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**Tuvalu**

# **EMPLOYMENT ACT**

**2008 Revised Edition**

**CAP. 40.28**





Tuvalu

## EMPLOYMENT ACT

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Tuvalu

## EMPLOYMENT ACT

### AN ACT TO DECLARE THE LAW RELATING TO EMPLOYMENT<sup>1</sup>

Commencement [22nd April 1966]

## PART I- PRELIMINARY

### 1 Short title

This Act may be cited as the Employment Act.

### 2 Interpretation

In this Act, unless the context otherwise requires —

“**agricultural undertaking**” includes processes conducted on the undertaking for the preservation and despatch of the agricultural products of the undertaking, unless any such processes are specifically declared by order made by the Minister to be parts of any industrial undertaking;

“**commercial undertaking**” includes —

- (1) commercial establishments and offices, including establishments engaging wholly or mainly in the sale, purchase, distribution, insurance, negotiation, loan, or administration of goods or services of any kind;
- (2) establishments for the treatment or care of the aged, infirm, sick, destitute, or mentally unfit;
- (3) hotels, restaurants, boarding houses, clubs, cafes and other refreshment houses;
- (4) theatres and places of public amusement; and

- (5) any establishment similar in character to those enumerated in sub-paragraphs (1), (2), (3) and (4) above;

“**Commissioner**” means the Commissioner of Labour appointed under the provisions of section 4;

“**domestic servant**” means any house, stable or garden servant or car driver employed in, or in connection with, the domestic services of any private dwelling-house;

“**employer**” means any person by whom a worker is employed and includes a prospective employer and the Government;

“**family**” includes the wife of a worker and his children who are unmarried and under the age of 14 years;

“**Health Officer**” means the person for the time being performing the duties of the office of Senior Medical Officer and includes any officer to whom, by writing under his hand, he delegates the exercise or performance of all or any of the powers or duties conferred or imposed on the Health Officer by this Act to the extent of the powers or duties so delegated;

“**immigrant worker**” means any worker whose passage to Tuvalu has been provided in consideration of a promise to perform work in Tuvalu;

“**industrial undertaking**” includes —

- (1) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished or in which materials are transformed including undertakings engaged in shipbuilding, in the generation, transformation, or transmission of electricity, in the production or distribution of gas or motive power of any kind, in the purification or distribution of water, or in heating or cooling;
- (2) undertakings engaged in the construction, reconstruction, maintenance, repair, alteration or demolition of any one or more of the following —  
buildings, railways, tramways, airports, harbours, docks, piers, works of protection against floods or coast erosion, canals, works for the purpose of inland; maritime or aerial navigation, roads, tunnels, bridges, viaducts, sewers, drains, wells, irrigation or drainage works, telecommunication installations, works for the production or distribution of electricity or gas, pipelines, waterworks, and undertakings engaged in other similar work or in the preparation for or laying the foundation of any such work or structure;
- (3) mines, quarries or other works for the extraction of minerals from the earth; and



- (4) undertakings engaged in the transport of passengers or goods, including the handling of goods at docks, quays, wharves and warehouses, but excluding transport by hand unless such undertakings are regarded as part of the operation of an agricultural or commercial undertaking;

“**medical officer**” means any person in the service of the Government who is a medical practitioner;

“**medical practitioner**” includes any person registered as a medical officer under the provisions of the Medical and Dental Practitioners Act;<sup>2</sup>

“**month to month**” in relation to a contract means a contract for 1 month renewable from month to month;

“**seaman**” means any person employed as a member of the crew of any vessel or boat whatsoever (other than a ship of war) engaged in maritime navigation whether privately or publicly owned;

“**undertaking**” means an undertaking whether public or private;

“**worker**” means a clerical worker, labourer, servant in husbandry, journeyman, boatman, artificer, handicraftsman, miner, mechanic, agriculturalist, gardener, seaman, motor-driver, or other person engaged in clerical or manual labour or in supervising such, who has entered into or works under a contract with an employer and includes any immigrant worker and any worker who is apprenticed, but does not include —

- (1) any domestic servant, or
- (2) in Part III of this Act, any clerical worker who is, for the time being, entitled to receive for clerical work done by him under any contract or contracts of employment any money or other consideration, the rate of which exceeds in amount or value, or both, \$400 per annum.

