agreement.

43 Definition under this Part

For the purposes of this Part -

“**maximum age of compulsory education**” refers to the maximum age of compulsory education provided for in the Education Act.

44 Minimum age for employment

- (1) The minimum age for full time employment in the Kingdom is 15 years of age, or the maximum age of compulsory education stated in the Education Act, whichever is higher.
- (2) A child aged 15 to 18 years, whether on a full time or part time basis, must not be employed in any capacity, except in non-hazardous work in accordance with section 45.
- (3) Notwithstanding subsection (2), work engaged in by a child under the age of 15 –
 - (a) in schools, as part of an authorised programme of education; or
 - (b) as part of an artistic performance or of a similar nature,is not a breach of this section.

45 Non-hazardous work

- (1) Non-hazardous work refers to work 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) The Hazardous Child Labour List recommended by the Minister and approved by Cabinet shall specify what constitutes hazardous and non-hazardous work for the purposes of this section.

46 Register of employed children

- (1) An employer that employs a child that is 18 years or younger must –
 - (a) keep a register of the child’s name, date of birth, gender, occupation, employment status, hours of work, school or vocational training

- attendance, rate of pay, employment commencement date, and employment termination date (as appropriate); and
- (b) produce the register for inspection when it is required by the Chief Executive Officer or labour officer.
- (2) An employer who breaches this section shall be liable to a penalty under this Act.

PART X – PAYMENT AND PROTECTION OF WAGES

47 Wage periods

The payment of an employee's wages must be at intervals that are reasonably appropriate to the nature of the employment agreement, but must be no less frequent than –

- (a) every two weeks if an employee's wages are calculated by the hour, day or week; or
- (b) once a month if an employee's wages are calculated on a monthly, annual or piece work basis.

48 Authorised deductions

An employer shall, when paying wages to an employee, only make deductions -

- (a) for periods of an unauthorised absence from work, calculated in proportion to the period for which the employee was required to work by the terms of his employment;
- (b) for the actual costs of meals or food supplied by the employer at the request of the employee;
- (c) for recovery of advances or for adjustment of overpayment of wages;
- (d) pursuant to an order made by a Court or authority having competent jurisdiction in that behalf;
- (e) lawfully permitted under any enactment, regulations or rules for the time being in force; and
- (f) for any other lawful purpose, with the consent in writing, or at the written request of the employee.

49 Remuneration other than wages

An employee may, under an employment agreement, receive other remuneration and entitlements permitted by law, in addition to wages for his work.

50 Interest on advances

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

51 Wages statement

- (1) An employer shall, at the request of an employee and no later than 72 hours after the request, provide the employee with a written statement containing the following particulars, in respect of a relevant wage period under section 47 –
 - (a) employee's name;
 - (b) nature of employment or job classification;
 - (c) days or hours worked at normal rates of pay;
 - (d) rate of wages;
 - (e) wage period;
 - (f) any overtime worked during a wage period and the rate of wages payable for the overtime;
 - (g) gross earnings of the employee;
 - (h) allowances, loadings or other sundry payments due to the employee;
 - (i) deductions made from the gross earnings of the employee in accordance with section 48; and
 - (j) net amount due to the employee after all deductions have been made in respect of each wage period.
- (2) At least one week prior to the pay period in which a change occurs, an employer must inform an employee, in writing, of any change to the conditions of the employee's wages.

52 Employment records

An employer, in relation to an employee who is engaged under an employment agreement, must keep employment records showing the following:

- (a) name, date of birth and address of the employee;
- (b) type of work and responsibilities for which the employee is engaged;
- (c) copy of the employment agreement under which the employee is engaged;
- (d) classification or designation of the employee according to which the employee is paid;
- (e) hours of work of the employee;
- (f) wages paid to the employee for each wage period and the method of calculation;

- (g) component of wages paid that is annual holiday pay, if section 54 applies;
- (h) overtime worked and the calculation of overtime pay;
- (i) employee's accrued annual holiday entitlements;
- (j) dates on which annual holiday leave and public holidays are taken;
- (k) amount paid to the employee for paid annual holidays and public holidays; and
- (l) any other information prescribed by this Act or regulations made under this Act.

53 Inspection of employment records

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

54 Non-payment of wages

- (1) An employer who –
 - (a) subject to subsection (2) of this section, fails to pay wages in accordance with a person's employment agreement;
 - (b) upon demand in writing by the Chief Executive Officer or a labour officer, fails within seven days of receiving a demand notice to pay any wages due to an employee;
 - (c) pays or agrees to pay the wages of an employee otherwise than in the currency which is legal tender at the place where the wages are paid;
 - (d) makes a deduction from the wages of an employee in the nature of a fine, or due to poor or negligent work;
 - (e) imposes conditions upon the expenditure of an employee's wages; or
 - (f) pays an employee on a piece-work basis which results in the employee receiving less than the rate of wages prescribed in the applicable employment agreement,commits an offence and is liable to a penalty under this Act.
- (2) Subsection (1)(a) will not constitute an offence where the employer proves that he or she acted in good faith or took reasonable steps to pay the employee's wages.

55 No wages on detention or imprisonment

- (1) Subject to subsection (2) of this section, an employer is not required to pay remuneration to an employee if the employee is detained or imprisoned in accordance with applicable law.

