

Republic of Kiribati

(No. of 2015)



I assent
Ando Tung
Beretitenti
24/12/2015

AN ACT entitled

A Code to make provision for the regulation of employment contracts, industrial relations and the settlement of employment disputes and for matters incidental thereto and connected therewith.

Commencement

2015

Made by the Maneaba ni Maungatabu and assented to by the Beretitenti.

PART 1 PRELIMINARY

1 Short Title

This Code may be cited as the *Employment and Industrial Relations Code, 2015*.

2 Constitutional provision

In relation to matters concerning public officers, this Code shall be read subject to Chapter VII and section 13 of the *Constitution*.

3 Commencement

- (1) This Code commences on a date or dates appointed by the Minister by notice in the Gazette.
- (2) The Minister may appoint different dates for the commencement of different provisions of this Code.

4 Interpretation

In this Code, unless the context otherwise requires:

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

“Board” means the Decent Work Advisory Board established under section 41;

“boycott” means the combining of persons in systematically refusing to hold or abstaining from holding relations or dealings of any kind whatsoever with any person, on account of differences with such other person, and so as to punish him or her for the position he or she has assumed or to coerce him or her to abandon that position;

“capacity” for the purposes of dismissal, means 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;

“casual employee” means an employee whose contract of service provides for the employee to be paid at the end of each work period;

“child” means a person who is under the age of 18 years;

“child labour” means work by a child that is harmful to the child’s physical or mental development and includes work that interferes with the child’s education;

“collective agreement” means an agreement that is made between one or more trade unions, and one or more employers or employer organisations, and:

- (a) prescribes (wholly or in part) the terms and conditions of employment of employees of one or more descriptions;

- (b) regulates the procedure to follow in negotiating terms and conditions of employment; or

- (c) combines paragraphs (a) and (b);

“collective bargaining” means meeting and negotiating with a view to concluding a collective agreement;

“Commissioner” means the Commissioner for Labour and Human Resource Development appointed under Division 1 of Part 2 of this Code;

“compassionate leave” means paid leave from work due to a bereavement of a family member or to care for a family member who is seriously ill or injured;

“conduct” for the purposes for dismissal means the behaviour of an employee that would reasonably be expected by an employer in the workplace or in other places attended by the employee for work related purposes.

“contract of service” means an agreement, whether written or oral, expressed or implied, to employ or to serve as an employee, whether piece-work, task-based, full-time, part-time or casual and whether for a fixed or indefinite period, and includes a contract of apprenticeship or traineeship and a contract to personally execute any work or labour;

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

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

“employee” means any person who performs work under a contract of service;

“employer” means any person who has entered into a contract of service to employ any person and includes the Government;

“employer organisation” means an organisation of employers registered under this Code the principal purpose of which is the protection and promotion of employers’ interests in matters relating to their business;

“employment relationship” means the relationship between an employee and an employer under a contract of service;

“employment dispute” means a dispute relating to a person’s compliance with this Code, or with an order, a regulation or a collective agreement made under this Code, or a dispute relating to collective bargaining;

“essential service” means a service specified in Schedule 1;

“family member” means a person’s spouse or partner, child, parent, sibling or dependent;

“family responsibilities” means a person’s regular contribution to the care and well-being of a family member;

“fixed-term employee” means a person who is employed under a contract of service that is for a fixed period;

“full-time employee” means a person who is employed under a contract of service;

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

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

“independent contractor” means a person who performs work under a contract for services;

“injury” includes injury to a person in respect of his business, occupation, employment or other source of income, and includes any actionable wrong;

“intimidation” means to cause in the mind of a person a reasonable apprehension of injury to the person, or to any family member of the person, or of violence or damage to any person or property;

“lock out” means the closing of a place of employment or the suspension of work or the refusal of an employer to continue to employ any number of persons employed by him done not with the intention of finally determining employment but with a view to compelling or influencing those persons, or to aid another employer in compelling or influencing persons employed by him, to do or to refrain from doing anything;

“minimum wage” means the minimum amount payable under this Code to an employee for work performed or for services rendered, within a given period, whether calculated on the basis of time or output;

“minimum wage order” means an order made by the Minister pursuant to section 61 of this Code;

“night work” means work performed between the hours of 10pm and 6am the following day;

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

“organisation” means an organisation of employees or employers established for the promotion and protection of its members’ economic and social interests, whether or not it is registered as a trade union or employer organisation under this Code;

“part-time employee” means a person who is employed under a contract of service for a defined period.

“piece-work employee” means an employee who is paid according to the quantity of goods or units produced or delivered;

“Principles of Decent Work” means principles including employment creation, rights at work, social protection, social dialogue, improved productivity and occupational safety and health, as enunciated and developed by the International Labour Organisation;

“Registrar” means the Registrar of Industrial Relations appointed under Division 3 of Part 2 of this Code;

“strike” means a cessation of work, a refusal to perform particular work, or an interruption or a slowing down of work, by a number of employees acting in concert or under a common understanding, with the intention of compelling or influencing their employer or any employee or body of employees, or to aid other employees in compelling or influencing their employer or any employee or body of employees, to do or to refrain from doing anything, provided that it shall not include any dispute or difference implicating:

(a) members of the police force;

(b) members of any disciplined body or organisation analogous to a police force designated, by notice, by the Minister;

“task-based employee” means an employee engaged to perform, and paid on the completion of, a specified task or project;

“trade union” means an organisation of employees registered under this Code, the principal purpose of which is the protection and promotion of employees’ interests in matters relating to their work.

PART II: COMMISSIONER, INSPECTORS AND REGISTRAR
Division 1: Commissioner for Labour and Human Resource Development

5. Appointment of Commissioner

- (1) Subject to section 99 of the *Constitution* the Beretitenti ,may appoint a Commissioner, who shall be a public servant.
- (2) The Commissioner appointed under subsection (1) shall have sufficient stability of employment, independent of changes in Government and improper external influences, to ensure independence and impartiality in the performance of his or her functions.

6. Functions and powers of Commissioner

- (1) The functions of the Commissioner are to:
 - (a) promote and monitor compliance with this Code, and with any orders, regulations or collective agreements made under this Code;
 - (b) advise and assist employers, employees, trade unions and employer organisations on particular or general matters relating to employment or industrial relations;
 - (c) provide information, advice, awareness or training to employers, employees, trade unions and employer organisations on matters related to compliance with this Code, and with any orders, regulations or collective agreements made under this Code;
 - (d) publish an annual labour inspection report including statistics on inspection visits, recorded breaches of the Code and penalties issued;
 - (e) formulate such enterprise or national policies, codes, guidelines and strategies on matters relating to employment or industrial relations; and
 - (f) refer a matter to the Office of the Attorney General for prosecution in the High Court in respect of contravention of this Code.
- (2) The Commissioner has other such powers as are necessary or expedient to perform his or her functions under this Code.
- (3) The Commissioner may delegate, in writing, the performance of a function or the exercise of a power under this Code, to a public servant who reports to the Commissioner.

7. Commissioner may require information

- (1) The Commissioner may require, in writing, an employer to provide written information necessary for the effective administration of this Code, including returns and statistics on employment and other related matters, whether periodically or otherwise.
- (2) An employer who fails to provide the information within the timeframe stipulated by the Commissioner under subsection (1) commits an offence.

Division 2: Labour Inspectors

8. Appointment of labour inspectors

- (1) Subject to section 99 of the *Constitution*, the Beretitenti may appoint such labour inspectors as are necessary or expedient for the purposes of this Code, who shall be public servants.
- (2) The Commissioner shall provide a certificate of designation to all labour inspectors appointed for the purposes of this Code.
- (3) When exercising any function under this Code, a labour inspector shall, if required by a person affected by the exercise of such function, produce the certificate of identity to that person.
- (4) The Commissioner shall be a labour inspector for the purposes of this Code.

9. Functions and powers of labour inspectors

- (1) The functions of a labour inspector shall be subject to such conditions, restrictions or directions, as may be issued by the Commissioner from time to time.
- (2) For the performance of his or her functions, a labour inspector has the power to enter premises where work is performed, or where the labour inspector reasonably believes work is performed, provided that:
 - (a) the inspector shall not enter a private dwelling house without either -
 - (i) the consent of the occupier; or
 - (ii) an order from the High Court;
 - (b) the inspector shall notify the employer or the employer's representatives of his or her presence, unless the labour inspector considers that such notification is likely to prejudice the performance of his or her functions.
- (3) While on premises in accordance with subsection (2), a labour inspector has the power to:
 - (a) inspect any work, process, object, document or record;
 - (b) interview any person;
 - (c) require a person to tell the inspector who has custody of or access to a document or record;
 - (d) require a person to produce a document or record;
 - (e) make copies of a document or record, or an extract of a document or record.
- (4) A person who prevents, frustrates or misleads a labour inspector in the exercise of his or her powers under this section commits an offence and shall be liable on conviction for a fine of \$1,000 or a term of imprisonment of 1 year.

10. Demand Notices

- (1) In the event that a labour inspector forms the opinion, on reasonable grounds, that an employer is failing, or has failed, to comply with this Code or with any orders, regulations or collective agreements made under this Code, the labour inspector may issue a demand notice in accordance with this section.
- (2) A demand notice for the purposes of subsection (1) shall indicate:
 - (a) the provision or provisions with which the employer is failing or has failed to comply; and
 - (b) the action to be taken by the employer to effect compliance and, if appropriate, remedy the effects of non-compliance; and
 - (c) the date by which the employer must comply with the demand notice, which shall be a date not less than 28 days from the date the demand notice is issued.
- (3) An employer may, in extenuating circumstances, apply to the Commissioner for an extension of the date specified for compliance with the demand notice.
- (4) Subject to a review under section 11, an employer who fails to comply with a demand notice as issued or as extended under this section commits an offence.

11. Review of demand notice

- (1) An employer may, within 28 days of the demand notice being issued, apply to the Registrar to have the demand notice reviewed.
- (2) An employer may seek a review of a demand notice under subsection (1) on the basis that:
 - (a) the employer is not failing, or has not failed, to comply with the provision or provisions specified in the demand notice;
 - (b) the actions specified in the demand notice as being required of the employer to effect compliance or remedy the effects of non-compliance are inappropriate; or
 - (c) the date specified for compliance with the demand notice is unreasonable.
- (3) Upon application under this section, the Registrar may affirm, vary or rescind a demand notice as he or she thinks fit.
- (4) Subject to an appeal under section 12, an employer who fails to comply with an order made by the Registrar under this section commits an offence.

12. Appeals from order of Registrar

- (1) Any person aggrieved by an order of the Registrar under section 11, may appeal the decision or order to the High Court.
- (2) An appeal under subsection (1) must be lodged with the High Court within fourteen days of the date on which the Registrar makes an order under section 11.

- (3) Upon an appeal under subsection (1), the High Court may make any orders it thinks proper, including directions as to costs, and any such orders made by the High Court shall be final and conclusive and shall not be subject to any appeal.
- (4) Subject to section 97 of the *Constitution*, the Chief Justice may make rules of court governing appeals under this section, providing for the method of giving evidence and prescribing the fees to be paid, the procedure to be followed and the manner of notifying the Registrar of the High Court of the appeal.
- (5) The Registrar shall be entitled to be heard on any appeal under this section.

13 Enforcement of demand notice

In the event that a labour inspector forms the opinion on reasonable grounds that an employer has not complied with a demand notice, as extended by the Commissioner or reviewed by the Registrar, the labour inspector may apply to have the demand notice enforced by the High Court.

14 Conflicts of interest and confidentiality

- (1) A labour inspector shall:
 - (a) not have any direct or indirect interest in a workplace that is under his or her supervision for the purposes of applying the provisions of this Code;
 - (b) not make use of or reveal, including after leaving Government service, any manufacturing or commercial secrets, working processes or confidential information which may come to his or her knowledge in the course of his or her appointment;
 - (c) treat as confidential the source of a complaint received by the labour inspector regarding an employer failure, or alleged failure, to comply with this Code or with any orders, regulations or collective agreements made under this Code; and
 - (d) give no intimation to the employer or the employer's representative whether a visit or inspection was made in consequence of the receipt of a complaint from within the organisation or workplace.
- (2) A labour inspector who contravenes subsection (1) commits an offence.

Division 3: Registrar of Industrial Relations

15 Appointment of Registrar

- (1) Subject to section 99 of the *Constitution*, the Beretitenti may appoint the Registrar, who shall be a public servant.
- (2) A person shall not be appointed as the Registrar unless he or she is a person who is competent in matters relating to industrial relations.

16 Functions and powers of Registrar

- (1) The Registrar shall perform such functions as are required of the Registrar by this Code.

- (2) The Registrar shall have such powers as are specified by, or as are necessary or expedient for the purposes of performing his or her functions under, this Code.

17. Termination of appointment

- (1) Subject to section 99 of the *Constitution* the Beretitenti, acting in accordance with the advice of the Public Service Commission, may terminate the appointment of the Registrar for serious misconduct or incompetence affecting the performance of the Registrar's functions, or an on-going inability to perform his or her functions under the Code.
- (2) The Registrar may at any time resign his or her office by notice in writing addressed to the Secretary.

PART III: TRADE UNIONS AND EMPLOYER ORGANISATIONS

Division 1: Freedom of association and the right to organise

18. Freedom of association of employees and employers

- (1) Employees and employers may establish organisations for the promotion and protection of their economic and social interests and join such organisations of their choice.
- (2) An employer shall not seek to prevent, discourage or influence the exercise of an employee's freedom of association under subsection (1).
- (3) Any employer who contravenes subsection (2) commits an offence and shall be liable on conviction to a fine of \$1,000 or a term of imprisonment of 1 year.
- (4) Any person who, whether acting on his own behalf, or on behalf of a third party, and whether or not acting in contemplation or furtherance of an employment dispute, compels, persuades or induces, or attempts to compel, persuade or induce, any employer to contravene subsection (2), commits an offence and shall be liable on conviction to a fine of \$1,000 or a term of imprisonment of 1 year.