### 3 Term of contract

In default of any agreement to the contrary whether express or implied every contract of employment shall be deemed to be from month to month determinable by either party on 1 month's notice or by the payment of 1 month's wages in lieu of notice.

## PART II - ADMINISTRATION

### 4 Commissioner of Labour and other officers

- (1) The Minister may appoint an officer to be the Commissioner of Labour, and may appoint one or more officers to be Deputy Commissioners of Labour and Assistant Commissioners of Labour and such other officers as may be necessary for carrying out the provisions of this Act who, subject to such limitations as the Minister may prescribe, may perform all duties imposed and exercise all powers conferred on the Commissioner by this Act.
- (2) If any employer is aggrieved by any decision or order of any of the officers (other than the Commissioner) referred to in subsection (1) made or given by virtue of the provisions of that subsection, he may require that such decision or order be confirmed by the Commissioner, who may confirm or rescind such decision or order or substitute therefor any decision or order which could be lawfully given in accordance with the provisions of this Act.
- (3) If any employer is aggrieved by any decision or order of the Commissioner made or given either originally or pursuant to the preceding subsection, he may require that such decision or order be confirmed by the Minister who may confirm or rescind such decision or order or substitute therefor any decision or order which could be lawfully given in accordance with the provisions of this Act.
- (4) Subject to such exceptions as may be prescribed, an officer appointed under subsection (1) of this section —
  - (a) shall not have any direct or indirect interest in any undertaking under his supervision;
  - (b) shall not reveal, either during the subsistence of his appointment or subsequently, any manufacturing or commercial secrets or working processes which may come to his knowledge in the course of his duties; and
  - (c) shall treat as absolutely confidential the source of any complaint bringing to his notice a defect or breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection has been made in consequence of the receipt of such a complaint.
- (5) Any officer who contravenes any of the provisions of subsection (4) shall be liable to a fine of \$100 and to imprisonment for 3 months, and in the case of a second or subsequent offence to a fine of \$200 and to imprisonment for 6 months.

**5 Powers of Commissioner and Health Officer to enter places of employment, to interrogate, etc.**

- (1) The Commissioner or Health Officer may enter at all times upon any place which he has reasonable cause to believe is a place of employment and into any house or accommodation provided by an employer for workers, and put questions, either alone or in the presence of witnesses, concerning the workers to the employer or to any person who may be in charge of the workers or to the workers themselves and the employer of such person, or any such worker, shall be equally bound to answer such questions truthfully to the best of his ability:

Provided that —

- (i) the Commissioner or Health Officer shall not enter or inspect a private dwelling-house without the consent of the occupier thereof;
  - (ii) on the occasion of a visit or inspection the Commissioner or Health Officer shall notify the employer or his representative of his presence, unless he has reasonable grounds for believing that such notification may be prejudicial to the performance of his duties.
- (2) The Commissioner or Health Officer shall produce his written appointment as such upon demand —
- (a) by any person in charge of any place or premises in respect of which, or wherein, any power conferred under the preceding subsection is, or is about to be, exercised; and
  - (b) by any person required by him under any power conferred by the preceding subsection to do, or to refrain from doing, any particular act or thing.
- (3) If the Commissioner or Health Officer has reasonable grounds for suspecting that any offence has been committed against a worker, and whenever any complaint of personal ill-usage or breach of any of the provisions of this Act is made to the Commissioner or Health Officer, the Commissioner or Health Officer, as the case may be, may forthwith remove, or cause to be removed, such worker from the place of employment where he is employed for further enquiry into the matter.
- (4) The Commissioner or Health Officer may by order in writing require any employer to take within such reasonable time as the Commissioner may determine such steps as he considers necessary with a view to remedying defects observed in plant, layout, working methods, supervision, medical or sanitary provisions or other matters at any place of employment which he may have reasonable cause to believe constitute a threat to the health or safety of the worker.