- (2) An employer must pay an employee any remuneration for work that has been carried out prior to the commencement of the term of imprisonment.

56 Repatriation upon death of an employee

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

PART XI – HOLIDAYS AND LEAVE

57 Holidays and leave entitlements

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

58 Duration of paid annual holidays

- (1) Subject to sections 59 and 60, on the completion of each year of employment with an employer, an employee is entitled in the subsequent year to at least 1 working day annual holiday per month, in addition to public holidays, and must be paid in respect of such holiday the wages the employee would have been paid for the time the employee would normally have worked during that period.
- (2) An employer must permit an employee to take his annual holiday in 1 unbroken period or, at the request of the employee, in two or more periods, one of which must be a continuous period of one week.

59 Proportionate paid annual leave

- (1) Notwithstanding section 58, an employee is entitled to annual leave once he has completed a minimum of twelve months service with the employer.
- (2) An employer may include annual holiday pay as part of an employee's wages, at the normal pay rate, with the agreement of an employee, if the employee -
 - (a) has a fixed term contract; or

- (b) works intermittently as a part-time employee; and
- (c) it is unreasonable and impracticable for the employer to provide 12 days paid annual leave days.

60 Annual leave pay on termination of employment

- (1) If an employee's employment is terminated either by the employer, or by the employee in accordance with this Act, the employer shall pay the employee one day's wages for each completed month of service less any annual leave that has already been taken during the year in which the termination occurs.
- (2) This section does not apply to an employee who receives annual leave pay as part of his wages under section 59(2).

61 Continuity of employment

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

62 Paid annual leave to be given within a certain period

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

63 Wages for annual holidays

Wages for a paid annual holiday, at the latest, must be paid on the pay day immediately following the holiday.

64 Public holidays

- (1) All public holidays provided by the Public Holidays Act applies to all workplaces.
- (2) Subject to subsection (3), an employee must be paid for each public holiday for the number of hours (exclusive of overtime) which the employee would normally have worked on that day had it not been a public holiday.
- (3) If an employee, other than a shift employee, works on a public holiday, the employee must be paid one and a half (1.5) time for the time worked during the public holiday or with the agreement of the employee, be given appropriate days off in lieu.

65 Sick leave

- (1) An employee who has completed more than 6 months continuous service with the same employer is entitled, for the subsequent year, to be paid sick leave of a minimum of 10 days.
- (2) An employee's unused sick leave for each year automatically lapses in the following year.
- (3) To be entitled to sick leave, an employee must –
 - (a) as soon as is reasonably practicable notify the employer of his absence and the reason for it; and
 - (b) produce, if requested by the employer, a written certificate signed by a registered medical practitioner, certifying the employee's incapacity for work.

66 Casual leave

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

67 Maternity leave

- (1) A female employee who expects to give birth to a child is entitled to maternity leave, from her employment for a period of 30 consecutive working days provided that the employee furnishes to her employer a certificate from a registered medical practitioner or registered nurse confirming the pregnancy and specifying the expected date of delivery of a child.
- (2) An employer and female employee may agree –
 - (a) to a longer period of maternity leave; or

- (b) that maternity leave is paid.
- (3) A female employee may take maternity leave at any time before or after the birth of a child provided that at least 15 days of the leave is taken after the birth of a child.
- (4) A female employee who returns to her employment after maternity leave –
 - (a) must be appointed to the same or equivalent position held prior to taking maternity leave, without any loss of salary, wages, benefits or seniority; or
 - (b) may be appointed to a higher position.

68 Restriction on termination

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

PART XII – EQUAL EMPLOYMENT OPPORTUNITIES

69 Prohibited grounds of discrimination

- (1) For the purposes of this Part, the prohibited grounds for discrimination include –
 - (a) ethnic origin;
 - (b) gender;

- (c) political opinion;
 - (d) social origin;
 - (e) marital status;
 - (f) pregnancy;
 - (g) family status;
 - (h) disability; or
 - (i) employee association membership or activity.
- (2) Subsection (1) –
- (a) includes actual or perceived personal characteristics or circumstances; and
 - (b) shall apply to a person who is being considered for a position of employment.

70 Discrimination in employment

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

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

due to the gender of a person.

71 Sexual harassment

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

- (a) directly or indirectly makes a request of the employee for sexual intercourse, sexual contact or any other form of sexual activity which contains an implied or overt –
 - (i) promise of preferential treatment in that employee's employment;
 - (ii) threat of detrimental treatment in that employee's employment; or
 - (iii) threat about the present or future employment status of that employee; or
- (b) directly or indirectly uses words (whether written or spoken), physical behaviour, visual material or any other actions of a sexual nature, which is unwelcome or offensive to an employee,

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

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

72 Employer liability in certain circumstances

- (1) If a representative of the employer or another employee in the workplace sexually harasses another employee and, a complaint of sexual harassment is made to the employer, the employer shall take reasonable steps to prevent the repetition of the sexual harassment.
- (2) If an employer fails to take the reasonable steps necessary to prevent the repetition of sexual harassment against an employee referred to in subsection (1), the employee is entitled to raise a dispute against the employer under this Act.