19. Rights of trade unions and employer organisations

- (1) Trade unions and employer organisations have the right, to:
 - (a) draw up their constitutions and rules;
 - (b) elect their representatives;
 - (c) organize their administration and activities; and
 - (d) formulate their programmes.

- (2) Trade unions and employer organisations have the right to:
 - (a) form and join federations or confederations of trade unions or employer organisations;
 - (b) affiliate with, and participate in the affairs of, any international affiliation of trade unions or employer organisations; and
 - (c) contribute to, or receive financial assistance from, such organisations.

20. Trade unions and employer organisations not criminal

The purposes of any trade union or employer organisation shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render any member of such trade union or employer organisation liable to criminal prosecution for conspiracy or otherwise.

21. Trade union or employer organisation not unlawful for civil purposes

The purposes of any trade union or employer organisation shall not, by reason merely that they are in restraint of trade, be unlawful so as to render voidable any agreement or trust entered into by such trade union or employer organisation.

22. Interference in the affairs of trade unions and employer organisations prohibited

- (1) No person shall interfere in the establishment or functioning of a trade union or employer organisation.
- (2) A trade union or employer organisation that believes its establishment or functioning has been interfered with in contravention of subsection (1) may report an employment dispute to the Registrar.
- (3) An employer that provides financial or other resources to a trade union, does not interfere for the purposes of this section, without further intent of the employer to influence the establishment or functioning of the trade union.
- (4) A person who contravenes this section commits an offence and shall be liable on conviction to a fine of \$1,000.

Division 2: Registration of organisations

23. Register of trade unions and employer organisations

- (1) The Registrar shall keep a register of trade unions and employer organisations, in which shall be recorded the particulars required for registration and any alternations to the same.
- (2) A copy of an entry in the register certified by the Registrar shall be proof, until the contrary is shown, of the facts stated therein as on the date of such certified copy.

24. Application for registration as trade union or employer organisation

- (1) An organisation of employees or employers established for the promotion and protection of its members' economic and social interests may apply to the Registrar for registration as a trade union or an employer organisation under this Code.

- (2) An application for registration under subsection (1) shall:
- (a) include a copy of the rules of the organisation signed by any 5 or more members of the organisation;
 - (b) state the name of the organisation;
 - (c) include a list of the titles and names of the officers of the organisation;
 - (d) indicate the principal address of the organisation and any branches thereof; and
 - (e) otherwise comply with the provisions of this Code and any regulations in force under this Code with respect to registration.
- (3) The rules of the organisation submitted to the Registrar in accordance with subsection (2)(a) must contain all categories of information set out in Schedule 3.

25. Registrar may require further information

The Registrar may call for further information for the purpose of determining whether an application for registration complies with the requirements of this Code and any regulations in force under this Code with respect to registration, or whether the organisation is entitled to registration under this Code.

26. Registrar may require alteration of name

If the name under which an organisation is proposed to be registered is identical with that by which any other organisation has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive or mislead the public or is in any other respect undesirable, the Registrar may require the persons applying for registration to alter the name of the organisation stated in the application, and may refuse to register the organisation until such alteration has been made to his or her satisfaction.

27. Refusal of registration

- (1) The Registrar may refuse the application for registration if the Registrar is satisfied that:
- (a) the organisation has not complied with the requirements of this Code or any regulations in force under this Code with respect to registration;
 - (b) any of the objects in the rules of the organisation is unlawful; or
 - (c) the organisation is formed or likely to be used for unlawful purposes.
- (2) If the Registrar refuses to register a trade union, he or she shall notify the applicants in writing of the grounds of his refusal within two months of the date of receipt of the application.

28. Certificate of registration

- (1) Subject to section 27, the Registrar shall register the organisation as a trade union or employer organisation and shall issue a certificate of registration to the organisation within 2 months of the date of receipt of the application.

- (2) A certificate of registration issued under subsection (1) shall be, unless proven to have been cancelled, conclusive evidence that the organisation is registered as a trade union or employer organisation under this Code.

29. Effect of registration

Upon registration as a trade union or employer organisation under this Code, the organisation shall become a body corporate by the name under which it is registered, and, subject to the provisions of this Code, with perpetual succession and the power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings, to do all things necessary for the purposes of its rules and to enjoy the rights, immunities and privileges of trade unions or employer organisations as prescribed by this Code.

30. Cancellation of registration

- (1) The Registrar may, by order served on the relevant trade union or employer organisation, cancel the registration of any trade union or employer organisation:
 - (a) at the request of the trade union or employer organisation upon its dissolution in accordance with its rules, to be evidenced in such manner as the Registrar may direct;
 - (b) on proof to the Registrar's satisfaction that a certificate of registration has been obtained by fraud or mistake, or that such trade union or employer organisation has wilfully, and after notice from the Registrar, violated any of the provisions of this Code or has ceased to function in accordance with the organisation's rules.
- (2) Where cancellation is proposed on account of grounds set out in paragraph (b) of subsection (1), the Registrar shall give the trade union or employer organisation not less than 2 months' written notice of the proposed cancellation, specifying the grounds on which cancellation is proposed.
- (3) A trade union or employer organisation served with a notice under subsection (2) may, before the expiry of such notice, show cause in writing as to why the proposed cancellation should not be affected.
- (4) Where cause is shown under subsection (3), the Registrar may hold such enquiry as he or she considers necessary in the circumstances.
- (5) A cancellation order under subsection (1) paragraph (b) may not be made by the Registrar until the latest of the following:
 - (a) the notice period specified in subsection (2) has expired; and
 - (b) if the relevant trade union or employer organisation has shown cause in writing in accordance with subsection (3), an enquiry under subsection (4) has been completed and failed to satisfy the Registrar that cancellation should not be ordered.
- (6) A cancellation order made by the Registrar under subsection (1) shall:
 - (a) specify the grounds for the cancellation of the organisation's registration under this Code; and

- (b) take effect from the date specified in the cancellation order, such date being -
 - (i) in the case of a cancellation order made under paragraph (a) of subsection (1), the date on which the trade union or employer organisation was dissolved in accordance with its rules; and
 - (ii) in the case of a cancellation order made under paragraph (b) of subsection (1), a date no earlier than one month from the date on which the order is served on the relevant trade union or employer organisation.

31. Effect of cancellation of registration

- (1) An organisation that has had its registration cancelled under section 30 shall, from the date the cancellation order takes effect and in addition to any other liability:
 - (a) cease to exist as a body corporate, and the Registrar may, notwithstanding anything contained in the rules of the organisation, appoint one or more persons to be liquidators thereof; and
 - (b) cease to enjoy the rights, immunities and privileges of trade unions and employer organisations as prescribed by this Code, but without prejudice to any liability incurred by the trade union or employer organisation which may be enforced against the organisation or its assets, whether such liability is incurred before, on or after the date of the cancellation of registration.
- (2) The officers and members of an organisation that has had its registration cancelled under section 30 shall, from the date the cancellation order takes effect, cease to enjoy the rights and privileges accorded to the officers and members of trade unions and employer organisations under this Code.
- (3) Any person acting or purporting to act as an officer of a trade union or employer organisation who contravenes subsection (2) thereby commits an offence.

32. Appeals from decisions of Registrar

- (1) Any person aggrieved by a decision of the Registrar under section 27, or by an order of the Registrar under section 30, may appeal the decision or order to the High Court.
- (2) An appeal under subsection (1) must be lodged with the High Court within one month of the date on which the Registrar notifies of a decision under section 27 or makes an order under section 30.
- (3) Upon an appeal under subsection (1), the High Court may make any orders it thinks proper, including directions as to costs, and any such orders made by the High Court shall be final and conclusive and shall not be subject to any appeal.
- (4) Subject to section 97 of the *Constitution*, the Chief Justice may make rules of court governing appeals under this section, providing for the method of giving evidence and prescribing the fees to be paid, the procedure to be followed and the manner of notifying the Registrar of the High Court of the appeal.
- (5) The Registrar shall be entitled to be on any appeal under this section.

33. Alteration and provision of rules of trade union or employer organisation

- (1) Every alteration to the rules of a trade union or employer organisation shall be submitted to the Registrar and shall take effect from the date of submission to the Registrar or such later date as is specified by said rules.
- (2) The rules of a trade union or employer organisation shall not be altered so that they cease to contain all categories of information set out in Schedule 3.
- (3) Any alteration to the rules of a trade union or employer organisation not submitted to the Registrar, or otherwise not made in compliance with this section, shall be void.
- (4) A copy of the rules of a trade union or employer organisation shall be delivered by the trade union or employer organisation to any person upon request and payment of a prescribed sum.

Division 3: Accounting obligations

34. Trade unions and employer organisations to account

- (1) The treasurer of a trade union or employer organisation shall maintain a just and true account in writing of all moneys received and paid by or on behalf of the trade union or employer organisation in the preceding year, and of the remaining sums of money and of all bonds and securities held by the trade union or employer organisation.
- (2) The trade union or employer organisation shall appoint annually one or more qualified accountants to audit the accounts of the trade union or employer organisation, as maintained by the treasurer under subsection (1).
- (3) Upon the annual audit of the accounts of the trade union or employer organisation, the audited accounts shall be presented to a meeting of the members of the trade union or employer organisation, and copies of the audited accounts made available to members upon request.
- (4) Upon resigning or vacating his office or membership, or at any other time required by the committee of management of the trade union or employer organisation, an officer or member of the trade union or employer organisation shall provide to the trade union or employer organisation:
 - (a) any balance shown by the account to be due from the officer or member to the trade union or employer organisation; and
 - (b) all bonds, securities, effects, books, papers and property of the trade union or employer organisation in his or her custody or under his or her control.
- (5) The treasurer of a trade union or an employer organisation who fails to comply with the provisions of this section commits an offence.

35. Audited accounts to be sent to Registrar

- (1) The trade union or employer organisation shall submit to the Registrar the accounts as audited in accordance with section 34(2) within one month from the date on which the audited accounts are presented to the meeting of members in accordance with section 34(3).

- (2) The secretary of a trade union or an employer organisation who fails to comply with subsection (1) commits an offence.

36. Falsification of accounts

- (1) An officer or member of a trade union or employer organisation shall not:
- (a) destroy, alter, mutilate or falsify any book, document, account or valuable security which belongs to the trade union or employer organisation or has been received by him or her on account of the trade union or employer organisation, or any entry in any such book, document or account; or
 - (b) make a false entry in any such book, document or account; or
 - (c) omit any material particular from any book, document or account.
- (2) Any person who contravenes subsection (1) commits an offence and shall be liable on conviction to:
- (a) a fine of \$500 or a term of imprisonment of 6 months; and
 - (b) disqualification from the right to hold an office of a trade union or employer organisation for a period of up to one year.

37. Injunction to restrain misuse of funds

An injunction restraining any expenditure of funds of a trade union or employer organisation on anything, or in any manner, not authorised by the rules of the trade union or employer organisation or by any provisions of this Code, may be granted by the High Court on the application of any officer or member of the trade union, employer organisation, the Registrar or the Attorney General.

PART IV: DECENT WORK ADVISORY BOARD

38. Decent Work Advisory Board

The Decent Work Advisory Board is established.

39. Objectives of the Board

The objectives of the Board are to:

- (a) make recommendations on social, economic and labour issues;
- (b) further the Kiribati National Development Strategy by enhancing equitable growth and distribution;
- (c) as a member of the International Labour Organisation, promote employment and industrial relations practices in accordance with the Principles of Decent Work; and
- (d) ensure active consultation with tripartite constituents on the development, adoption, implementation and regulation of International Labour Standards.

40. Composition of the Board

- (1) The Board consists of the following members appointed in writing by the Minister:
 - (a) the Commissioner of the Ministry of Labour and Human Resource Development, who in the absence of an appointment of the Chairman by the Minister, shall be the Chairperson of the Board;
 - (b) the Secretary for Finance and Economic Development, or him/her representative;
 - (c) the Secretary for the Public Service Commission, or his/her representative;
 - (d) the Director of Labour, or his/her representative;
 - (e) four members nominated by the Kiribati Trade Union Congress, who adequately represent the interests of employees in both the public and private sectors; one of whom shall be appointed by the Minister as Vice-Chairman of the Board;
 - (f) two members nominated by the Kiribati Chamber of Commerce and Industry, with adequate representation of the interests of business owners, including the particular interests of small business owners; and
 - (g) one member nominated by the Kiribati Major Employers Association.
- (2) The Minister must appoint the members nominated under subsection (1)(e)(f) and (g) within 30 days of receiving the nomination.

41. Term of Office

- (1) Subject to this Part, a member of the Board other than the Chairperson, is appointed for a period not exceeding 2 years but can be reappointed one or more times.
- (2) A member may, in writing addressed to the Minister, resign as a member of the Board and the resignation takes effect upon receipt by the Minister of the written resignation.
- (3) A member's office becomes vacant if:
 - (a) the term of the member's appointment under subsection (1) expires and the member is not reappointed;
 - (b) the member resigns under subsection (2); or
 - (c) the member was appointed under section 40(1),(e),(f) or (g) and their appointment was terminated by the Minister under subsection (4) of this section.
- (4) The Minister may terminate the appointment of a member where the Minister has reasonable grounds to conclude that the member has undermined the objectives of the Board in a serious manner, including but not limited to by:
 - (a) being convicted of a serious criminal offence;
 - (b) engaging in gross misconduct relevant to the functions of the Board; or
 - (c) repeated failure to attend Board meetings without reasonable excuse.

- (5) Before making a decision under subsection (4), the Minister must first consult with the nominating organisation about the proposed termination of appointment.
- (6) Any vacancy arising in the course of the member's term in office shall be filled in accordance with the procedures prescribed for such appointment.