**6 Returns by employers, inspection of documents, etc.**

- (1) Every employer shall furnish to the Commissioner such return or returns, which shall be accurate and complete in every particular, in such form or forms as shall be prescribed.
- (2) The Commissioner or Health Officer may call for and examine all contracts, registers, books of account and other documents concerning any workers or relating to their employment.
- (3) The Commissioner or Health Officer may take and remove for purpose of analysis samples of materials and substances used or handled by any worker in the course of his employment, subject to the employer of such worker, or the representative of that employer, being notified of any samples or substances taken or removed for such purpose.

**7 Power of summons and institution of proceedings**

- (1) Whenever the Commissioner has reasonable grounds for suspicion that any offence under this Act has been committed or wishes to enquire into any matter concerning disputes as to wages, alleged wrongful termination of agreement or contract, misconduct, food, medical attendance, death, mining usage or mining complaint, inspection, sanitation or any other matter relating to employer and worker dealt with under the provisions of this Act, the Commissioner may summon any person whom he has reason to believe can give information respecting the subject matter of the enquiry, and the person so summoned shall be bound to attend at the time and place specified in the summons and to answer all questions which the Commissioner may put to him.
- (2) If the Commissioner is of opinion that an offence has been committed or that any complaint is well founded he may institute such proceedings, criminal or civil, for and in the name of the worker as he shall deem necessary in the circumstances.

**8 Offences**

Any person who hinders or obstructs the Commissioner or Health Officer acting in the execution of his duty under this Act or who refuses to produce any document or give any information lawfully required of him, or who produces a document or gives information which he knows to be false, shall be liable to a fine of \$100 or to imprisonment for 6 months.

## **PART III - WAGES AND HOURS OF WORK**

### **9 Liability of worker for advances and loans**

- (1) The total amount of all loans or advances of wages or both made by an employer to a worker or to a person in consideration of his taking up employment as a worker shall not without the previous permission of the Commissioner exceed an amount equivalent to the wages earned by the worker during the previous month or if he has not been employed for that period the wages he is likely to earn during 1 month.
- (2) No worker shall be held to be liable for the amount of any loan or advance or both made to him under the preceding subsection by his employer which exceeds the amount authorised under subsection (1).
- (3) Subject to the provisions of subsections (1) and (2), an employer may deduct or stop from the wages payable to a worker —
  - (a) the actual or estimated cost to the employer of any materials, tools and implements supplied by the employer to the worker at the latter's request to be used by him in his occupation; and
  - (b) any sums advanced by the employer to the worker by way of loan or advance of wages in anticipation of the regular period of payment of his wages:

Provided that the total amount which may be stopped or deducted from the wages of a worker in any pay period under the provisions of this subsection shall not exceed one-third of the wages of the worker in that pay period.

### **10 Days and hours of work, and overtime rates, may be specified by Commissioner etc.**

After consultation with representatives of organisations of the workers in any particular industry, occupation or area, and with representatives of organisations of their employers, the Commissioner may by order specify the days and hours of work for such workers and the rates at which they shall be paid for any work in excess of that specified.

### **11 Task work**

- (1) Any employer and a worker may agree to the assignment of a task to be performed by the worker as equivalent to work for a day of 8 hours and the performance of such task shall, for the purposes of this Act, be equivalent to working for a day.
- (2) Nothing in this Part contained shall prevent any employer from agreeing with any worker in his employment that the wages of such worker shall be paid at

an agreed rate in accordance with the amount of work done and not by the month or by the day.

## **12 Records concerning workers**

Every employer shall keep records concerning his workers containing sufficient information to form a full record of the workers and of the terms and conditions of their employment and, in addition to any other record, shall keep a register or check roll showing the names of the workers, place of recruitment, nature of employment, rate of wages, amount and value of rations (if any), amount earned, advances, deductions, net amount due, amount paid and any bonus due whether paid monthly or at the end of the contract.

## **13 Period for which wages payable**

In any contract it may be stipulated, subject to the provisions of section 10, that wages shall only be payable for days actually worked, for public holidays, and for days other than Sundays or other rest days on which through no fault of the worker no work is provided by the employer.