73 Policies to eliminate sexual harassment

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

PART XIII – OCCUPATIONAL SAFETY AND HEALTH

74 Duties of employers

- (1) An employer shall provide and maintain so far as is practicable, a working environment for employees that is safe and without risk to health.
- (2) An employer must develop an Occupational Safety and Health Policy to apply within the workplace which –
 - (a) complies with minimum conditions set out in this Part and in regulations made under this Act; and
 - (b) meets applicable industry standards for occupational safety and health.
- (3) An employer shall –
 - (a) identify existing and new hazards at work and assess each identified hazard to determine whether or not it is a significant hazard to any employee at work; and
 - (b) take steps as far as is practicable to eliminate each significant hazard in the workplace, and if the hazard remains significant –

- (i) take steps as far as practicable to isolate the hazard from employees at the workplace;
 - (ii) introduce a system to control each employee's exposure to the hazard and provide protective clothing and equipment to protect employees from any harm that might arise from the hazard; and
 - (iii) provide such information, instruction, training and supervision as is necessary to enable employees to perform their work in a manner that is safe and without risks to their health or safety.
- (4) An employer who –
 - (a) knowing that any action, or a failure to take action, is reasonably likely to cause serious harm to an employee; and
 - (b) commits an action or fails to take action, which causes serious harm to an employee,commits an offence and is liable to a penalty under this Act.
- (5) If an injury or death occurs in a workplace due to a workplace hazard, the employer must report the incident to the Ministry within 48 hours of the injury or death being made known to the employer.

75 Duties of employees

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

76 Duties of the Ministry

For the effective implementation of this Part, the Ministry shall provide the following –

- (a) an appropriate template for the development of an employer's Occupational Safety and Health Policy under this Part; and

- (b) subject to the availability of funding, relevant training for employers and employees in each sector with the objective to reduce workplace hazards and improve safety within work places.

PART XIV – TERMINATION OF EMPLOYMENT

77 Probationary period

- (1) An employer may appoint an employee to a position for a probationary period of no more than 6 months at the commencement of an employee's employment.
- (2) Despite anything to the contrary in this Part, an employer may terminate an employee's employment during the probationary period either by providing one weeks' notice, or if section 85 applies, with no notice.
- (3) Grounds for termination during a probation period may be due to –
 - (a) the employee's capacity or conduct and sections 86 and 87 have been complied with; or
 - (b) serious misconduct by the employee and section 86 has been complied with,and it is not for an unlawful reason under section 85.

78 Termination by an employer

- (1) Subject to subsection (2), an employment agreement is conclusively presumed to be for an indefinite duration.
- (2) Subsection (1) does not apply to a contract —
 - (a) for a fixed period, which is presumed to terminate at the end of the fixed period; or
 - (b) for a fixed task, which is presumed to terminate upon completion of the fixed task.
- (3) An employment agreement of indefinite duration to which subsection (1) applies or a contract for a fixed period where that fixed period has not yet expired, shall not be terminated by the employer unless it is justified on reasonable grounds.
- (4) The termination of an employee's employment is justified on reasonable grounds if it –
 - (a) relates to the employee's capacity or conduct and sections 81 and 82 have been complied with;
 - (b) is due to serious misconduct by the employee and section 80 has been complied with; or
 - (c) was due to redundancy and sections 82 and 85 have been complied with,

and it is not for an unlawful reason under section 80.

79 Further provisions relating to unlawful termination

- (1) The termination of an employment agreement by an employer is unlawful if it relates to –
 - (a) discrimination pursuant to section 69;
 - (b) an employee’s authorised absence from work due to illness or injury;
 - (c) an employee seeking office as, or acting or having acted in the capacity of an employee representative;
 - (d) an employee’s filing of a complaint or participation in proceedings against an employer, involving alleged breach of laws or regulations or recourse to competent administrative authorities; and
 - (e) an employee’s authorised absence from work during maternity leave.
- (2) In any employment dispute under Part XIV, if an employee alleges that his employment agreement was terminated on one or more of the grounds in subsection (1), the burden of proving the existence of a valid reason for the termination shall lie with the employer.

80 Summary dismissal

- (1) An employer may dismiss an employee without notice for serious misconduct if the employee’s conduct is of such a nature that it would be unreasonable to require the employer to permit the employee to continue in his employment.
- (2) Serious misconduct in the course of employment includes, but is not limited to the following circumstances–
 - (a) embezzlement, theft, fraud or any act of dishonesty;
 - (b) violence or the assault of another person or threats of violence;
 - (c) deliberate falsification of skills or qualifications for the purpose of obtaining employment or a promotion; or
 - (d) being under the influence of intoxicating liquor or a drug, except a drug administered by, or taken in accordance with the directions of a person lawfully authorised to administer the drug or a registered medical practitioner.
- (3) In determining whether or not a particular conduct constitutes serious misconduct under subsection (2)(a), an employer shall have due regard to the following –
 - (a) whether there is credible evidence of the alleged conduct;
 - (b) nature and seriousness of the alleged offence;
 - (c) level of damage or harm to the employer or other employees;

- (d) willingness of the employee to provide reparation for damages; and
 - (e) whether the employee has been warned to refrain from similar conduct in the past.
- (4) The employer must document in writing the reason for the summary dismissal, and must upon request by the employee, provide this to the employee within 48 hours of the request.