42. Allowances

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

43. General functions of the Board

- (1) The functions of the Board are to consider and make timely recommendations or proposals to the Minister on:
 - (a) any legislation or legislative amendment concerning matters related to or affecting labour, employment, industrial relations, working conditions or wages;
 - (b) any policy measures or programmes related to or affecting labour, employment, industrial relations, working conditions or wages;
 - (c) means to promote and facilitate collective bargaining, occupational safety and health, equal pay for work of equal value or equality of entitlement between public and private sector employees;
 - (d) the establishment, functioning and appointment processes of national bodies responsible for vocational training, occupational safety and health, productivity or provident funds or other social protection;
 - (e) the ratification, implementation and denunciation of any Conventions and Recommendations of the International Labour Organisation;
 - (f) the reports to the International Labour Office regarding ratified Conventions;
 - (g) proposals or matters to be discussed at the International Labour Conference of the International Labour Organisation, resolutions or conclusions adopted by the International Labour Conference, or issues addressed by other tripartite regional or international conferences related to or affecting labour, employment, industrial relations, working conditions or wages;
 - (h) the implementation and evaluation of technical cooperation activities of the International Labour Office;
 - (i) the promotion of a better understanding in the community of the Principles of Decent Work and the activities of the International Labour Organisation; or
 - (j) other matters connected with the employment of employees or industrial relations referred to it by the Commissioner.
- (2) In addition to the functions prescribed by subsection (1), the Board may also:
 - (a) carry out studies on issues related to labour, economic and social affairs;

- (b) support employees in both the public and private sectors to contribute to the National Development Strategy, Ministerial Operational Plans and Public Enterprise Business Plans;
- (c) carry out functions in relation to minimum wage recommendations as prescribed by Part V;
- (d) nominate a pool of conciliators that are available to be appointed by the Registrar upon report of an employment dispute;
- (e) nominate a pool of arbitrators that are available to be appointed by the Registrar upon report of an employment dispute; and
- (f) carry out other functions prescribed by this Code.

44. Meetings

The Board shall be convened in ordinary meeting at least four times per year.

45. Quorum

- (1) The quorum shall consist of 5 Members, including at least one Member representing each of the government, employees and employers.
- (2) The quorum shall include the Chairperson and an equal number of Members representing employees and employers, as appointed under subsection section 40(1) (c),(e),(f) and (g).
- (3) The quorum may include the delegate of a Member appointed under section 40(1),(a),(b),(c) or (d).
- (4) If the quorum conditions set out in this Regulation are not met, the meeting shall be postponed to a date within 14 days.

46. Decision making

- (1) All Members will be granted an equal opportunity to make submissions and have their views considered.
- (2) Decisions of the Board will be made by majority vote of the Board members present and voting, provided that where there is an equality of votes, the Chairperson's vote shall be decisive.

47. Technical committees and individual advisors

- (1) The Board may establish, under specific Terms of Reference, Technical Committees as standing committees or ad hoc committees to advise the Board.
- (2) The Chairperson may, after consultation with the Board, invite individual advisors to a Board meeting to give their expert views and opinions on specific matters.
- (3) Advisors shall not be entitled to vote at any Board meeting.

48. Reports of the Board

The Board shall, no later than three months after the end of the financial year, furnish to the Minister and make publicly available, an annual report on the activities of the Board.

49. Rules of the Board

The Board may determine its own rules and procedures.

PART V: MINIMUM WAGE SETTING

50 Board to make minimum wage recommendations

- (1) The Board shall make recommendations to the Minister concerning the fixing of the minimum wage for employees.
- (2) A minimum wage recommendation under subsection (1) may pertain to employees generally, or be limited to:
 - (a) employees in a specified occupation or class or grade of occupation;
 - (b) employees in a specified area, island or region of Kiribati;
 - (c) employees in a specified sector; or
 - (d) employees in a specified industry.
- (3) A minimum wage recommendation under subsection (1) may recommend different minimum rates for different types of employment or different types of work, as the Board thinks fit, including, but not limited to, employees who are:
 - (a) employed as casual employees, fixed-term employees, piece-work employees or task-based employees; or
 - (b) required to work hours outside the employee's ordinary hours of work or to work at night.
- (4) The Board shall advise the Minister on other matters related to the fixing of minimum wages for employees.
- (5) The Board may exercise its powers under this section at its own initiative or upon the request of the Minister, provided that the Board shall make a recommendation under subsection (1) at least once every two years.

51. Criteria for minimum wage recommendations

In exercising its responsibilities under section 50, the Board shall consider the following:

- (a) the needs of employees and their families;
- (b) the general level of wages in Kiribati;
- (c) the cost of living and its effect on the real value of the minimum wage;

- (d) whether other social protection measures have compensated for cost of living increases in paragraph (c);
- (e) the relative living standards of other social groups;
- (f) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment;
- (g) the right to equal remuneration for work of equal value;
- (h) any other information, including information submitted to it by employee and employer representatives and other interested parties, relating to the reasonableness of any wage, including information of a financial or economic nature either at the national level or in relation to an industry, sector, occupation or geographic area; and
- (i) such other matters as it thinks fit.

52. Subcommittees and advisors

The Chairperson may, after consultation with the Board:

- (a) appoint from amongst the members of the Board, one or more sub-committees for the purpose of reviewing the minimum wage, provided that any such sub-committee shall be composed of an equal number of members representing employees and employers, as appointed under section 40 (1),(a),(e),(f) and (g); or
- (b) invite advisors to provide advice to the Board on matters relating to fixing the minimum wage, but such advisors shall not be entitled to vote at any Board meeting.

53. Consultation and determination by the Board

- (1) Before submitting a minimum wage recommendation to the Minister, the Board shall:
 - (a) invite submissions from, and consult with, employee and employer representatives, and in particular with those representing employees and employers in sectors, industries, occupations or geographical areas paying the lowest wages;
 - (b) request analysis of current wage rates from relevant government departments; and
 - (c) invite and receive relevant submissions from other such interested parties, people or organisations as the Board considers appropriate.
- (2) The content of all minimum wage recommendations and advice given to the Minister under section 50 shall be determined by a majority vote of the Board members present and voting, provided that where there is an equality of votes, the Chairperson's vote shall be decisive.

54. Reasons for recommendation or advice

When submitting a minimum wage recommendation or advice to the Minister under this Part, the Board shall provide the Minister with a written statement of the reasons for its recommendation or advice.

55. Consultation by the Minister

Upon receiving a minimum wage recommendation that affects a specific occupation, industry or sector as provided for by section 54(2), the Minister shall consult with any other ministers with responsibility for the relevant industry or sector before making a minimum wage order under section 57.

56. Referral back to the Board

- (1) If the Minister has concerns or reservations in relation to a minimum wage recommendation submitted to the Minister by the Board under section 50, the Minister may refer the minimum wage recommendation for reconsideration by the Board, with a statement setting out his or her concerns or reservations.
- (2) Where a minimum wage recommendation is referred back to the Board under subsection (1), the Board shall reconsider the recommendation, taking into account the concerns or reservations of the Minister and the procedures for making minimum wage recommendations set out in this part of the Code, and resubmit the minimum wage recommendation with or without amendment.

57. Minimum wage orders

The Minister may make an order fixing the minimum wage rate for employees in accordance with a minimum wage recommendation made by the Board under section 50 or section 56(2);

58. Effect of minimum wage order

- (1) If a collective agreement or individual contract of service provides for the payment of a wage rate that is less than the minimum wage set by an applicable order of the Minister under section 57, the minimum wage set by that order shall apply.
- (2) A person who fails to comply with a provision of a minimum wage order made by the Minister under section 61 commits an offence.
- (3) Where proceedings are brought under subsection (2) in respect of an offence consisting of payment of remuneration less than the statutory minimum remuneration:
 - (a) if the employer or any other person charged is found guilty of the offence, evidence may be given of any like contravention on the part of the employer or such other person in respect of any period during the 3 years immediately preceding the date of the offence; and
 - (b) on proof of such contravention, the High Court may order the employer to pay such sum as is found by the Court to represent the difference between the amount which ought to have been paid during that period to the employee by way of remuneration, if the provisions of this Part had been complied with, and the amount actually so paid.

- (4) No evidence shall be given under subsection (3)(a) unless notice of intention to give such evidence has been served upon the employer or the other person with the summons, warrant, information or complaint.
- (5) The powers given by this section for the recovery of sums due from an employer to a employee shall be in addition to and shall not derogate from any right to recover such sums by way of arbitration award under Part XV of this Code.

59. Notice of minimum wage order

- (1) An employer shall display a written notice in a conspicuous place in the workplace for the purpose of informing the employees of any minimum wage orders applicable to employees in the workplace.
- (2) An employer that fails to comply with subsection (1) commits an offence.

PART VI: COLLECTIVE BARGAINING

Division 1: Initiating collective bargaining

60. Parties with power to initiate collective bargaining

- (1) Bargaining for a new collective agreement may be initiated by:
 - (a) one or more trade unions, for collective bargaining with one or more employers or an employer organisation; or
 - (b) one or more employers or an employer organisation, for collective bargaining with one or more trade unions.
- (2) A trade union, an employer organisation may only initiate bargaining for a new collective agreement under subsection (1) if that party has the right, under the rules of the organisation registered under Part III of this Code, to represent one or more of the employers or employees who will be covered by the collective agreement.

61. Notice to initiate collective bargaining

- (1) A party who initiates collective bargaining must serve a notice that complies with subsection (2) on each party with whom the initiating party proposes to bargain with.
- (2) A notice complies with this subsection if it:
 - (a) is in writing;
 - (b) is signed by a duly authorised representative of the party initiating collective bargaining;
 - (c) identifies each of the intended parties to the collective agreement;
 - (d) identifies the intended coverage and expiry of the collective agreement;
 - (e) includes a statement of the initiating party's claims with respect to the collective agreement.

62. Time to initiate collective bargaining

- (1) A party may initiate bargaining for a new collective agreement at any time, unless there is an existing collective agreement in effect that:
 - (a) has the same or substantially the same coverage as the intended coverage of the new collective agreement identified in section 66(2)(a); and
 - (b) has not yet passed its expiry date.
- (2) If there is an existing collective agreement in effect that satisfies paragraphs (a) and (b) of subsection (1), a party shall not initiate bargaining for a new collective agreement until 60 days before the date on which the existing collective agreement expires.

Division 2: Duty of good faith in collective bargaining

63. Duty of good faith in collective bargaining

- (1) All parties engaged in collective bargaining shall bargain in good faith.
- (2) The duty of good faith requires a party to collective bargaining to do, at least, the following things:
 - (a) the union and the employer or employer organisation shall use their best endeavours to enter into an arrangement, as soon as possible after the initiation of bargaining, that sets out a process for conducting the bargaining in an effective and efficient manner, covering matters including those set out in Schedule 2;
 - (b) the union and the employer or employer organisation must meet each other at reasonable times and at timely intervals for the purpose of the collective bargaining;
 - (c) the employer must allow union officials right of entry to the workplace in order to meet with members in relation to the collective bargaining;
 - (d) the employer must allow union member employees reasonable time off work during working hours and without loss of pay, for the purpose of meeting with union officials about the collective bargaining;
 - (e) the union and the employer or employer organisation must genuinely consider and respond to proposals made by each other in a timely manner, stating the reasons for the response given;
 - (f) the union and the employer or employer organisation shall, for the duration of the collective bargaining process -
 - (i) recognize the role and authority of the representative or advocate as nominated by the other party (or parties) to the collective bargaining;
 - (ii) bargain only with the nominated representative or advocate for the other party (or parties); and

- (iii) refrain from capricious or unfair conduct that is likely to undermine freedom of association or collective bargaining; and
 - (g) the union and the employer or employer organisation must provide to each other, on request and in accordance with section 64, information that is reasonably necessary to support or substantiate claims or responses to claims made for the purposes of the bargaining.
- (3) The duty of good faith does not require a party to collective bargaining to:
- (a) make concessions during bargaining for a new collective agreement; or
 - (b) reach agreement on any matter to be included in the new collective agreement.

64. Providing information for collective bargaining

- (1) A request made under section 63 (2)(g) by a trade union or an employer or an employer organisation to the other for information must be in writing and shall specify:
 - (a) the nature of the information requested in sufficient detail to enable the information to be identified;
 - (b) the claim or the response to a claim in respect of which information to support or substantiate the claim or the response is requested; and
 - (c) a reasonable time within which the information is to be provided.
- (2) A union or an employer or employer organisation that has received a request under subsection (1) must provide the information requested:
 - (a) directly to the other party (or all the parties) to the collective bargaining; or
 - (b) to the Registrar, if the party providing the information reasonably considers that it should be treated as confidential information.
- (3) Where the information is provided to the Registrar under subsection (2)(b), the Registrar shall, within a reasonable time, determine whether the information should be treated as confidential.
- (4) If the Registrar determines the information is confidential under subsection (3), the information must only be used for the bargaining concerned and not disclosed to a third party unless the parties decide otherwise.

65. Guidelines on bargaining in good faith

Upon recommendation by the Board, the Minister may issue guidelines on bargaining in good faith, the purpose of which shall be to provide the parties to collective bargaining with further information about the requirements of the duty of good faith under this Division.

66. Breach of duty of good faith

Where a party to collective bargaining forms the opinion that another party or parties is or are in breach of the duty of good faith under this Division, that party may apply to the Registrar for directions as to the requirements of the duty of good faith in the circumstances.

Division 3: Collective Agreements

67. Form and content of collective agreement

- (1) A collective agreement has no effect unless it is:
 - (a) in writing;
 - (b) signed by each party to the agreement; and
 - (c) registered by the Registrar.
- (2) A collective agreement shall contain:
 - (a) a coverage clause;
 - (b) if the collective agreement regulates the remuneration rates of employees, a clause providing for equal remuneration for work of equal value for women and men under the collective agreement;
 - (c) a clause setting out the dispute resolution procedure the parties will follow at a workplace level; and
 - (d) a nominal expiry date.
- (3) A collective agreement must not contain:
 - (a) a clause providing for a means by which an employer or employee may elect (unilaterally or otherwise) not to be covered by the collective agreement, in part or in its entirety;
 - (b) a clause excluding or modifying the application of a provision of this Code or another applicable collective agreement to the detriment an employee.
- (4) A collective agreement may contain such other provisions prescribing the terms and conditions of employment, or regulating the procedure to follow in negotiating the terms and conditions of employment, as the parties may agree.