## **14 Payment of wages**

- (1) Where the wages of a worker are payable monthly they shall be paid not later than 1 day after the expiration of the period in respect of which they are due.
- (2) All wages due to a worker whose contract is terminated by expiry of the period for which it was made shall be paid to him on the day on which such agreement or contract terminates.
- (3) All wages due to a worker whose contract is terminated by his employer shall be paid to him on the day on which such contract is terminated, or if this is not possible, on the first day, not being a rest day or public holiday, after the day on which such agreement or contract is terminated.
- (4) All wages due to a worker who terminates his contract with his employer after he has given due notice to such employer as required under section 3 or under section 63 shall be paid to him on the day on which such agreement or contract is terminated.
- (5) If a worker terminates his contract without giving notice to his employer as required by the terms of any contract or if the required notice having been given the worker terminates his contract without waiting for the expiry of such notice, all wages due shall be paid to him before the expiry of the tenth day after the day on which he terminates his contract:

Provided that the employer may, subject to any order made by a court or the Commissioner to the contrary, deduct from the wages due to the worker such

sum as the worker is liable to pay in lieu of notice according to the terms of his contract, if any.

- (6) The Commissioner may in the case of any wages paid in any particular industry, or by any particular employer, by order extend by any period not exceeding 5 days any of the periods within which wages are required to be paid by any of the preceding provisions of this section.

## **15 Payment in stores, etc., prohibited**

No wages shall be paid to any worker —

- (a) at or within any shop or store;
- (b) at any place or premises where intoxicating liquors are sold; or
- (c) at any place of amusement:

Provided that this section shall not apply to any worker who is normally employed in any such shop, store, place or premises.

## **16 Wages to be paid in legal tender**

- (1) Except where otherwise expressly provided by this or any other Act the entire amount of the wages earned by, or payable to, any worker in respect of any work done by him shall be actually paid directly to him in legal tender and every payment of, or on account of, any such wages made in any other form shall be illegal, null and void.
- (2) Nothing contained in this section or in section 17 of this Act shall be construed to prevent or to render invalid any contract for the payment to the credit of any bank account in the name of the worker any payment in pursuance of such contract or any actual payment by cheque made payable to, or the order of, any worker of the whole or any part of his wages if such worker shall have consented in writing to such contract of payment, payment in pursuance thereof or actual payment by cheque.

## **17 Contracts to pay any wages otherwise than in legal tender, illegal**

In any contract for the employment of any worker or for the performance by any worker of any work, the wages of such worker shall, subject to the provisions of section 16(2), be made payable in legal tender and not otherwise and if in any contract provision is made for the whole or any part of such wages to be made payable in any other manner, such provision shall be null and void.

**18 Stipulation as to place and manner of spending wages illegal**

No employer shall provide in any contractor the employment of any worker any terms as to the place at which, or the manner in which, or the person with whom, any wages paid to the worker are to be expended and any such provision in a contract between an employer and a worker shall be illegal, null and void.

**19 Worker's right to recover**

Every worker shall be entitled to sue for and recover by legal process so much of his wages exclusive of sums lawfully deducted in accordance with the provisions of this Act as shall not have been paid to him in accordance with the provisions of section 16.

**20 Interest on advances forbidden**

No employer shall make any deductions by way of discount, interest or any similar charge on account of any advance of wages made to any worker.

**21 Certain deductions from wages may be made**

- (1) Notwithstanding anything to the contrary in this Act contained, an employer may with the consent of the worker make deductions from the wages of that worker and pay to the appropriate person or account any contributions to provident or pension funds or schemes to which the worker has agreed to contribute, and which the Commissioner has approved.
- (2) Subject to the provisions of subsection (1) and except where otherwise expressly permitted by the provisions of any law no employer shall make any deduction or make any agreement or contract with a worker for any deduction from wages to be paid by the employer to the worker or for any payment to the employer by the worker for or in respect of any lost time, or of bad or negligent work or of injury to the materials or other property of the employer.
- (3) No worker shall be required to make a direct or indirect payment for the purpose of obtaining or retaining employment and no deduction may be made from the wages of a worker for this purpose by an employer or his representative or a recruiter.

**22 Remuneration other than wages**

- (1) No contract with any worker containing a provision that he shall receive food, or a dwelling place in addition to a monetary wage as remuneration for his services shall be illegal by reason only of such a provision, but the value of any food or dwelling place so provided shall be expressed in monetary terms in any such contract.