81 Termination for reasons relating to capacity or conduct

A termination of an employee's employment under section 78(4)(a) is justified if the employer has –

- (a) warned the employee about any unsatisfactory capacity or conduct;
- (b) provided the employee with an opportunity and reasonable assistance to improve their capacity or conduct;
- (c) given the employee a reasonable opportunity to respond to any issues raised about their capacity or conduct;
- (d) afforded the employee a reasonable opportunity for a representative to be present or to represent the employee's interests at one or more meetings relating to the employee's performance;
- (e) notified the employee of the reason for the termination; and
- (f) provided the employee with a notice of termination in accordance with section 82.

82 Provision of notice

- (1) Subject to this Part, an employer or employee who terminates an employment agreement, in the absence of a specific written agreement as to notice between the parties to the contrary, shall give at least –
- (a) one week's notice in writing if the employee has been employed for less than two years;
 - (b) two weeks' notice in writing if the employee has been employed for more than two years.
- (2) If the termination of an employment agreement is at the employer's initiative under this section, the payment of wages in lieu of notice may be provided at the employer's discretion.

83 Further requirements as to termination of contracts

- (1) On the termination of an employment agreement, the employer must pay to the employee all wages and benefits including any accrued but untaken annual

leave due to the employee, as soon as practicable but not less than 14 days from the date of termination.

- (2) If payment is made in lieu of notice, the payment must include the wages and benefits that would have been payable to the employee if the employee had worked during the period of notice.
- (3) Upon termination of an employee's contract or dismissal of an employee, if requested by the employee, the employer must provide a certificate to the employee stating the nature of the employee's employment and his period of service.
- (4) Excluding a dismissal under section 85, if the termination of an employment agreement is in relation to a foreign employee, the employer must follow the process in regulations made under this Act.

84 Termination for reasons of redundancy

- (1) Before an employee's employment agreement 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 85; or
 - (b) comply with any requirements with respect to redundancy under any applicable employment agreement.
- (2) Termination of an employment agreement for reasons of redundancy will not constitute a justified termination for the purpose of 78(4)(c), if it would have been reasonable in all of the circumstances for the employee to be re-deployed to a similar or equivalent position within the employer's enterprise.
- (3) If the employer has terminated the employment of a person due to a redundancy, the employer cannot subsequently re-employ the same person or other person, to the same or similar position, within a period of 12 months from the date of termination.

85 Provision of information

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

- (a) subject to the notice period for termination in an employee's contract; and
- (b) not less than 30 days before the proposed date on which the terminations take place, provide the employees, their representatives and the Chief Executive Officer –
 - (i) with relevant information including the reasons for the terminations contemplated;

- (ii) the number and categories of employees likely to be affected; and
- (iii) the period over which the terminations are intended to be carried out.

86 Redundancy pay

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

87 Transfer of contract

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

PART XV – EMPLOYMENT DISPUTES

88 Workplace dispute resolution

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

89 Time limit for raising a dispute

- (1) A party to a dispute must, subject to subsection (2) and (3), raise the dispute to the other party within a period of 21 days from the date on which the matter giving rise to the dispute is alleged to have occurred or came to the notice of the party, whichever is later.
- (2) An employer may consent to extend the period of the submission of dispute under subsection (1).
- (3) If an employer does not consent to extending the period of the submission of a dispute under subsection (1), the Chief Mediator may extend the period, upon a written application, if the Chief Mediator is satisfied that there are good reasons for the delay.

90 Meeting of the parties

- (1) Upon receiving a notice under section 89 and within 14 days of the notice being received, the parties shall meet at the workplace or an agreed location outside the workplace to discuss the dispute.
- (2) A party may appear personally or be represented by a person who has the authority to act on behalf of the absent party, but no legal practitioner shall be allowed to represent a party at the meeting.

91 Written statement

If a dispute is not settled by the parties at their meeting in section 90, the aggrieved party must, within 21 days, give to the other party a written statement outlining the following –

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

92 Written response

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

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

93 Reference to mediation services

If one or more parties to a dispute is of the view that efforts to resolve a dispute at a workplace level have failed, either party may, within 21 days, seek mediation services from the Mediation Unit.

Subject to sections 94 and 95, the mediator must seek to facilitate the resolution of a dispute within 28 days of the matter being referred to it.

94 Mediation services

- (1) The Ministry shall establish a Mediation Unit to provide mediation services in accordance with this Act, consisting of the following suitably qualified public officers, who shall be appointed by the Chief Executive Officer in consultation with the Public Service Commission –
 - (a) a Chief Mediator responsible for the daily management of the Mediation Unit; and
 - (b) other advisors as necessary.
- (2) The Chief Executive Officer may, in special circumstances, appoint a suitably qualified person, not being a public servant, as a Mediator.
- (3) For the purposes of subsections (1) and (2), “suitably qualified” means a person who satisfies the requirements for relevant qualifications, mediation training and experience prescribed in regulations made under this Act.
- (4) The salary or fees of the Chief Mediator appointed under this Part shall be covered by the Ministry or by any other funding source that is approved by Cabinet.
- (5) Functions of the Mediation Unit includes, but is not limited to –
 - (a) the provision of general information about employment rights and obligations;
 - (b) the provision of information about what services are available relating to the dispute;
 - (c) services that assist the smooth conduct of employment relationships;
 - (d) services that promptly and effectively, resolve disputes; and
 - (e) services to resolve any problems relating to employment agreements associated with the fixing of new terms and conditions of employment.
- (6) Functions of the Chief Mediator include, but are not limited to –
 - (a) listening to the grievances of the parties;
 - (b) obtaining further information from the parties as appropriate;
 - (c) clarifying relevant provisions in the Act that are applicable to the matter in dispute;

- (d) facilitating discussions with and between the parties, with a view to aiding resolution of the matter in dispute; and
 - (e) providing recommendations to the parties as to the way forward for the resolution of the dispute.
- (7) The Ministry shall, through regulations made under this Act, consider the provision of mediation services for persons who are employed in the outer islands.