68. Collective agreement to be registered

- (1) The parties to a collective agreement shall, within 28 days of being signed by all parties, lodge a signed copy of the collective agreement with the Registrar for registration.
- (2) The copy of the agreement delivered to the Registrar shall include any document referred to, or incorporated by reference, in the collective agreement, unless the document is publicly available.

- (3) The Registrar shall register a collective agreement lodged for registration under this section, unless the Registrar forms the opinion that the collective agreement:
 - (a) has the same or substantially the same coverage as a collective agreement that is in effect under this Code;
 - (b) does not comply with the requirements of section 67; or
 - (c) is otherwise contrary to this Code or any other written law.
- (4) Upon receipt of a collective agreement for registration, the Registrar shall:
 - (a) issue a certified copy of the registered collective agreement to each party to the collective agreement; or
 - (b) notify the parties to the collective agreement of the grounds on which registration has been refused.
- (5) A collective agreement in force at the commencement of this Code shall be deemed registered under this Code.
- (6) A party that contravenes subsection (1) commits an offence.

69. When a collective agreement comes into effect

- (1) A collective agreement comes into effect on:
 - (a) the date on which the collective agreement is registered under section 68; or
 - (b) such later date as specified in the agreement.
- (2) A collective agreement may provide that one or more of its provisions come into effect on different dates.

70. Application of collective agreement

- (1) A collective agreement that is in effect binds and is enforceable by:
 - (a) the parties to the agreement; and
 - (b) a member of an employer organisation that is a party to the agreement; and
 - (c) an employee who is -
 - (i) employed by an employer that is either a party to the agreement or a member of an employer organisation that is a party to the agreement; and
 - (ii) a member of a trade union that is a party to the agreement.
- (2) If the registration of a trade union that is a party to a collective agreement is cancelled, the collective agreement continues to bind the employer or employers who are parties to the agreement, and the employees who are members of the trade union at the time its registration is cancelled.

- (3) If the trade union's registration is cancelled as a result of the trade union's amalgamation with one or more other trade unions, the collective agreement binds the amalgamated trade union.

71. Variation of collective agreement

A collective agreement that is in effect under this Part may only be varied by order of the Registrar, upon application of a party to the collective agreement:

- (a) with the consent of all parties to the collective agreement; or
- (b) to remove an ambiguity or uncertainty.

72. Termination of collective agreement

(1) A collective agreement that is in effect under this Part may only be terminated by the Registrar upon application of a party to the collective agreement:

- (a) before the nominal expiry date - with the consent of all parties to the collective agreement; or
- (b) on or after the nominal expiry date - following written notice to all parties to the collective agreement of the application for termination.

(2) The Registrar may make an order terminating the collective agreement under subsection (1) if the Registrar is satisfied that it is in the public interest to do so.

73. Compliance with collective agreement

A person who is bound by a collective agreement that is in effect under this Part, and who fails to comply with one or more provisions of the collective agreement, commits an offence.

PART VII: ESTABLISHING EMPLOYMENT RELATIONSHIPS

74. Determination of employment relationship

- (1) Any dispute over whether an employment relationship exists between a person who is engaged to perform work and a person for whom work is performed shall be determined with regard to all relevant matters, including whether the person engaged to perform work:
 - (a) carries out the work under the direction and control of the person for whom the work is performed;
 - (b) is integrated into the organisation of the person for whom the work is performed;
 - (c) carries out the work personally;
 - (d) performs work at a place or places specified by the person for whom the work is performed;
 - (e) has tools, materials, machinery or work-related travel expenses paid for by the person for whom the work is performed; and
 - (f) is exposed to financial risk arising from the work.

- (2) Upon recommendation of the Board, the Minister may issue guidelines on the employment relationship, the purpose of which shall be to provide contracting parties with further information about when a contract for the performance of work is a contract of service for the purposes of this Code.

75. Execution of written contract

- (1) A contract of service shall be in writing and signed by both parties to the contract.
- (2) A written contract shall contain, as a minimum, the particulars set out in Schedule 4.
- (3) Before the contract is signed by the employee, the employer shall advise him or her:
 - (a) that by signing the contract, he or she shall become bound by the terms of the contract;
 - (b) not to sign the contract unless he or she understands and agrees to the terms of the contract; and
 - (c) that he or she may obtain independent legal advice on the contract at his or her own cost, obtain advice on the contract from his or her union representative or seek information on the legislative entitlements of employees from the Ministry.
- (4) Upon the recommendation of the Board, the Minister may prescribe additional information or documents that must be provided by an employer to a person prior to or upon signing a contract of service.
- (5) Upon executing a written contract of service, the employer must give the employee a signed copy of that contract.

76. Presumption where no written contract

Where a written contract of service has not been executed in accordance with section 75, or a copy of the contract cannot be produced, the contract of service shall be presumed to be for an indefinite period.

77. Recruitment agencies

- (1) No person shall act as a recruitment agent or private employment agent, by enlisting or recruiting any person to perform work for a third party in the Republic of Kiribati or overseas, unless the person is licensed.
- (2) The Commissioner shall be empowered license recruitment agents in accordance with such conditions as specified in the regulations.
- (3) A person that contravenes this section commits an offence and shall be liable on conviction for a fine of \$500 or a term of imprisonment of 6 months, or both.

PARTVIII: PAYMENT OF WAGES

78. Payment of wages

- (1) Wages must be paid to employees at intervals that are reasonably appropriate to the nature of the contract of service and in any event must not be less frequent than:
 - (a) twice a month for employees whose wages are calculated by the hour, day or week; or
 - (b) once a month for employees whose remuneration is fixed on a monthly or annual basis, and for piece-work and task-based employees.
- (2) Subject to subsection (3), wages shall be paid to the employee in cash, on working days and at or near the employee's place of work.
- (3) An employer may, upon receiving the written consent or a written request from the employee, pay any amounts owed by the employer to that employee by postal order, money order, specified cheque, or lodgement at a financial institution to the credit of an account standing in the name of that employee or in the name of that employee and some other person or persons jointly.
- (4) An employer who contravenes this section commits an offence.

79. Authorised deductions from wages

- (1) Subject to subsection (2), an employer shall pay all wages owed to an employee under this Code, an applicable collective agreement and the employee's contract of service without deduction.
- (2) Subject to subsection (3), an employer may deduct from the wages owed to an employee:
 - (a) an amount due to be paid by the employee in respect of any tax, provident fund contribution or other deduction imposed by law;
 - (b) an amount due by the employee to a church fund, school fund, pension fund, sports fund, superannuation scheme, life insurance or medical scheme, credit union, trade union, co-operative society or other funds or schemes of which the employee is a member, provided that the deduction is -
 - (i) made on the written consent or request of the employee; and
 - (ii) paid to the person empowered to collect the amount or entrusted with the management of the fund, scheme, trade union or cooperative society;
 - (c) to the extent of an overpayment made by mistake by an employer to the employee in the immediately preceding 3 months..
- (3) The total of any deductions made under subsections 2(b) or (c) shall not exceed one third of the employee's wages for that pay period.
- (4) An employer shall not make a deduction by way of discount, interest or similar charge on account of an advance payment of the employee's wages.
- (5) An employer who contravenes this section commits an offence.

80. Statement of wages

- (1) Upon payment of the employee's wages, an employer shall provide to the employee a written or electronic statement containing the following particulars:
 - (a) the employee's name;
 - (b) the classification or designation of the employee according to which the employee is paid;
 - (c) the rate of wages payable to the employee for ordinary hours worked;
 - (d) the rate of wages payable to the employee for overtime hours worked;
 - (e) the wage period to which the statement relates;
 - (f) the number of ordinary hours worked by the employee during the relevant wage period;
 - (g) the number of overtime hours worked by the employee during the relevant wage period;
 - (h) the gross earnings of the employee for the relevant wage period;
 - (i) allowances, loadings or other sundry payments due to the employee for the relevant wage period;
 - (j) the amount and reasons for any deductions made from the gross earnings of the employee;
 - (k) the net amount due to the employee for the relevant wage period;
 - (l) the amount of leave accrued and taken by the employee during the relevant wage period; and
 - (m) any other prescribed information.
- (2) In addition to providing a statement of wages in accordance with subsection (1), an employer shall notify an employee, as soon as reasonably practicable, of any changes relating to the employee's wages or payment thereof.
- (3) An employer that contravenes subsections (1) or (2) commits an offence.

81. Employment records

- (1) An employer shall create and maintain employment records documenting the following particulars for each employee employed by the employer:
 - (a) the particulars prescribed by Schedule 4 of this Code;
 - (b) the particulars prescribed by section 80(1);
 - (c) an annual summary of the amounts earned by and paid to the employee; and

- (d) other prescribed particulars.
- (2) An employer shall retain records made under subsection (1) for a period of not less than 6 years.
- (3) An employer that contravenes this section commits an offence.

82. Payment of wages in case of insolvency or bankruptcy

In the event that an employer is declared bankrupt or insolvent, the amounts owed by the employer to employees on account of services rendered, shall be paid in priority to all other debts owed and payable by the employer.

PART IX: HOURS OF WORK

83. Maximum hours of work

- (1) An employer shall not request or require an employee to work more than 8 hours in a day, unless the additional hours are reasonable.
- (2) An employer shall not request or require an employee to work more than 40 hours in a week, unless the additional hours are reasonable.
- (3) The employee may refuse to work additional hours if the additional hours are not reasonable.
- (4) In determining whether additional hours are reasonable or unreasonable for the purposes of this section, the following must be taken into account:
 - (a) any risk to the employee's health and safety from working the additional hours;
 - (b) the employee's personal circumstances, including family responsibilities;
 - (c) the needs of the workplace in which the employee is employed;
 - (d) whether the employee is entitled to receive overtime payments;
 - (e) the nature of the employee's role, and the employee's level of responsibility;
 - (f) any other relevant matter.
- (5) For the purposes of subsections (1) and (2), the hours an employee works in a week are taken to include any hours of authorised leave.

84. Daily and weekly rest periods

Every full-time employee shall be entitled to:

- (a) a daily rest period of at least 12 consecutive hours; and
- (b) a weekly rest period of at least 48 consecutive hours.

85. Meal and tea breaks

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

86. Nursing breaks

- (1) An employer shall provide women employees nursing breaks of half an hour for every four hours worked, from the time the employee returns to work after childbirth up until the child is aged 12 months.
- (2) Nursing breaks provided under subsection (1) shall be counted as hours worked for the purposes of calculating wages.

87. Consultation and notice of changes to hours of work

- (1) An employer who proposes to make changes to an employee's ordinary hours of work shall consult with the employee and, if requested, the employee's representative, regarding the changes proposed.
- (2) Where the proposed changes affect multiple employees, and one or more of the affected employees are members of a trade union, the employer shall consult with the relevant trade union regarding the changes proposed.
- (3) An employer shall provide the employee with reasonable notice of any changes to the employee's ordinary hours of work.
- (4) The period that shall constitute reasonable notice for the purpose of subsection (2) shall be determined with reference to the extent of the changes to the employee's hours of work and the employee's personal circumstances, including family responsibilities.

88. Additional measures relating to night work

- (1) Any employee who is assigned to night work shall have the right to undergo a health assessment without charge and to receive advice on how to reduce or avoid health problems associated with their work:
 - (a) upon assignment to night work;
 - (b) at regular intervals during the assignment;
 - (c) if they experience health problems during such an assignment which are not caused by factors other than the performance of night work.
- (2) An employee who is certified as unfit to perform night work shall be transferred, wherever practicable, to a similar job for which they are fit.
- (3) An employer shall provide an alternative to night work to a pregnant employee for a period of no less than 16 weeks, of which at least 8 weeks shall be before the expected date of childbirth.

89. Contravention of Part

An employer who fails to comply with a provision of this Part commits an offence.

PART X: LEAVE

90. Application of this Part

- (1) This Part applies:
 - (a) to all employees, other than casual employees; and
 - (b) to part-time employees on a pro-rata basis; and
 - (c) to piece-work and task-based employees, subject to any additional provisions for the calculation of entitlements as prescribed by Regulations.

91. Paid annual leave

- (1) For each completed year of service, an employee is entitled to a maximum 30 days of annual leave 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) After the first 6 months of employment with an employer, an employee is entitled to take annual leave on a pro rata basis.
- (3) Any public holiday falling within an employee's annual holiday shall not be counted as part of the employee's annual holiday entitlement provided for by subsection (1).

92. Public Holidays

- (1) An employee is entitled to be absent from his or her employment on a day designated by law to be a public holiday.
- (2) An employee must be paid in respect of each public holiday for the number of hours which the employee would normally have worked on that day had it not been a public holiday.
- (3) If an employee is required to work on a public holiday the employee must be paid for all work undertaken on that day, in addition to their entitlement to be paid their normal wages in accordance with subsection (2).

93. Sick leave

- (1) After the first 6 months of employment with an employer, if an employee is incapable of work due to sickness or injury, that employee is entitled to paid sick leave of up to 20 working days per year of service.
- (2) For an employee to be entitled to sick leave under subsection (1), the employee must:
 - (a) notify the employer as soon as reasonably practicable of the employee's absence and the reason for it; and

- (b) produce, if requested by the employer, a written certificate signed by a medical practitioner, certifying the employee's incapacity for work.

94. Compassionate leave

- (1) An employee who has completed at least 6 months' continuous service with the same employer is entitled to 3 days' paid compassionate leave per year.
- (2) For an employee to be entitled to sick leave under subsection (1), the employee must:
 - (a) notify the employer as soon as reasonably practicable of the employee's absence and the reason for it; and
 - (b) produce, if requested by the employer, documentary evidence of the death or serious illness or injury of the employee's family member.

95. Maternity leave

- (1) A pregnant employee is entitled to maternity leave for a period of 12 consecutive weeks, at least 6 weeks of which shall be taken immediately after childbirth.
- (2) A pregnant employee shall furnish to her employer a certificate from a medical practitioner confirming her pregnancy and specifying the expected date of delivery of a child at least four weeks before taking maternity leave in accordance with subsection (1).
- (3) The employer shall pay the employee an amount for the period of maternity leave of not less than 25% of the remuneration the employee would have earned had she been at work.
- (4) A woman who returns to her employment after maternity leave shall be appointed to the same or equivalent position she held prior to taking maternity leave, without any loss of salary, wages, benefits or seniority.