- (2) No employer shall give, or agree to give, any intoxicating liquor or any noxious drug to any worker by way of remuneration.

### **23 Employer's shops**

- (1) Nothing in this Part shall prevent an employer from establishing a shop for the sale of food and domestic goods to his workers at prices which are in the opinion of the Commissioner fair and reasonable and which are marked or exhibited in such manner as the Commissioner may require but such employer shall not compel any worker to purchase food and domestic goods at such shop.
- (2) No employer shall trade with any worker or establish or keep a shop on any place of employment otherwise than in accordance with the preceding subsection.
- (3) No person employed at any place of employment as a manager or an overseer shall traffic on such place on his own account with any worker employed under or together with him nor shall such person be either directly or indirectly financially concerned in the management of any shop wheresoever it be situated which is used or maintained for the purpose of supplying commodities of any kind whatsoever to those employed under or together with such person.

### **24 Power of employer to exempt himself if other person proved actual offender and proceedings against such a person in first instance**

- (1) Where any employer is charged with an offence against this Part, he shall be entitled, upon information duly laid by him and on giving to the prosecution not less than 3 days' notice in writing of his intention, to have any other person, whether or not employed by him, whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court —
  - (a) that he has used all due diligence to enforce the provisions of this Part; and
  - (b) that the said other person had committed the offence in question without his consent, connivance or knowledge,that other person shall be summarily convicted of the offence, and the employer shall not be guilty of the offence, and the person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings.
- (2) Where an employer seeks to avail himself of the provisions of the preceding subsection, the prosecution, as well as the person whom the employer charges with the offence, shall have the right to cross-examine him, if he gives

evidence, and any witnesses called by him in support of his pleas, and to call rebutting evidence.

- (3) Where it appears to the Commissioner that an offence has been committed in respect of which proceedings might be taken under this Part against some employer and the Commissioner is reasonably satisfied that the offence was due to the act or default of some other person and that the employer could establish a defence under subsection (1), then the Commissioner may cause proceedings to be taken against the person who committed the offence without first causing proceedings to be taken against the employer. In any such proceedings the said person who committed the offence may be charged with, and, on proof that the contravention was due to his act or default, be convicted of, the offence with which the employer might have been charged.

## **25 Penalties**

Any employer who —

- (a) fails to pay wages in accordance with the provisions of this Part; or
- (b) gives any remuneration for services contrary to the provisions of this Part, or makes any deductions from the wages of any worker or receives any payment from any worker contrary to the provisions of this Part; or
- (c) trades with his workers or keeps a shop otherwise than in accordance with the provisions of this Part; or
- (d) contravenes or fails to comply with any order of the Commissioner made under this Part;

and any person employed at a place of employment, who contravenes the provisions of section 23(3) shall be liable to a fine of \$100 or in default of payment thereof to imprisonment for 6 months.

## **PART IV - MINIMUM WAGE**

### **26 Interpretation**

In this Part, unless the context otherwise requires, the term “minimum wage” means the minimum rate of wages fixed as in this Part provided in respect of the particular occupation followed by the person concerned and applicable to that person.

### **27 Fixing of minimum wage**

- (1) The Minister may by order fix minimum rates of wages for workers in any occupation or in any class or grade of any occupation in Tuvalu, either

generally or in any specified area or district, in any case in which he is satisfied that the minimum rate of wages being paid to any persons employed in any such occupation is unreasonably low.

- (2) Before making any order under this section fixing a minimum rate of wages for any workers the Minister shall consult with the representatives of the employers of such workers and with representatives of the workers.

## **28 Penalty for not paying wages in accordance with minimum rate**

- (1) Where any minimum rate of wages has been fixed under this Part, an employer shall in cases to which the minimum rate is applicable pay wages to the person employed at not less than the minimum rate, and if he fails to do so shall be liable in respect of each offence to a fine of \$40, and to a fine of \$10 for each day on which the offence is continued after conviction therefore.
- (2) On conviction of an employer under this section for failing to pay wages at not less than the minimum rate to a person employed, the court may by the conviction adjudge the employer convicted to pay in addition to any fine such sum as appears to the court to be due to the person employed on account of wages, the wages being calculated on the basis of the minimum rate, but the power to order the payment of wages under this provision shall not be in derogation of any right of the person employed to claim recovery of wages due to him by civil proceedings.