95 Procedures for mediation services

- (1) Where mediation services are provided, the mediator who provides the services decides what services are appropriate to the particular case in accordance with regulations made under this Act.
- (2) The mediator, in providing mediation services may –
 - (a) have regard to the object of this Act and the needs of the parties, follow such procedures, or do such things he or she considers appropriate to resolve the employment dispute promptly and effectively; and
 - (b) receive any information, statement, admission, document, or other material he considers necessary.
- (3) A party to proceedings before a mediator may appear personally or be represented by a person whom the mediator is satisfied has the authority to act in proceedings, but no legal practitioner shall be allowed to represent a party during mediation.
- (4) The Mediation Unit may request that the parties attempt further dispute resolution under section 88 if it is satisfied that the parties have not made sufficient efforts to resolve the dispute prior to seeking mediation services.

96 Notice to attend mediation

- (1) Where a matter is referred to the Mediation Unit, a notice shall be issued to all parties to appear before the mediator at a place and time specified in the notice.
- (2) A party that fails to appear before the mediator as required under subsection (1), without reasonable excuse, is liable to a penalty.
- (3) Notwithstanding subsection (1), a party shall not be compelled to attend mediation for a period of more than 2 days on a subject matter that is in dispute, if the parties are not able to resolve the issue within that time.

97 Independence of mediation personnel

- (1) A mediator shall, at all times, act independently in deciding how to handle or deal with a dispute or any aspect of it.

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

98 Code of ethics

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

99 Settlements

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

PART XVI – PROCEEDINGS

100 Proceedings where mediation fails

- (1) If the mediator is of the opinion that the provision of further mediation services is unlikely to resolve a dispute, he may terminate the mediation proceedings by written notice to the parties.
- (2) Mediation may be terminated and proceedings may be lodged in the Court to hear and determine a dispute by –
 - (a) an employee, prospective employee or former employee who is a party to the dispute;
 - (b) an employer who is a party to the dispute;

- (c) an employer association that is a party to the employment dispute or is representing an employer in the employment dispute.
- (3) Proceedings must be lodged within 28 days from the date that the mediation has failed to settle a dispute.
- (4) The conduct of any dispute resolution or mediation proceedings conducted under Part XIV of this Act shall be, and shall remain private and confidential.
- (5) No transcript or any other evidence of any matter disclosed, discussed or raised in any manner in the course of the dispute resolution or mediation proceedings under Part XIV of this Act may be presented as evidence in any Court, or any other dispute resolution forum hearing, relating to the subject matter of that dispute resolution or mediation proceeding conducted under Part XIV of this Act.

101 Jurisdiction of the Court

The Court has exclusive jurisdiction to make determinations about one or more of the following —

- (a) a dispute between an employee and one or more employers connected with the employment, non-employment, or the terms and conditions of employment for one or more employees under this Act;
- (b) a dispute relating to whether a person is an employee;
- (c) a breach of a settlement agreement;
- (d) actions for the recovery of penalties;
- (e) objections to demand notices;
- (f) objections to penalty notices;
- (g) challenges to the decision of the Chief Executive Officer;
- (h) actions for the recovery of wages, holiday pay or any other money owing to an employee under this Act;
- (i) hear and determine offences under this Act;
- (j) questions of law arising during the course of proceedings; or
- (k) such other matters conferred on it by this Act.

102 Determination of whether a person is an employee

For the purpose of determining whether a person is employed within the meaning of this Act, the Court shall have regard to all relevant matters including whether the person engaged to work —

- (a) carries out the work under the direction and control of another person;
- (b) is integrated into the organisation of the enterprise;
- (c) performs the work solely for the benefit of another person;

- (d) carries out the work personally;
- (e) has specified working hours or a working duration;
- (f) has a specified workplace;
- (g) has tools, materials, machinery and work related travel expenses paid by the person requesting the work;
- (h) receives regular or periodic remuneration;
- (i) has entitlements to leave; or
- (j) has absence of financial risk from the work.

103 Remedies

- (1) The Court may grant one or more of the following remedies—
 - (a) reimbursement of wages or other money by the employer to an employee as a result of a breach of the employment contract;
 - (b) the payment of compensation to an employee by the employer for –
 - (i) humiliation, loss of dignity, and injury to the feelings of the employee; or
 - (ii) loss of any benefit, whether or not of a monetary kind, which the employee might reasonably have been expected to obtain if the dispute had not arisen.
- (2) The payment of compensation to an employee for lost wages or salary under subsection (1)(b)(ii) shall be limited to three times the amount of the lost wages or salary of the employee, had the dispute not arisen.
- (3) If an employee's employment is terminated and the termination is not justified, the Court may in determining the nature and extent of the remedies to be granted to an employee, consider the extent to which the employee contributed to the situation and reduce the remedies accordingly.