96. Transitional arrangements

- (1) If an employer experiences genuine financial hardship that would be exacerbated by full compliance with this Part, the employer may apply to the Commissioner for a temporary exemption from one or more obligations under this Part.
- (2) An application under subsection (1) shall be supported by:
 - (a) evidence of the financial hardship experienced by the employer; and
 - (b) the way in which the employer proposes to transition to full compliance with this Part by the time that any exemption granted by the Commissioner expires.
- (3) Upon receipt of an application under subsection (1), the Commissioner shall determine:
 - (a) whether the employer should be exempted in whole or part from one or more obligations under this Part;
 - (b) the period for which such exemption should be granted, provided that the period may not exceed 24 months from the commencement of this Code; and

- (c) any measures to be taken by the employer to transition to full compliance with this Part by the time that any exemption granted by the Commissioner expires.
- (4) An employee who is affected by a determination of the Commissioner under subsection (3) shall have the right to a copy of the determination made by the Commissioner under subsection (3).

97. Contravention of Part

Subject to any transitional arrangements made in accordance with section 96, an employer who fails to comply with a provision of this Part commits an offence.

PART XI: TERMINATION OF EMPLOYMENT

98. Valid reasons for termination by employer

- (1) A contract of service shall only be terminated at the initiative of the employer for one or more valid reasons relating to:
 - (a) the employee's capacity or conduct in employment, as prescribed by section 99; or
 - (b) the employer's reduced operational requirements, as prescribed by section 100.
- (2) A reason for termination shall not be a valid for the purposes of subsection (1) if it relates to or is affected by an unlawful reason for termination as prescribed by section 100.
- (3) The employer must provide the employee with a written copy of the reason or reasons under subsection (1) at the time the employee's employment is terminated.
- (4) The requirement to give a valid reason for termination under this section does not apply in the event that the employee is a fixed-term or task-based employee and his or her employment is terminated upon the expiry of the fixed period or completion of the specified task in accordance with the provisions of the contract and any applicable collective agreement.
- (5) An employer who contravenes this section commits an offence.

99. Reasons related to capacity or conduct

- (1) A reason for termination shall only be a valid reason under section 98(1)(a) if the employee's capacity or conduct in employment is such as to provide the employer reasonable grounds on which to conclude that the employee:
 - (a) is unable to perform the inherent requirements of the job at the standard of performance reasonably expected of the employee by the employer; or
 - (b) does not comply with the standard of conduct reasonably expected of the employee by the employer.

- (2) Before concluding that a valid reason exists for termination under subsection (1), the employer shall:
 - (a) clearly notify the employee of the aspects of the employee's capacity or conduct of concern to the employer;
 - (b) give the employee a reasonable opportunity to respond to any issues raised about their capacity or conduct;
 - (c) warn the employee about the possibility of termination of employment in the event that the capacity or conduct identified under paragraph (a) do not improve;
 - (d) provide the employee with a genuine opportunity to improve the relevant capacity or conduct;
 - (e) provide the employee with reasonable assistance to improve the relevant capacity; and
 - (f) afford the employee a reasonable opportunity to have a representative of his or her choosing attend and represent the employee at any meeting held to discuss the employee's capacity or conduct.
- (3) In any proceedings under this Code where it is alleged that an employee's contract of service was terminated in contravention of section (98)(1), the employer shall bear the onus of proving that:
 - (a) there were reasonable grounds for concluding that a valid reason existed for termination in accordance with subsection (1);
 - (b) the requirements of subsection (2) were satisfied in light of all relevant circumstances.

100. Reasons related to reduced operational requirements

- (1) A reason for termination shall not be a valid reason under section 98(1)(b) if it would have been reasonable in all of the circumstances for the employee to be redeployed in a similar or equivalent position within:
 - (a) the employer's enterprise; or
 - (b) the enterprise of an associated entity of the employer.
- (2) For the purposes of determining whether an alternative position is similar or equivalent to the employee's existing position under subsection (1), consideration shall be given to the duties, remuneration, responsibility level and location of the two positions.
- (3) Before an employee's contract of service is terminated by reason of redundancy, an employer shall comply with the requirements:
 - (a) relating to the provision of information and consultation set out in section 104;
 - (b) with respect to redundancy under any applicable collective agreement or contract of service.

- (4) In any proceedings under this Code where it is alleged that an employee's contract of service was terminated in contravention of section 98(1)(b), the employer shall bear the onus of proving that it was not reasonable in all of the circumstances for the employee to be redeployed in a similar or equivalent position in accordance with subsection (1).

101. Unlawful reasons for termination

- (1) A reason for the termination of an employee's employment shall be unlawful and an offence if it relates to or is affected by any of the following considerations:
- (a) an attribute listed in section 107;
 - (b) temporary absence from work because of illness or injury;
 - (c) trade union membership or participation in trade union activities outside working hours or, with the employer's consent, during working hours;
 - (d) non-membership of a trade union;
 - (e) the filing of a complaint, or the participation in proceedings, against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities; and
 - (f) absence from work during maternity leave, or for a period of 12 weeks following maternity leave due to an illness certified by a medical practitioner to have arisen out of pregnancy or confinement.
- (2) In any employment dispute under Part 15 of this Code where an employee alleges that his or her contract of service was terminated for an unlawful reason, the employer shall bear the onus of proving that the decision to terminate the employee's employment was not made for reasons including one or more unlawful reasons.

102. Notice of termination of employment

- (1) A party to a contract of service that intends to terminate the contract shall provide the other party with written notice of termination in accordance with this section.
- (2) The period of notice of termination under subsection (1) shall be no less than:
- (a) if the employee has been employed by the employer for less than one year - one week;
 - (b) if the employee has been employed by the employer for one year or more, but for less than three years - two weeks;
 - (c) if the employee has been employed by the employer for three years or more, but for less than five years - three weeks;
 - (d) if the employee has been employed by the employer for five years or more - four weeks; or
 - (e) such longer period as is prescribed by the relevant contract of service or an applicable collective agreement.

- (3) In the event that the employment is terminated at the employer's initiative, the employer may provide the employee with payment in lieu of notice.
- (4) An employee given notice of termination by his or her employer in accordance with this section shall be provided with a reasonable amount of time off work at times convenient to both parties and without loss of pay, so that the employee may look for other employment.
- (5) The requirement to give notice of termination under this section does not apply in the event that the employee is:
 - (a) a fixed-term or task-based employee and his or her employment is terminated upon the expiry of the fixed period or completion of the specified task in accordance with the provisions of the contract and any applicable collective agreement;
 - (b) a casual employee who has performed work for the employer over the course of less than six months;
 - (c) dismissed by the employer in accordance with section 103.
- (6) An employer that contravenes this section commits an offence.

103. Summary dismissal

- (1) An employer may terminate an employee's employment without any notice in the event that the employee is guilty of serious misconduct amounting to a repudiation of the employee's contract of service.
- (2) For the purpose of subsection (1), serious misconduct amounting to a repudiation of the employee's contract of service includes but is not limited to the following types of behaviour where committed by the employee in the course of his or her employment:
 - (a) reckless conduct that causes a serious and imminent risk to the health or safety of another person;
 - (b) theft or fraud;
 - (c) acts or threats of violence;
 - (d) deliberate falsification of skills or qualifications during the employment application or promotion process; or
 - (e) being under the influence of intoxicating liquor or a drug.
- (3) Before deciding to terminate an employee's employment in accordance with this section, the employer shall:
 - (a) give the employee an opportunity to respond to the allegations of serious misconduct;
 - (b) advise the employee of the possibility of summary dismissal;

- (c) consider any mitigating factors raised by the employee in relation to the serious misconduct; and
 - (d) afford the employee a reasonable opportunity to have a representative of his or her choosing attend and represent the employee at any meeting held to discuss the employee's capacity or conduct.
- (4) The employer shall provide the employee with a written statement of the reasons or reasons for the employee's summary dismissal under this section at the time the employee is dismissed.

104. Information and consultation on redundancies

- (1) If an employer proposes to terminate the employment of one or more employees by reason of the employer's reduced operational requirements, the employer shall:
- (a) as early as possible, consult with employees and their representatives, on measures to be taken to avert or to minimise the terminations and on measures to mitigate the adverse effects of any terminations on the employees concerned, such as action to attempt to find alternative employment or retraining; and
 - (b) not less than 28 days before the proposed date in which the terminations take place, provide the employees and their representatives with relevant information including the reasons for the employer's reduced operational requirements, the number and categories of employees likely to be affected and the period over which the redundancies shall be effected.
- (2) If an employer proposes to terminate the employment of 10 or more employees by reason of the employer's reduced operational requirements, the employer shall, not less than 28 days before the proposed date in which the terminations take place, provide the Commissioner with the same information as is provided to the employees and their representatives under subsection 1(b).
- (3) An employer that contravenes subsections (1) or (2) commits an offence.

105. Payments on termination of employment

- (1) Upon the termination of a contract of service, the employer must pay to the employee all wages and benefits due to the employee, including any accrued but untaken annual leave, by the end of the following working day.
- (2) If payment is made in lieu of notice the payment must include the wages and benefits that would have been payable to the employee if the employee had worked during the period of notice.

106. Certificate of service

Upon the request of an employee or former employee, the employer shall provide a certificate of service stating the nature and period of the employee's employment with the employer.

PART XII: EQUAL EMPLOYMENT OPPORTUNITIES

107. Prohibition of discrimination

- (1) An employer shall not discriminate, directly or indirectly, against any employee or prospective employee in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment, or other matters arising out of the employment relationship, for a prohibited reason or for reasons including a prohibited reason.
- (2) For the purpose of subsection (1), a prohibited reason shall be a reason that is affected by any of the following attributes of the employee or prospective employee, whether actual or perceived:
 - (a) ethnic origin, race, colour, national extraction, social origin, social class or economic status;
 - (b) sex, pregnancy, marital status, sexual orientation or family responsibilities;
 - (c) age, state of health, HIV / AIDS status, or disability;
 - (d) religion or political opinion;
 - (e) trade union membership or activity; or
 - (f) involvement in an employment dispute, an investigation or legal proceedings affecting the employer.
- (3) For the purpose of subsection (1):
 - (a) direct discrimination occurs when a distinction, exclusion or preference is made on the basis of an attribute listed in subsection (2); and
 - (b) indirect discrimination occurs when a distinction, exclusion or preference is made on the basis of an attribute that is not listed in subsection (2), but that disproportionately disadvantages people with a particular attribute listed in subsection (2).
- (4) For the purposes of subsection (2)(e), trade union activity includes:
 - (a) the formation or registration of a trade union under this Code;
 - (b) the management or operation of a trade union;
 - (c) representation of a trade union or a trade union member in collective bargaining, employment disputes, employee consultations, or meetings where the interests of a trade union or a trade union member are discussed; or
 - (d) participation in industrial activity in accordance with Part XVI of this Code.

- (5) An employer who contravenes this section commits an offence and shall be liable on conviction for a fine of \$1,000;
- (6) In any proceedings under this Code where a contravention of this section is alleged, the employer shall bear the onus of proving that the distinction, exclusion or preference was not affected by an attribute set out in subsection (2).

108. Exceptions in relation to inherent requirements of the position

- (1) A distinction, exclusion or preference that is based on the inherent requirements of the position shall not constitute a contravention of section 107.
- (2) Subsection (1) will not apply where reasonable accommodations could be made to allow an employee or prospective employee to perform the inherent requirements of a particular position.
- (3) Subsection (2) does not prevent different treatment based on disability if the position is such that the person could perform the duties of the position satisfactorily only with the aid of special services or facilities and it is not reasonable to expect the employer to provide those services or facilities.

109. Exceptions in relation to special measures

- (1) A person may take a special measure for the purpose of promoting or realising substantive equality for members of a group with a particular attribute, including an attribute set out in section 107.
- (2) A special measure must be:
 - (a) undertaken in good faith for achieving the purpose set out in subsection (1); and
 - (b) reasonably likely to achieve the purpose set out in subsection (1); and
 - (c) a proportionate means of achieving the purpose set out in subsection (1); and
 - (d) justified because the members of the group have a particular need for advancement or assistance; and
 - (e) be examined periodically to assess whether it is still needed and remains effective.
- (3) A special measure taken in accordance with this section shall not constitute a contravention of section 107.

110. Prohibition of discriminatory advertising

- (1) An employer shall not publish or display or authorise the publication or display of a job advertisement or other notice that indicates, or could be reasonably understood as indicating, that the employer intends to engage in conduct that contravenes section 107.
- (2) An employer who contravenes subsection (1) commits an offence.
- (3) Evidence of a contravention of subsection (1) shall give rise to a presumption that the employer has also contravened section 107.

111. Prohibition of discriminatory medical checks

- (1) An employer shall not require an employee to undergo a medical examination that comprises or includes screening for HIV/AIDS status, a sexually transmitted infection or pregnancy as a condition of employment or during the course of employment.
- (2) An employer who contravenes subsection (1) commits an offence.
- (3) Evidence of a contravention of subsection (1) shall give rise to a presumption that the employer has also contravened section 107.

112. Prohibition of sexual harassment

- (1) A person shall not sexually harass an employee or a prospective employee.
- (2) An employer shall take all reasonable steps to prevent the sexual harassment of an employee or a prospective employee.
- (3) A person sexually harasses an employee or a prospective employee if:
 - (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the employee or prospective employee; or
 - (b) the person engages in other unwelcome conduct of a sexual nature,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the employee or prospective employee would be offended, humiliated or intimidated in the course of their employment or application for employment.
- (4) A person who contravenes this section commits an offence and shall be liable on conviction for a fine of \$1,000.
- (5) If the person who contravenes this section is an employee, the employer of that employee shall also be liable under subsection (4) unless the employer can prove that it took all reasonable steps to prevent the sexual harassment.
- (6) The Minister may direct the Board to develop guidelines on sexual harassment, the purpose of which shall be to provide information on the types of behaviour that may constitute sexual harassment and the reasonable steps an employer may take to prevent sexual harassment.