## **29 Miscellaneous provisions with regard to legal proceedings**

- (1) Where any employer has been convicted for failing to pay wages at not less than the minimum rate to any person employed by him, and notice of intention so to do has been served with the summons, evidence may be given of any failure on the part of the employer to pay wages at not less than the minimum rate to such person at any time during the 2 years immediately preceding the date on which the complaint was made, and on proof of the failure the court may order the employer to pay to such person such sum as in the opinion of the court represents the difference between the amount which having regard to provisions in this Part ought properly to have been paid by way of wages during those years and the amount actually so paid.
- (2) Where it appears to the Commissioner that any sum is due by employer to any person by reason of the fact that wages have been paid to him at less than the minimum wage applicable, and that it is not possible to recover the sum so appearing to be due or some part of that sum by means of proceedings under this section, the Commissioner may, if it appears expedient so to do by reason of the refusal or neglect of such person to take the necessary proceedings, on behalf of and in the name of such person institute civil proceedings before any court of competent jurisdiction for the recovery of the said sum.

### **30 Offence by agent**

Where an employer who is charged with an offence against this Part proves to the satisfaction of the court that he has used due diligence to enforce the execution of this Part and the offence was in fact committed by his agent or some other person without his knowledge, consent or connivance, he shall in the event of the conviction of that agent or other person for the offence be discharged in respect of the offence, without prejudice however to the power of the court under this Part to adjudge him to pay any sum which appears to the court to be due to the person employed on account of wages.

### **31 Employers not to receive premium where minimum rates in force**

- (1) Where a person employed in any occupation being a person to whom a minimum wage applies, is an apprentice or learner, it shall not be lawful for his employer to receive directly or indirectly from him, or on his behalf, or on his account any payment by way of premium:

Provided that nothing in the foregoing provisions shall apply to any such payment duly made in pursuance of any instrument of apprenticeship executed within 3 months of the commencement of the employment.

- (2) If an employer acts in contravention of the provisions of this section he shall be liable in respect of each offence to a fine of \$40, and the court may upon conviction in addition to imposing a fine adjudge him to repay to the person by whom the payment was made the sum improperly received by way of premium.

### **32 Prevention of evasion**

Any shopkeeper, dealer or trader who by way of trade makes any arrangement, express or implied, with any person in pursuance of which the person performs any work for which a minimum wage has been fixed, shall be deemed for the purpose of this Part to be the employer of such person, and the net remuneration obtainable by such person in respect of the work, after allowing for his necessary expenditure in connection with the work, shall be deemed to be wages.

### **33 Exemption**

- (1) The Commissioner may issue permits of exemption to infirm or disabled persons authorising the employment of such persons at less than the minimum wage fixed in respect of the occupation in which such persons are employed, and such permits may specify the conditions under which such persons may be so employed and the wage conditions specified in such permit shall, for the purposes of this Part, be deemed to be the minimum wage.

- (2) Any minimum rate of wages may, with the written permit of the Commissioner, be subject to abatement by collective agreement; and thereupon during the continuance of such collective agreement the wage and conditions specified in such permit shall be deemed to be the minimum wage fixed in respect of the employed persons who are a party to such collective agreement.
- (3) Save as in this section provided, any agreement for the payment of wages at less than the minimum rate fixed under this Part shall be void.

## PART V - RECRUITING OF WORKERS

### 34 Interpretation

In this Part —

“**licence**” means a licence issued under this Part;

“**licensee**” means the holder of a license issued under this Part;

“**professional recruiter**” means a person who for remuneration recruits workers;

“**recruiting**”, with its grammatical variations, includes all operations undertaken with the object of obtaining or supplying the labour of workers who do not spontaneously offer their services at the place of employment or at a public emigration or employment office, or at an office conducted by an employers' organisation and supervised by the Commissioner and the noun “**recruit**” means a worker who has been recruited;

“**worker-recruiter**” means a person who, being a worker, is authorised in writing by his employer to recruit workers on behalf of his employer, but who does not receive any remuneration or other advantages for such recruiting.