104 Compliance orders

If a person has not complied with –

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

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

105 Terms and conditions void if inconsistent with Act

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

PART XVII – ENFORCEMENT**106 Designation of a labour officer**

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

- (9) Notwithstanding the revocation of an officer's designation under this Act, if the officer is a public servant who has been appointed under the Public Service Act, he may continue in his employment as an employee of the Ministry or any other Ministry, unless or until the Public Service Commission directs otherwise to the officer's Minister in writing.

107 Powers and functions of a labour officer

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

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

108 Interests and confidentiality

A labour officer must –

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

PART XVIII — SPOT FINES

109 Power to determine spot fine

- (1) The Cabinet shall, in consultation with the Minister, have the power to determine the type and level of spot fines which may be issued under Part XIX of this Act.
- (2) All monies received by the Ministry for the payment of spot fines issued under this Act shall be deposited into the General Revenue account of the Government.

110 Election of process

- (1) Where a person is issued with a notice of a spot fine under this Act, that person may –
 - (a) if he accepts the alleged infringement, elect to pay the spot fine; or

- (b) if he contests the allegation, elect for the matter to be determined by the Magistrates Court.
- (2) If a person who is issued with a notice of a spot fine does not respond within a period of 21 days, the matter will be automatically referred by the Division to the Magistrates Court for determination.
- (3) A notice of a spot fine shall clearly outline the following –
 - (a) the alleged offence;
 - (b) date on which the offence was allegedly committed;
 - (c) provision or provisions which have been violated and prescribed sanctions; and
 - (d) right of the alleged offender to elect the process in accordance with subsection (1) and the prescribed period within which this must be done.

PART XIX – OFFENCES AND PENALTIES

111 General offences and penalties

- (1) A person who commits an offence under this Act shall, on conviction, be liable to a fine of up to \$50,000 or a term of imprisonment of up to 2 years, or both.
- (2) A person who breaches a provision of this Act that imposes a spot fine, is liable –
 - (a) in the case of an individual, to a spot fine not exceeding \$5,000; or
 - (b) in the case of a company or other corporation, to a spot fine not exceeding \$10,000.
- (3) The type and level of spot fines to which an individual or company may be liable shall be set out in regulations made under this Act.

112 Failure to provide a written contract

An employer who, upon request by the Chief Executive Officer, fails to provide information, a written contract or a document that is required by this Act commits an offence and shall be liable to –

- (a) a spot fine; or
- (b) upon conviction, to the penalty prescribed in section 109(1).

113 Offence to delay or obstruct an officer

A person who –

- (a) wilfully delays or obstructs the Chief Executive officer, Registrar, mediator or labour officer exercising a power or performing a duty conferred by the Act;
- (b) fails to comply with a direction, requirement, request, demand or inquiry of the Chief Executive Officer, Registrar, mediator or labour officer made or given in accordance with the powers conferred by this Act; or
- (c) conceals or prevents a person from appearing before or being examined by such officer,
and shall be liable to –
 - (i) a spot fine; or
 - (ii) upon conviction, to the penalty prescribed in section 109(1).

114 Issuance of notice of spot fine and payment

- (1) A designated labour officer may issue a notice of spot fine in accordance with this Act and regulations made under this Act.
- (2) The notice shall be in the form prescribed by regulations made under this Act.
- (3) Payment for a spot fine shall not be made to an individual officer, but shall be made to the place prescribed by regulations made under this Act.

PART XX – MISCELLANEOUS

115 Protection against civil or other criminal proceedings

No action or proceeding, civil, or criminal, lies against the Chief Executive Officer, labour officer or Committee, for anything done or omitted in good faith in the lawful exercise or purported exercise of a function under this Act by the Chief Executive Officer, labour officer or Committee.

116 Time for instituting proceedings for other offences

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

117 Regulations

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

118 Chief Executive Officer to keep registers

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

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

119 Savings

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

Passed in the Legislative Assembly on this day of 2020.

SCHEDULE 1*(Section 2 & 4)***GOVERNMENT MINISTRIES AND AGENCIES COVERED BY THIS ACT****GOVERNMENT MINISTRIES**

1.	Prime Minister's Office
2.	Ministry of Foreign Affairs
3.	Ministry of Infrastructure and Tourism
4.	Ministry of Lands and Natural Resources
5.	Ministry of Education and Training
6.	Ministry of Health
7.	Ministry of Finance
8.	Ministry of Trade and Economic Development
9.	Ministry of Internal Affairs
10.	Ministry of Public Enterprises
11.	Ministry of Justice
12.	Ministry of Revenue and Customs
13.	Bureau of Statistics
14.	Ministry of Agriculture, Food, Forests and Fisheries
15.	Ministry of Meteorology, Energy, Information, Disaster Management, Environment, Communications and Climate Change

GOVERNMENT AGENCIES

1.	Office of the Lord Chamberlain
2.	Palace Office
3.	Audit Office
4.	Public Service Commission
5.	Attorney General's Office.