113. Prohibition of victimisation

- (1) A person shall not victimise an employee or prospective employee because the employee or prospective employee, or a person associated with the employee or a prospective employee, has, in good faith:
 - (a) exercised rights or responsibilities under this Code;
 - (b) raised allegations of one or more contraventions of this Code;
 - (c) reported an employment dispute under Part XV of this Code;

- (d) provided evidence, information or assistance in connection with any employment dispute, hearing or proceedings under this Code;
 - (e) participated in industrial activity in accordance with Part XVI of this Code; or
 - (f) refused to do anything that the employee or prospective employee had reason to believe would contravene this Code.
- (2) A person victimises an employee or prospective employee if the person subjects, or threatens to subject, the employee or prospective employee to any detriment, prejudice or penalty.
 - (3) A person contravenes subsection (1) if the employee or prospective employee is victimised for reasons that include a reason set out in subsection (1).
 - (4) A person who contravenes this section commits an offence and shall be liable on conviction for a fine of \$1,000.
 - (5) If the person who contravenes this section is an employee, the employer of that employee shall also be liable under subsection (4) unless the employer can prove that it took all reasonable steps to prevent the victimisation.
 - (6) In any proceedings under this Code in which a contravention of this section is alleged, the person accused of victimising an employee or prospective employee shall bear the onus of proving that the detriment, prejudice or penalty was not affected by a reason set out in subsection (1).

114. Equal remuneration for work of equal value

- (1) An employer shall pay men and women employees equal remuneration for work of equal value.
- (2) For the purposes of this section, “remuneration” means the wage or salary and any additional benefits or allowances whatsoever payable, directly or indirectly, whether in cash or kind, by the employer to the employee arising out of the employee’s employment.
- (3) An employer who contravenes this section commits an offence and shall be liable on conviction for a fine of \$1,000.

PART XIII: CHILDREN

115. Minimum age for employment

- (1) A person shall not employ or otherwise engage a child under the age of 14 to perform work in any capacity, except in light work as prescribed by section 116.
- (2) Subject to subsection (3), the minimum age for employment applies to all types of work, including domestic work, work in family undertakings, work in agriculture, work as a self-employed person, work as an apprentice and maritime work.
- (3) The minimum age for employment does not apply to work performed in schools, as part of an authorised programme of education.

- (4) Upon recommendation of the Board, the Minister may prescribe requirements for work performed in schools, as part of an authorised programme of education.
- (5) Upon recommendation of the Board, the Minister may prescribe a higher minimum age for the purposes of compliance with this section.
- (6) A person who contravenes this section, or any orders or regulations in force under this section, commits an offence and shall be liable on conviction to a fine of \$1,000 or a term of imprisonment of 12 months, or both.

116. Minimum age for light work

- (1) A child aged 12 or 13 may be employed or engaged to perform light work that:
 - (a) is unlikely to be harmful to the health and development of the child;
 - (b) shall not prejudice the child's attendance at school or participation in vocational training;
 - (c) shall not prejudice the child's ability to benefit from schooling or vocational training; and
 - (d) complies with the prescribed requirements for light work.
- (2) Upon the recommendation of the Board, the Minister may prescribe requirements for light work, including the permissible times and hours of work, the activities that may be carried out and the conditions under which these activities may be performed.

117. Minimum age for hazardous work

- (1) A person shall not employ or otherwise engage a child in hazardous work.
- (2) For the purpose of subsection (1), hazardous work is work that, by its nature or the circumstances under which it is carried out, is likely to jeopardise a child's health, safety or morals, and shall include any categories of work prescribed as such by the Minister.
- (3) Upon the recommendation of the Board, the Minister may revise the types of work that are prescribed as hazardous work under subsection (2).
- (4) A person who contravenes this section commits an offence and shall be liable on conviction to a fine of \$1,000 or a term of imprisonment of 12 months, or both.

118. Prohibition of the worst forms of child labour other than hazardous work

- (1) The engagement of any child in the following worst forms of child labour is prohibited:
 - (a) all forms of slavery or practices similar to slavery;
 - (b) sale or trafficking of children;
 - (c) debt bondage and serfdom;
 - (d) forced or compulsory labour;

- (e) compulsory recruitment of children for use in armed conflict;
 - (f) use, procuring or offering of a child for prostitution;
 - (g) use, procuring or offering of a child for the production of pornography or for pornographic performances;
 - (h) use, procuring or offering of a child for illicit activities; and
 - (i) use, procuring or offering of a child for the production or trafficking of illegal drugs.
- (2) Any person who contravenes this section is commits an offence and shall be liable on conviction to a fine of \$5,000 or a term of imprisonment of 10 years, or both.

119. Register of child employees

- (1) An employer shall create and maintain a register of all children employed by the employer.
- (2) The register shall record the child's name, date of birth, sex, occupation, employment status, hours of work, school or vocational training attendance, rate of pay, and the dates on which the child's employment commenced and terminated.
- (3) An employer that contravenes this section commits an offence.

120. Determination of age

In any proceedings relating to an alleged offence under this Part in which the age of the employee at the time of the alleged offence is disputed by the parties, the High Court shall, after such inquiry as it considers necessary and after hearing evidence that may be tendered by either party to the proceedings, determine the age of the employee and such determination shall be final.

PART XIV: FORCED LABOUR

121. Interpretation

In this Part, "forced or compulsory labour" means any work or service that is exacted from a person under the menace of any penalty, but does not mean:

- (a) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired or placed at the disposal of private individuals, companies, or associations;
- (b) any work or service exacted in case of emergency, that is to say, in the event of war, or of a calamity or threatened calamity such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstances that would endanger the existence or the well-being of the whole or part of the population, provided that such work or service shall be limited to that strictly required by the exigencies of the situation and shall cease as soon as the circumstances endangering the population or its normal living conditions no longer exist;

- (c) unpaid labour on minor communal works that are reasonably required as part of reasonable and normal communal or civic obligations, provided that members of the community concerned must be consulted in regard to the need for such works, prior to any obligation imposed on a person to undertake them.

122. Prohibition of forced labour

Any person who exacts, procures or engages forced or compulsory labour commits an offence and shall be liable on conviction to a fine of \$100,000 or a term of imprisonment of 25 years, or both.

PART XV: SETTLEMENT OF EMPLOYMENT DISPUTES

123. Reporting of employment disputes

- (1) Any employment dispute may be reported to the Registrar by or on behalf of any party to the dispute.
- (2) A report of an employment dispute shall:
 - (a) be in writing addressed to the Registrar;
 - (b) be in such form as may be prescribed for the purpose of reporting employment disputes;
 - (c) be reported within such time limits as are prescribed under section 124 or as may be prescribed by regulation under this Code;
 - (d) set out in full the matters in issue between the parties to the dispute; and
 - (e) record the steps that the parties have taken to resolve the dispute at the workplace level.
- (3) Where the Registrar is of the opinion that a report of an employment dispute does not contain sufficient particulars of the matters required to be set out by subsection (2), or does not disclose an employment dispute as defined by this Code, the Registrar may require further written particulars to be provided.
- (4) Every person reporting an employment dispute or giving further written particulars to the Registrar under this section shall forthwith give by hand or send by registered post, a true copy of the report thereof or of the written particulars to each of the other parties to the dispute.

124. Time limits on reporting certain types of employment disputes

- (1) Where an employee alleges that Part XI of this Code has been contravened, the employee shall report the employment dispute to the Registrar within 28 days from the date on which the employee's employment was terminated.
- (2) Where an employee or prospective employee alleges that Part XII of this Code has been contravened, the employee shall report the employment dispute to the Registrar within 12 months from:

- (a) the date on which the relevant conduct occurred; or
 - (b) the date on which the employee or prospective employee became aware of matters material to the alleged contravention.
- (3) An employment dispute may be reported in relation to an alleged contravention of Parts V, VIII, IX or X of this Code that occurred, or is alleged to have occurred, within the last 6 years.

125. Powers of Registrar on report of employment dispute

- (1) The Registrar shall consider every employment dispute of which a report has been made and shall, within 7 days of receipt of the report, take any one or more of the following steps as seem to the Registrar most expedient for promoting a settlement of the dispute:
- (a) where the employment dispute involves parties to an ongoing employment relationship, direct the parties to engage in dispute settlement procedures at the workplace level, in accordance with the dispute resolution procedure of any applicable collective agreement or the model dispute resolution procedure in Schedule 5 of this Code; or
 - (b) refer the dispute for conciliation in accordance with this Part;
 - (c) refer the dispute for arbitration in accordance with this Part;
 - (d) where the employment dispute involves an alleged commission of an offence under this Code, refer the matter to the Commissioner for investigation and, if appropriate, prosecution; or
 - (e) such other orders or directions are contemplated by this Code.
- (2) A decision of the Registrar under subsection (1) shall be recorded in writing and shall be communicated in writing by hand or by registered post to the parties to the dispute or to their representatives.
- (3) The Registrar may only take action under subsections 1(a) or 1(b) once in any given employment dispute.

126. Further action by Registrar

Where a step taken by the Registrar under section 125 fails to result in settlement of the dispute, and the Registrar is requested to do so by any party to the dispute, the Registrar must take the following further steps within 7 days of receipt of the request:

- (a) where the Registrar had previously referred the dispute back to the parties for settlement at the workplace level in accordance with section 125(1)(a) - refer the dispute for conciliation in accordance with section 127;
- (b) where the Registrar had previously referred the dispute for conciliation - refer the dispute for arbitration in accordance with section 128.

127. Referral for conciliation

- (1) The Registrar may refer the matter to an independent person, appointed by the Registrar from the pool of conciliators nominated by the Board, for conciliation.
- (2) A person appointed under this section to act as a conciliator shall inquire into the causes and circumstances of the employment dispute by communication with the parties thereto shall endeavour to bring about a settlement of the dispute and shall report the outcome to the Registrar.
- (3) The conciliator shall perform his or her functions under this section in as timely a fashion as is reasonably practicable in the circumstances and, in any case, within no more than:
 - (a) 1 month from the date the conciliator is appointed;
 - (b) such shorter time frame as may be specified by the Registrar at the time of appointment.
- (4) The terms of every settlement of an employment dispute effected under this section shall be set out in writing, shall be signed by or on behalf of the parties to the dispute and, where appropriate, by the conciliator and a true copy of the text signed as aforesaid, shall be lodged with the Registrar.

128. Referral for arbitration

- (1) The Registrar may refer an employment dispute to an arbitrator, appointed by the Registrar from the pool of arbitrators nominated by the Board, for arbitration in accordance with this Part.
- (2) The Registrar may only refer an employment dispute for arbitration if conciliation under section 127 has failed to resolve the dispute and:
 - (a) one or more of the parties to the dispute request the Registrar to refer the dispute for arbitration; or
 - (b) the dispute is in the public services involving public servants exercising authority in the name of the State; or
 - (c) industrial action has been protracted or is tending to endanger, or has endangered, the personal health, safety or welfare of the community or part of it.
- (3) Unless expressly provided for in this Code or in any regulations made under this Code, an arbitrator may establish such procedures for the conduct of arbitration proceedings under this Part as he or she thinks fits.
- (4) The arbitrator shall perform his or her functions under this section in as timely a fashion as is reasonably practicable in the circumstances and, in any case, within no more than:
 - (a) 3 months from the date the conciliator is appointed;
 - (b) such shorter time frame as may be specified by the Registrar at the time of appointment.

129. Appointments to be final

Every appointment of a conciliator or arbitrator made by the Registrar in accordance with this Part shall be final and shall not be questioned by any party to the employment dispute in question.

130. Arbitration awards

- (1) Subject to section 131, an arbitration award shall be final and binding on the parties to the employment dispute.
- (2) An arbitration award in relation to an employment dispute may be made so as to have retrospective effect, provided that no award may retrospectively reduce any salary, wages or allowances or any other sum of money whatsoever payable to an employee under a contract of service in force at the time the award is made.
- (3) An arbitration award may award to any party to an employment dispute damages, compensation and costs, and compel an employer to take such steps as are necessary to remedy a contravention of this Code.
- (4) An arbitration award shall not be inconsistent with any law or be less favourable to an employee than any material award or order or agreement made in pursuance thereof.
- (5) An arbitration award shall be transmitted in writing to all parties to the dispute and to the Registrar who shall as soon as practicable cause the award to be published in such manner as he or she thinks fit.

131. Appeal of arbitration award

- (1) A party to an employment dispute who is aggrieved by an arbitration award may, subject to subsections (3) and (4), appeal as of right or by leave to the High Court.
- (2) An appeal to the High Court must be made in the prescribed manner within 28 days of the date of the arbitration award.
- (3) A notice of appeal must specify:
 - (a) the grounds of appeal;
 - (b) the decision or part of the decision which is to be appealed; and
 - (c) the precise form of the order which the appellant proposes to seek from the High Court.
- (4) An appeal by an aggrieved party from an arbitration award lies as of right to the High Court:
 - (a) on any error of law arising; or
 - (b) on grounds of jurisdictional error.
- (5) An appeal by an aggrieved party from an arbitration award on any other grounds shall only lie to the High Court with leave, where the High Court is satisfied that it is in the public interest to grant such leave.

- (6) For the purposes of hearing and determining any appeal, the High Court has all the power, authority and jurisdiction of the arbitrator and such other authority vested in a superior Court.
- (7) The High Court hearing and determining an appeal may:
 - (a) determine the appeal by confirming, modifying, or reversing the decision or a part of that arbitration award, or by setting the award aside and substituting its own decision.
 - (b) refer the matter with or without any direction to the arbitrator to reconsider, either generally or in respect of specified matters, the whole or a part of the matter to which the appeal relates.
- (8) Where a matter on appeal is referred back to the arbitrator, the arbitrator must hear and dispose of the matter without delay.