SCHEDULE 2*(Section 4(6)(a))***PERSONS EXCLUDED FROM THE SCOPE OF THIS ACT**

The following persons shall not be covered by this Act –

1.	Cabinet Ministers appointed under the Constitution
2.	Lord Chancellor appointed under the Constitution
3.	Lord Chief Justice appointed under the Constitution
4.	Governors appointed under the Constitution
5.	Judges of the Court of Appeal and the Supreme Court appointed under the Constitution
6.	Judges and Land Assessors of the Land Court appointed under the Land Act
7.	Magistrates appointed under the Magistrate's Court
8.	Attorney General appointed under the Constitution
9.	Auditor General appointed under the Public Audit Act
10.	Ombudsman appointed under the Ombudsman Act
11.	Lord Chamberlain
12.	Lord Privy Seal
13.	Commissioners appointed under the Public Service Act
14.	Commissioners appointed under the Royal Commissions Act
15.	Members of the Tonga Police appointed under the Tonga Police Act
16.	Members of the Prisons Department appointed under the Prisons Act
17.	Members of the Tonga Fire Services appointed under the Tonga Fire Services Act
18.	Members of the His Majesty's Armed Forces appointed under His Majesty's Armed Forces Act
19.	Employees of the Legislative Assembly appointed under the Legislative Assembly Act
20.	Anti-Corruption Commissioner appointed under the Anti-Corruption Commissioner Act

21.	Employees of the Office of the Anti-Corruption Commissioner
22.	Employees of the Office of the Ombudsman

SCHEDULE 3

(Section 18(1))

RULES AND PROCEDURES OF THE EMPLOYMENT RELATIONS ADVISORY COMMITTEE

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

1 Meetings of the Committee

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

2 Quorum for meetings

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

3 Responsibilities of Chair

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

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

4 Term of office

- (1) Except for the Chair, a member of the Committee shall be appointed for a term of up to two years.
- (2) When the term of office for a member under section 14(1)(c), 14(1)(d) and 14(1)(e) of the Act has ended, the relevant association that nominated such member shall nominate new names to the Ministry and Cabinet for consideration of membership.
- (3) Notwithstanding that a relevant association was represented on the Committee in a prior term, the Cabinet may consider nominations from a new or alternative association to become a member of the Committee.

5 Extraordinary vacancies

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

6 Co-opted members

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

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

7 Delegation of powers

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

8 Members and officers to maintain confidentiality

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

9 Functions of the Secretary

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

- (a) keeping proper minutes of meetings of the Committee;
- (b) notifying members of meetings of the Committee within the prescribed time, and overseeing the timely distribution of meeting materials;
- (c) liaising between the Ministry and members of the Committee as necessary on matters relevant to the Committee, and for effective communication between the Ministry and the Committee;
- (d) liaising between the Committee and the public, key stakeholders and the media as is required from time to time;
- (e) ensuring that confidential information of the Committee are kept in secure storage and released only according to the instructions of the Committee; and
- (f) complying with any other lawful directions of the Chair of the Committee.

10 Functions of the Secretariat

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

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

11 Members not personally liable

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

12 Meeting fees

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

SCHEDULE 4*(Section 20(1))***MINIMUM PARTICULARS OF AN INDIVIDUAL'S WRITTEN EMPLOYMENT AGREEMENT**

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

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

SCHEDULE 5*(Section 106(6))***DESIGNATION OF A LABOUR OFFICER: FULL POWERS**

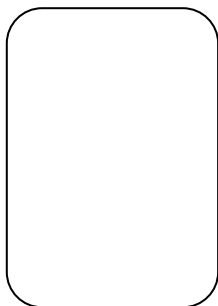
Pursuant to section 69 of the Employment Relations Act, I hereby designate [OFFICER'S NAME] of [MINISTRY NAME] as a labour officer under the Act.

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

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

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

.....
Honourable Minister responsible for Labour

SCHEDULE 6*(Section 106(6))***FORM OF IDENTIFICATION OF A LABOUR OFFICER****FRONT:**

Name:

Designation:

Ministry:

Expiration:

ID No.:

FULL POWERS / LIMITED POWERS**BACK:**

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

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

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

EXPLANATORY NOTES

(These notes does not form part of the Bill, and are only intended to explain its scope and purpose)

The Employment Relations Bill 2020, if enacted, will establish a new law for Tonga. The primary objective of the Bill is to establish a legal framework governing employment in Tonga.

The table below outlines the main Parts of the Employment Relations Bill 2020 -

Part I – Preliminary	<p>This Part deals with a number of important sections. Section 1(2) provides that the Bill will come into force in different phases – starting with the Parts which establish the main governing bodies, and then other Parts will come into force on one or more dates specified by the Minister in the Gazette. This allows for gradual implementation of the Bill, providing a transitional period for employers and employees.</p> <p>The scope of the Bill is set out in section 4. This section provides that the Bill shall cover all employers and employees in Tonga, except as provided in subsections 4(2), 4(3), 4(4), 4(5) and 4(6). Special categories are –</p> <ul style="list-style-type: none"> ▪ Public Service Employees (including employees of the Ministry of Education) will be covered by the Bill, except for the Parts relating to grievance and disputes – where Public Service employees will be governed by the Public Service Act and regulations made under that Act. ▪ Employees of non-Government schools and Managing Authorities will be covered by the Bill. ▪ Employees of a church or religious organisation who are employed in the business arm of the church or religious organisation will be covered by the Bill. <p>Employees not covered by the Bill are –</p> <ul style="list-style-type: none"> ▪ Persons listed in Schedule 2 of the Bill. ▪ Employees of a society or a trust that has been incorporated under the Incorporated Societies Act or Charitable Organisations Act.
Part II – Administration	<p>This Part deals with the administration of the Bill, and establishes the functions of the Minister, Ministry, Chief Executive Officer and Labour Division. The Bill establishes a number of governing</p>

	bodies, including one or more Commissions to further consider issues identified under the Bill and the Employment Relations Advisory Committee (ERAC), which is an advisory body to the Ministry.
Part III- Registration of Employee and Employer Associations	This Part deals with the Registration of Employee and Employer Association. The Minister on the recommendation of the Chief Executive Officer is to appoint a Registrar of Associations under this Bill. The Registrar will consider applications for the registration of associations in accordance with the criteria established under the Bill.
Part IV – Employment Relations Advisory Committee	Members of the ERAC include the Chief Executive Officer of the Ministry, 3 representatives from Government, 3 from employee associations, 3 from employer organisations and 1 representative from the Forum Directors of Education. Functions of the ERAC are essentially to provide policy, industry and technical advice to the Ministry on employment and labour issues.
Part V – Employment Agreement	The Bill requires that every person who is employed for a period of 2 months or more in a year must be employed under a written employment agreement. This Part requires that minimum conditions of employment are included in the written employment agreement.
Part VI – Fundamental Rights and Principles at work	This Part sets out certain fundamental rights of a person who is employed. This includes freedom from discrimination, equal remuneration for work of equal value, and freedom from forced labour.
Part VII – Hours of work	The Bill establishes rules for what constitutes regular hours of work, total hours of work, and overtime pay. Special provisions relate to shift work and rest breaks during work hours.
Part VIII – Minimum wages	This Part incorporates provisions which were formerly in the Price and Wage Control Act (CAP 113). That Act has now been reviewed by the Ministry, and will be tabled in Cabinet as the Price Control Bill 2020 – with provisions relating to minimum wages removed from the jurisdiction of the Competent Authority and included under the Employment Relations Bill 2020. The Employment Relations Bill 2020 does not specify what the minimum wage is for Tonga. Instead, it allows for a Commission to recommend to Cabinet what the minimum wage should be, following comprehensive consultations with key stakeholders. The Bill requires that the minimum wage, once established, will be reviewed every three years thereafter.

Part IX – Employment of Children	This Part establishes the minimum age of employment as 15 years of age. This has been set taking into account the current compulsory education age in the Education Act (6-14 years), the legal age of marriage with the consent of parents (15 years), and the minimum age for fishing crew under the Shipping Act (15 years). Children aged 15-18 may only be employed in non-hazardous work.
Part X – Payment and protection of wages	This Part ensures that employees are paid at regular intervals, and establishes what constitutes “authorised deductions” from their wages. An employee is entitled to request a written wage statement from the employer.
Part XI – Holidays and leave	This Part establishes the minimum entitlements of an employee to paid leave. The minimum entitlements are: annual leave (12 days per year), sick leave (10 days per year), maternity leave (30 days unpaid leave), bereavement leave (3 days per year), casual days (3 days per year) and holiday leave (all days under the Public Holidays Act). An employee must be employed for a period of at least 6 months before being entitled to these leave periods.
Part XII – Equal Employment Opportunities	Section 69 establishes the grounds in which a person must be free from discrimination within the workplace, and when applying for employment. This Part also prohibits sexual harassment within the workplace.
Part XIII – Occupational Safety and Health (OSH)	This Part requires that an employer must identify significant hazards within a workplace and remedy these hazards to ensure the safety of employees. The Ministry will assist employers to develop OSH policies. Employees are required to comply with an employer’s OSH policy.
Part XIV – Termination of Employment	This Part deals with circumstances where an employer can terminate an employee’s employment. This may be during the probation period, or during the term of employment.
Part XV – Employment Disputes	This Part establishes an alternative dispute resolution process for employees covered by the Bill. The Ministry is empowered to establish a mediation unit, led by a Chief Mediator, to facilitate the resolution of employment disputes under the Bill. The process allows parties to resolve issues before taking a matter to Court. It should be noted that public service employees are not subject to this Part – they will still be governed by the Public Service Act and regulations under that Act for the resolution of disputes and grievances.

Part XVI – Proceedings	This Part provides some rules for proceedings and refers to the jurisdiction of the Court in matters that are referred to Court.
Part XVII – Enforcement	This Part provides for the designation of labour officers under the Bill, and establishes their powers and functions.
Part XVIII – Spot fines	This Part provides for Cabinet in consultation with the Minister to have the power to determine the type and level of spot fines which may be issued under Part XIX of this Bill. All monies received by the Ministry for the payment of spot fines under this Bill shall be deposited into the General Revenue account of the Government.
Part XIX – Offences and Penalties	This Part establishes general and specific penalties for offences under this Bill.
Part XX – Miscellaneous	This Part deals with miscellaneous issues, including the requirement for the Chief Executive Officer of the Ministry to establish registers under the Bill. It also empowers the Minister, with the consent of Cabinet, to establish regulations under this Bill.
Schedules 1 - 6	There are 6 Schedules under the Bill that provide further detail in relation to the scope of the Bill, minimum particulars to be included in an employment agreement, procedures of the ERAC, instrument of designation and ID for a labour officer.

Hon. Samiu Kuita Vaipulu
Minister of Trade and Economic Development