132. Interpretation of awards

- (1) If any question arises as to the interpretation of an arbitration award, the Registrar may, upon the request of any party to the original employment dispute, refer the matter to an arbitrator for a decision on the question.
- (2) Where referred under subsection (1), the arbitrator when referred a question under subsection (1) shall decide the matter after hearing the parties, or without hearing if the consent of the parties has first been obtained.
- (3) The arbitrator's decision under subsection (2) shall be:
 - (a) notified to the parties and the Registrar; and
 - (b) deemed to form part of, and shall have the same effect in all respects as, the original award.

133. Evidence in arbitration or conciliation

- (1) For the purpose of dealing with any matter referred to it under this Code, an arbitrator may elicit all such information as in the circumstances it may consider necessary without being bound by the rules of evidence in civil or criminal proceedings and may by order require any person:
 - (a) to furnish, in writing or otherwise, such particulars in relation to any matter as may be required;
 - (b) to appear before it and give evidence on oath or otherwise; and
 - (c) to produce any material documents as may be cited.
- (2) Despite subsection (1), if any person objects to furnishing any particulars, answering any question or producing any document on the ground of confidentiality or that it will tend to incriminate him or her or on any other lawful ground he or she shall, subject to subsection (3), not be required to furnish such particulars, answer such question or produce such document nor be liable to any penalties for refusing to do so.

- (3) Where objection is taken to the production of a document on the ground that the contents thereof are confidential the arbitrator may nevertheless by order require production of the document and consideration of its contents in camera and shall take all such further steps as may seem necessary and practicable to preserve the confidential nature of the document.
- (4) A conciliator appointed under section 127 may, for the purpose of dealing with an employment dispute referred to it under this Code, by order require any party to the dispute to appear before it.
- (5) Any person who without reasonable excuse fails to obey any order made under this section commits an offence.
- (6) Any person who being required by an order under subsection (1)(a) or (b) to furnish particulars or to give evidence, wilfully furnishes information or makes a statement which he or she knows to be false or which he or she does not believe to be true, commits an offence.

134. Representation of parties in conciliation or arbitration

- (1) In any conciliation or arbitration proceedings under this Code, a party to those proceedings may:
 - (a) appear in person; or
 - (b) being an organisation, be represented by a member, officer or employee of the organisation; or
 - (c) not being an organisation, be represented by -
 - (i) an employee of that party; or
 - (ii) a member, officer or employee of any organisation of which that party is a member; or
 - (d) subject to subsection (2), be represented by a legal representative.
- (2) A party to a proceeding may only be represented by a legal practitioner with leave of the conciliator or arbitrator granted on grounds of:
 - (a) the complexity of the issues in the proceeding;
 - (b) the legal issues to be decided in the proceeding;
 - (c) the public interest in legal representation in the proceeding; or
 - (d) the relative ability of the parties to represent themselves in the proceeding.

135. Duties in relation to employment disputes

All parties to an employment dispute and every person appointed under this Part shall where appropriate take into account in considering any proposed settlement, award or recommendation in respect of the employment dispute:

- (a) the public interest;
- (b) the need to maintain existing levels of employment and the desirability of raising those levels;
- (c) the desirability of increasing productivity;
- (d) the desirability of establishing and maintaining reasonable reward differentials for different skills;
- (e) the financial implications of the proposed settlement, award or recommendation if implemented on the living standards of the employees affected, the particular industry concerned and similar or related industries or skills, and the economy of Kiribati; and
- (f) the price levels of essential commodities.

PART XVI: INDUSTRIAL ACTION

136. Strike, lock-out or boycott action where dispute resolution procedures not followed

- (1) A party to an employment dispute shall not take strike, lock-out or boycott action in furtherance of that dispute, unless that party has made all reasonable endeavours to resolve the dispute in accordance with:
 - (a) the dispute resolution clause of an applicable collective agreement or, where none applies, the Model Dispute Resolution Procedure set out in Schedule 5 of this Code; and
 - (b) Part XV of this Code.
- (2) Where another party to the employment dispute forms the opinion that strike, lock-out or boycott action is being taken, or is about to be taken, in contravention of subsection (1), that party may apply to the Registrar for an order under subsection (3).
- (3) Upon application under subsection (2), where the Registrar is satisfied that strike, lock-out or boycott action is being taken, or is about to be taken, in contravention of subsection (1), the Registrar may, if he or she thinks fit, take any one or more of the following steps:
 - (a) invite the parties to the dispute to show cause as to why they did not comply with the relevant procedures for the resolving the employment dispute;
 - (b) invite the parties to comply with the relevant procedures for resolving the employment dispute;
 - (c) by order, declare the strike, lock-out or boycott action specified in the application under subsection (2) to be unlawful until a date specified in the order, which date shall be no later than one month from the date on which the order is made.
- (4) A person who contravenes an order of the Registrar under subsection 3(c) commits an offence.

137. Strike, lock-out or boycott action where award, settlement or agreement in force

- (1) Subject to this section, a strike, lock-out or boycott is unlawful, unless it relates to a dispute relating to the formation, variation or application of a collective agreement.
- (2) A party to an employment dispute shall not take strike, lock-out or boycott action in furtherance of that dispute, where a collective agreement, conciliation settlement or arbitration award has been made by, or in relation to, the parties to the employment dispute, which:
 - (a) deals with the matters to which the employment dispute relates; and
 - (b) is expressed to have effect until a date that has not yet passed.
- (3) Where another party to the employment dispute forms the opinion that strike, lock-out or boycott action is being taken, or is about to be taken, in contravention of subsection (1), that party may apply to the Registrar for an order under subsection (3).
- (4) Upon application under subsection (2), where the Registrar is satisfied that strike, lock-out or boycott action is being taken, or is about to be taken, in contravention of subsection (1), the Registrar may, if he or she thinks fit, take any one or more of the following steps:
 - (a) invite the parties to the dispute to show cause as to why they should not comply with collective agreement, conciliation settlement or arbitration award until the date on which it will cease to have effect;
 - (b) invite the parties to the dispute to comply with that collective agreement, conciliation settlement or arbitration award;
 - (c) by order declare any strike, lock-out or boycott action arising out of that dispute to be unlawful until a date specified in the order, which date shall be no later than any date referred to in subsection (1)(b).
- (5) A person who contravenes an order of the Registrar under subsection (3)(c) commits an offence.

138. Strike, lock-out or boycott action involving essential service

- (1) A party to an employment dispute that involves an essential service employee shall not take strike, lock-out or boycott action in furtherance of that dispute unless the party has given not less than 14 days' notice of the intended strike, lock-out or boycott action to the Registrar and to all other parties to the dispute.
- (2) Where another party to the employment dispute forms the opinion that strike, lock-out or boycott action is being taken, or is about to be taken, in contravention of subsection (1), that party may apply to the Registrar for an order under subsection (3).
- (3) Upon application under subsection (2), where the Registrar is satisfied that strike, lock-out or boycott action is being taken, or is about to be taken, in contravention of subsection (1), the Registrar may, if he or she thinks fit, take any one or more of the following steps:

- (a) refer the dispute for conciliation and arbitration under Part 15, subject to such directions as the Registrar thinks fit;
- (b) by order, declare the strike, lock-out or boycott action specified in the application under subsection (2) to be unlawful until a date specified in the order, which date shall be no later than 2 months from the date on which the order is made.
- (4) A person who contravenes an order of the Registrar under subsection (3)(b) commits an offence.

139. Strike action involving more than 50 employees

- (1) A party to an employment dispute shall not take strike action in furtherance of that dispute, where:
 - (a) the strike action will involve more than 50 employees; and
 - (b) the strike action has not been approved by a majority of the employees by way of a strike ballot.
- (2) Where another party to the employment dispute forms the opinion that strike action is being taken, or is about to be taken, in contravention of subsection (1), that party may apply to the Registrar for an order under subsection (3).
- (3) Upon application under subsection (2), where the Registrar is satisfied that strike action is being taken, or is about to be taken, in contravention of subsection (1), the Registrar may, if he or she thinks fit, take any one or more of the following steps:
 - (a) invite the party to the dispute to show cause as to why strike action was taken without the approval of a majority of the employees involved;
 - (b) invite the parties to undertake a strike ballot;
 - (c) by order, declare the strike, lock-out or boycott action specified in the application under subsection (2) to be unlawful until a date specified in the order, which date shall be no later than one month from the date on which the order is made.
- (4) A person who contravenes an order of the Registrar under subsection 3(c) commits an offence.
- (5) The Registrar may make rules prescribing the manner in which ballots required by this section shall be conducted.

140. Effective date of orders

- (1) An order made by the Registrar as the case may be under this Part shall be published by exhibition at the Public Office of the Beretitenti and shall come into effect on the day following the date of publication, unless a later date is prescribed therein.
- (2) The Registrar shall, as soon as practicable after an order has been published in accordance with subsection (1), further publish such order in such manner as he may think fit for the purpose of bringing its contents to the attention of the persons affected thereby.

- (3) Where members of a trade union or employer organisation is affected by an order of the Registrar under this Part, the trade union or employer organisation must take all reasonable steps to:
 - (a) bring the contents of the order to the attention of its members; and
 - (b) inform them of the legal consequences of contravening the order.
- (4) A trade union or employer organisation that fails to comply with subsection (3) commits an offence.

141. Appeals from order of Registrar

- (1) Any person aggrieved by an order of the Registrar under this Part, may appeal the order to the High Court.
- (2) An appeal under subsection (1) must be lodged with the High Court within fourteen days of the date on which the Registrar makes an order of the Registrar under this Part.
- (3) Upon an appeal under subsection (1), the High Court may make any orders it thinks proper, including directions as to costs, and any such orders made by the High Court shall be final and conclusive and shall not be subject to any appeal.
- (4) Subject to section 97 of the *Constitution*, the Chief Justice may make rules of court governing appeals under this section, providing for the method of giving evidence and prescribing the fees to be paid, the procedure to be followed and the manner of notifying the Registrar of the High Court of the appeal.
- (5) The Registrar shall be entitled to be heard on any appeal under this section.

142. Onus of proof in proceedings for alleged offence

Where, in any proceedings for an alleged offence under this Part, it is proved that the accused person, in circumstances which give the High Court reasonable grounds to suppose that the person was taking part in or acting in furtherance of an unlawful strike, lock-out or boycott:

- (a) ceased work or refused to continue to work or to undertake particular work, being work in terms of his or her employment he or she was bound to do; or
- (b) closed a place of employment or suspended work or being an employer refused to continue to employ persons employed by him or her; or
- (c) systematically refused to hold or abstained from holding relations or dealings of any kind with another person,

the accused person shall bear the onus of proving that he or she acted as aforesaid for reasons wholly unconnected with the strike, lock-out or boycott action declared unlawful by the relevant order of the Registrar.

143. Prohibition of expulsion of members

- (1) No person being a member of an organisation who refuses to take part or to continue to take part in any unlawful strike, lock-out or boycott action shall by reason of such refusal or by reason of any action taken by him under this section be subject to expulsion from

membership of any organisation, to any fine or other penalty, or to deprivation of any right or benefit to which he or she or their personal representatives would otherwise be entitled or liable to be placed in any respect either directly or indirectly under any disability or to any disadvantage as compared with other members of the organisation despite anything to the contrary in the rules or constitution of an organisation.

- (2) No provision of any law limiting the proceedings which may be entertained by the High Court and nothing in the rules or constitution of any organisation requiring the settlement of employment disputes in any manner shall apply to proceedings for enforcing any right or exemption secured by this section and in any such proceedings the Court may, in lieu of ordering any person who has been wrongfully expelled from membership of an organisation to be restored to membership, order that he or she be paid out of the funds of the organisation such sum by way of compensation or damages as the Court thinks just.

144. Intimidation or annoyance

- (1) A person shall not, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority:
 - (a) use violence against or intimidate such other person or a family member of that person, or injures his or her property; or
 - (b) persistently follow such other person about from place to place; or
 - (c) hide any tools, clothes or other property owned or used by such other person, or deprive him or her of or hinders him or her in the use thereof; or
 - (d) watch or beset the house or other place where such other person resides or works or carries on business or happens to be or the approach to such house or place; or
 - (e) follow such other person with 2 or more other persons in disorderly manner in or through any street or road; or
 - (f) attend at or near a house or place where a person resides or works or carries on business or happens to be, in such numbers or in such manner as to be calculated to intimidate any person in that house or place, or to obstruct the approach thereto or egress therefrom, or to lead to a breach of the peace.
- (2) A person who contravenes this section commits an offence and shall be liable on conviction for a fine of \$2,000 or a term of imprisonment of 1 year, or both.

145. Immunity of trade unions or employer organisation from actions of tort

- (1) An action against a trade union or employer organisation, or against any members or officials thereof, on behalf of themselves and all other member of the trade union or employer organisation, in respect of any tortious act alleged to have been committed by or on behalf of the trade union or employer organisation, shall not be entertained by any court.
- (2) Nothing in this section shall affect the liability of a trade union or employer organisation or any official thereof to be sued in any court touching or concerning the property or rights of a trade union or employer organisation in contemplation or in furtherance of an employment dispute.

146. Conspiracy in relation to employment disputes

- (1) An agreement or combination of 2 or more persons to do or procure to be done any act in contemplation or furtherance of an employment dispute shall not be triable as a conspiracy if such act committed by 1 person would not be punishable as a crime.
- (2) An act done in pursuance of an agreement or combination by 2 or more persons shall, if done in contemplation or furtherance of an employment dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.
- (3) Nothing in this section shall exempt from punishment any person guilty of a conspiracy for which a punishment is awarded by any law in force.
- (4) Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace or sedition or any offence against the Republic.
- (5) A crime for the purposes of this section means an offence for the commission of which the offender is liable to be imprisoned, either absolutely or at the discretion of the High Court as an alternative for some other punishment.

147. Removal of liability for interfering with another person's business

An act done by a person in contemplation or furtherance of an employment dispute shall not be actionable on the ground only that it induces some other person to break a contract of service or that it is an interference with the trade, business or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills.

148. Peaceful picketing

Despite anything contained in this Code, it shall be lawful for 1 or more persons, acting on their own behalf or on behalf of a trade union or employer organisation or of an individual employer or firm, in contemplation or furtherance of an employment dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

PART XVII: MISCELLANEOUS

149. Terms and conditions in contravention of Code

Any term or condition of a contract of service or a collective agreement that contravenes a provision of this Code is void to the extent of its contravention.

150. Liability of persons appointed under Code

No person shall be liable for any act done or omitted to be done by him in good faith and without negligence in the carrying out of any function vested in him by this Code or made thereunder.

151. Offences by corporation

- (1) Where an offence against this Code committed by a corporation is proved to have been committed with the consent or connivance of, or to have been attributable to the wilful neglect on the part of an officer of the corporation or person purporting to act as such an

officer, that officer or person also commits the offence and is liable to the penalty for that offence.

- (2) Where in proceedings under this Code it is necessary to establish the intention of a corporation, it is sufficient to show that an officer, employee or agent of the corporation had that intention.
- (3) In this section, “officer” in relation to a corporation means:
 - (a) a director, secretary or executive officer of the corporation;
 - (b) a person in accordance with whose directions or instructions the directors of the corporation are accustomed to act; or
 - (c) a person concerned in the management of the corporation.

152. General penalty

A person who commits an offence under this Code for which no specific penalty is prescribed is liable on conviction:

- (a) where the person is an individual, to a fine of \$2,000;
- (b) where the person is a corporation, trade union or employer organisation, to a fine of \$10,000.

153. Remuneration and expenses

The Minister, acting in accordance with the advice of Cabinet shall determine the remuneration, including allowances, to be paid to any person appointed under this Code and the same shall be paid out of the Consolidated Fund.

154. Regulations under this Code

- (1) The Beretitenti, acting in accordance with the advice of the Cabinet, may make regulations prescribing:
 - (a) the procedure to be followed in making any application or report, or instituting any proceedings, under this Code;
 - (b) matters which are required or permitted by this Code to be prescribed by Regulations;
 - (c) matters necessary or convenient to be prescribed for carrying out of or giving effect to this Code.
- (2) Without any prejudice to the generality of subsection (1), the Beretitenti, acting in accordance with the advice of the Cabinet may make regulations with respect to:
 - (a) the registration of trade unions and employer organisations under Part III of this Code, including any forms to be used in an application for registration, any fees to be paid for registration and the register of trade unions and employer organisations to be kept by the Registrar;

- (b) the discharge of the Board's functions under Part V of this Code;
- (c) prescribing the licensing of recruitment agents and private employment agencies for local or overseas employments under Part VII;
- (d) amending the list of essential services set out in Schedule 1 to this Code.

155. Code to bind Government

The provisions of this Code shall bind the Government.

156. Labour laws repealed

- (1) The Trade Unions and Employer Organisations Code, 1998 is repealed.
- (2) The Employment Ordinance, 1977 is repealed.
- (3) The Industrial Relations Code 1998 is repealed.

SCHEDULE 1 – ESSENTIAL SERVICES

1. Distribution of essential food services
2. Distribution of fuel services
3. Electricity services (including the generation and distribution of electricity and the maintenance of electricity supplies)
4. Fire services
5. Emergency health Services
6. Maintenance of internal and external air services
7. Police services
8. Port services connected with the loading and unloading of vessels
9. Prison services
10. Sanitary services
11. Search and rescue services
12. Shipping services
13. Emergency telecommunication services
14. Water services, with respect to the provision of sufficient potable water to an I-Kiribati.

SCHEDULE 2 – ARRANGEMENTS FOR COLLECTIVE BARGAINING

1. The negotiating parties will be represented / led by:
2. The negotiating parties will be representing:
3. The parties agree to meet: Set out anticipated timeframe for meetings (i.e. weekly, fortnightly).
4. The procedure for resolution of disputes over bargaining, prior to reference to the Registrar is:

SCHEDULE 3 – TRADE UNION AND EMPLOYER ORGANISATION RULES

The rules of a trade union or employer organisation shall include the following information:

1. The name of the trade union or employer organisation.
2. The objects for which the trade union or employer organisation is to be established, the purpose for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefits assured thereby and the fines and forfeitures to be imposed on any member of the trade union or employer organisation.
3. The manner of making, altering, amending and rescinding the rules.
4. A provision for the appointment and removal of a general committee of management, of a treasurer and other officers.
5. A provision for the keeping of full and accurate accounts by the treasurer.
6. A provision for a meeting of members to be convened as soon as practicable after the end of the financial year with the express purpose of enabling the treasurer to present the audited accounts.
7. A provision for the investment of the funds or their deposit in a bank and for an annual or periodical audit of accounts.
8. The inspection of the books and names of members of the trade union or employer organisation by every person having an interest in the funds of the trade union or employer organisation.
9. The manner of the dissolution of the trade union or employer organisation and the disposal of the funds thereof available at the time of such dissolution.

SCHEDULE 4 –PARTICULARS OF CONTRACTS OF SERVICE

1. Name of employer
2. Name of employee
3. Position description / inherent requirements of position
4. Applicable minimum wage order and collective agreement(s)
5. Classification or designation of the employee under the applicable minimum wage order or collective agreement(s)
6. Type of contract (full time / part time / casual)
7. Term of contract (indefinite / fixed term)
8. Place of work
9. Hours of work
10. Wages/salary
11. Allowances
12. Pay period
13. Holidays and leave
14. Employment dispute procedure
15. Other entitlements
16. Notice of termination
17. Severance pay
18. Date of contract

SCHEDULE 5 - MODEL WORKPLACE DISPUTE RESOLUTION PROCEDURE

Application of procedure

1. The procedure set out in clauses 2 to 8 of this Schedule apply to an employment dispute.

Persons who may invoke procedure

2. An employee, trade union, employer or employer organisation that is a party to an employment dispute, or a representative of such a party, may invoke the procedure or the Registrar may direct the parties to invoke the procedure in accordance with section 138.

Submission of an employment dispute to other party

3. The party invoking the procedure must advise the other party or parties to the employment dispute of
 - (a) the existence of the employment dispute; and
 - (b) the basis of the employment dispute; and
 - (c) the solution sought in respect of the employment dispute.

Meetings

4. The parties must then meet to discuss the employment dispute.

Written statement

5. If the parties fail to resolve the employment dispute, the party who invoked the procedure must within seven days give to the other party or parties a written statement setting out
 - (a) the nature of the employment dispute;
 - (b) the relevant facts in relation to the employment dispute; and
 - (c) the solution sought in respect of the employment dispute.

Response

6. If one or more of the other parties are not prepared or able to provide the solution sought, and the employment dispute has not otherwise been settled, the other party must no later than the 7th day after the day of receiving the written statement of the employment dispute under clause 5, provide a written response setting out
 - (a) that party's view of the facts; and
 - (b) the reason why that party is not prepared or able to provide the solution sought.

Waiver of written statements

7. If the parties agree in writing that the exchange of written statements under the preceding provisions is inappropriate or unnecessary, they may dispense with those parts of the procedure.

Power to refer dispute to Registrar

8. If:
 - (a) the party invoking the procedure is not satisfied with the other party's written response;
or
 - (b) the other party fails to provide, within the 7 day period required, a written response; or
 - (c) the parties have agreed to waive the requirement for an exchange of written statements and the party invoking the procedure is not satisfied that the dispute has been resolved,the party invoking the procedure may report to the Registrar the failure to resolve the employment dispute, in the prescribed manner.

EMPLOYMENT AND INDUSTRIAL RELATIONS CODE ACT 2015

Explanatory Memorandum

The objective of the Employment and Industrial Relations Code Act is to provide for the regulation of employment contracts, industrial relations and for the settlement of employment disputes. The Act repeals the:

- a. Employment Ordinance 1977,
- b. Industrial Relations Code 1988 and the
- c. Trade Union and Employer Organisations Act.

The Act aims to modernise employment practices to keep pace with changing labour market needs and aspirations in Kiribati. This includes providing a framework that enables businesses to grow in the context of providing decent work. It is also intended to enable progressive compliance with following International Labour Organisation (ILO) Conventions which have been ratified by Kiribati:-

- Forced Labour Convention 1930
- Freedom of Association and Protection of the Right to Organise Convention
- Right to Organise and Collective Bargaining Convention
- Equal Remuneration Convention
- Abolition of Forced Labour Convention
- Discrimination (Employment and Occupation) Convention
- Minimum Age Convention
- Worst Forms of Child Labour Convention

Part I Preliminary

This Part provides for preliminary matters such as the name of the Code, the commencement and interpretation sections.

Section 2 explains that the sections of this Code must comply with the human resource framework of the Kiribati Public Service Commission and the fundamental right to assembly and association as set out in Chapter VII and Article 13 of the Constitution respectively.

Section 3 is the commencement section. It enables different sections of the Code to come into force on a date or on dates appointed by notice.

Part II Commissioner, Inspectors and Registrar

This Part establishes these key positions, their roles and functions-

- the Commissioner for Labour and Human Resource Development;
- labour inspectors; and
- the Registrar of Industrial Relations.

Part III Trade Unions and Employer Organisations

This Part gives effect to the rights of employees and employers to freedom of association and the rights of organisations registered under this Code as trade unions or employer organisation.

The Act establishes the registration process for organisations representing the economic and social interests of employees or employers. It also prescribes the accounting requirements for trade unions and employer organisations.

Part IV Decent Work Advisory Board

This Part establishes the Decent Work Advisory Board, its role and functions. The objectives of the Board are to-

- make recommendations on social, economic and labour issues;
- further the Kiribati National Development Strategy by enhancing equitable growth and distribution;
- as a member of the ILO, promote employment and industrial relations practices in accordance with Principles of Decent Work;
- ensure active consultation with tripartite consultations on the development, adoption, implementation and regulation of International Labour Standards.

The Board membership comprises relevant stakeholders representing public sector agencies, as well as nominees from the representative organisations of employers and employees.

Part V Minimum Wage Setting

This Part establishes the process by which the Minister responsible for Industrial Relations fixes the minimum wage rate for employees.

The Decent Work Advisory Board makes recommendations to the Minister on the level of the minimum wage based on prescribed criteria.

Part VI Collective Bargaining

This Part establishes the framework for collective bargaining which incorporates the principles of flexibility and fairness in the collective bargaining process.

The Act does this by-

- establishing a clear process in which collective bargaining must be initiated;
- creating a statutory duty of good faith in collective bargaining; and
- encouraging efficient and effective collective bargaining.

This Part contains key provisions concerning the rules relating to the form and content of collective agreements as well as the requirements for registration of a collective agreement.

Part VII Establishing Employment Relationships

This Part intends to create certainty and fairness for both employers and employees by establishing the minimum standards relating to-

- the establishment of an employment relationship;
- when a written contract of service is required; and
- the licensing of recruitment agencies.

Part VIII Payment of Wages

To safeguard the rights of employees, this Part creates a statutory duty on an employer -

- to pay wages regularly;
- to make deductions from wages only where such deductions are lawful;
- to keep employment records; and
- to produce a statement of wages or a pay slip to an employee.

Part IX Hours of Work

This Part prescribes the maximum hours of work that may be performed and the minimum hours of rest that may be taken by an employee.

Breaks include meal and rest breaks, daily and weekly rest periods and nursing breaks for a woman who returns to work after childbirth.

Part X Leave

This Part provides a statutory entitlement by an employee to paid leave in particular annual leave, public holidays, sick leave, compassionate leave and maternity leave.

Part XI Termination of Employment

This Part establishes the minimum requirements relating to the termination of an employee's contract of service.

This Part makes it clear that any employer can only terminate an employee's contract of service for these reasons- (i) the employee's capacity or conduct in employment is unable to comply with the standard of performance reasonably expected of an employee; and (ii) there is a reduction in the work functions in the employer's business.

Part XII Equal Employment Opportunities

This Part mandates all employers to provide for equal employment opportunities by:

- prohibiting direct and indirect discrimination on specific grounds such as ethnic origin, race, colour, religion or political opinion, age, state of health or membership of a trade union;
- prohibiting sexual harassment,
- establishing an obligation on an employer to pay women and men equal remuneration for work of equal value.

It also makes provision for special measures of protection or assistance to a particular group of employees due to a particular attribute.

Part XIII Children

This Part establishes minimum protections for children to ensure that their health, safety or morals are not harmed. It also establishes the circumstances and ages at which children may work and confers certain rights on children and provides protection in view of their vulnerability to exploitation.

Part XIV Forced Labour

This Part prohibits forced labour which attracts severe criminal and civil sanction

Part XV Settlement of Employment Disputes

This Part establishes a framework to facilitate the settlement of employment disputes arising under this Act. Areas covered under this Part include the power of the Registrar of Industrial Relations to invoke the Registrar's statutory power of dispute resolution. In other words, the Registrar of Industrial Relations may refer an employment dispute to conciliation. It provides that where conciliation does not resolve a dispute, the Registrar may refer a dispute to arbitration in specified circumstances. If arbitration fails to resolve a dispute, then a party may appeal to the High Court on specified grounds.

Part XVI Industrial Action

This Part establishes the circumstances in which an industrial action may be declared unlawful by the Registrar of Industrial Relations. It also sets out specific requirements and protections in relation to industrial action in an essential service..

Part XVII Miscellaneous

This Part deals with procedural matters relating to liability, penalties and regulations that will facilitate implementation of this Code.

Section 156 states these labour laws are repealed once this Code becomes into force–

- a. the Employment Ordinance 1977,
- b. the Industrial Relations Code 1988;
- c. the Trade Union and Employer Organisations Act.

Schedules

Schedule 1	lists eleven essential services.
Schedule 2	sets out the arrangements for collective bargaining.
Schedule 3	establishes the key organisational rules for both a trade union and an employer organisation.
Schedule 4	establishes the key matters must be addressed in a contract of service.
Schedule 5	articulates the model workplace dispute resolution.

**CERTIFICATE OF THE CLERK OF THE MANEABA NI
MAUNGATABU**

This printed impression of the Employment and Industrial Relations Code 2015 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 20th August 2015 and is found by me to be a true and correctly printed copy of the said Bill.



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Eni Tekanene
Clerk of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this 24 day of
December 2015.



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Eni Tekanene
Clerk of the Maneaba ni Maungatabu