### 35 Recruiting of workers to be under licence

- (1) The Commissioner may in his discretion issue licences to fit and proper persons to recruit workers.
- (2) Save as in this section hereinafter provided it shall be an offence for any person to recruit workers except in accordance with the terms of a licence duly issued by the Commissioner under this Part.
- (3) It shall be lawful for an employer, either in person or by some other person acting on his behalf other than a professional recruiter, to recruit workers without a licence where —
  - (a) the employer does not employ more than 25 workers at any one time; or

- (b) the workers are to be employed within the island of recruitment or within 25 miles of the place of recruitment; or
- (c) the workers are to be employed on personal or domestic service or upon non-manual work.

### **36 Matters to be considered before granting licence**

In the exercise of his discretion to grant or refuse a licence under this Part the Commissioner shall take into consideration possible effects of the withdrawal of adult males on the social life and organisation of the population and in particular shall consider —

- (a) the density of the population;
- (b) the possible effects of the withdrawal of adult males on the health, welfare and development of the population particularly in connection with the food supply;
- (c) the dangers to the family and morality generally arising from the withdrawal of adult males.

### **37 Restriction on recruitment**

The Commissioner may by order prohibit or restrict the recruiting of workers in any area in Tuvalu if he considers it expedient to do so in the interests of the inhabitants thereof; and any recruiting licence in force relating to such area shall be valid only so far as it does not conflict with such order.

### **38 Application for recruiting licence**

Before issuing any licence the Commissioner —

- (a) may require the applicant to show to his satisfaction that adequate provision has been made for safeguarding the health and welfare of the workers to be recruited;
- (b) shall, if the workers to be recruited are intended to be employed beyond Tuvalu, satisfy himself that all necessary measures have been taken for the protection of the recruits beyond the limits of Tuvalu;
- (c) may require the applicant to furnish financial or other security for proper conduct as a licensee;
- (d) may require the licensee, if an employer, to furnish financial or other security for the payment of wages due.

**39 Conditions of recruiting licence**

- (1) A licence shall be subject to such conditions as the Commissioner may think necessary to impose and such conditions shall be endorsed upon the licence.
- (2) Without prejudice to the generality of the provisions of the preceding subsection the Commissioner may impose conditions relating to all or any of the following matters —
  - (a) the period during which and the places from which workers may be recruited;
  - (b) the number of workers who may be recruited during a specified period or from a specified place;
  - (c) the manner in which recruited workers shall be transported from their homes or from the place of engagement to the place of employment;
  - (d) the vessel or vessels which may be used in transporting recruited workers;
  - (e) the reports or returns to be made by recruiters;
  - (f) the maintenance and welfare of the recruits from the time of recruitment until the time their employment begins;
  - (g) the return of the workers to their homes upon conclusion of their employment.
- (3) The Commissioner may make it a condition of the licence that —
  - (a) the recruits shall be grouped at the place of employment under suitable conditions;
  - (b) each recruit shall be issued with a document containing particulars of the identity of the recruit, the prospective conditions of employment, any advances of wages made to him and such other particulars as the Commissioner may require.

**40 Term of licence**

A recruiter's licence shall be valid for a period of 12 months from the date of issue and shall not be transferable and shall be produced on the demand of the Commissioner or a police officer.

**41 Professional recruiters**

No professional recruiter shall be licensed unless he is recruiting for a department of the Government of Tuvalu or for one or more specific employers or an organisation of employers, and produces to the Commissioner the written authorisation of such department of the Government of Tuvalu, or employer, or organisation of employers.

**42 Cancellation of licence**

The Commissioner may cancel any licence in any case where the licensee has been convicted of an offence against the provisions of this Act or has not complied with the conditions under which it was granted, or is guilty of conduct which in the opinion of the Commissioner renders him no longer a fit and proper person to hold a licence; and the Commissioner may suspend any licence pending the making of any inquiry which he may consider necessary or where proceedings are taken against the licensee pending the decision of the court.

**43 Persons under the age of 18 not to be recruited**

No person shall recruit a worker under the apparent age of 18:

Provided that the Commissioner may permit workers under that age, but of or above the age of 15 years, to be recruited with the consent of their parents or guardians for employment in Tuvalu upon light work subject to such conditions as he may impose.

**44 Provisions relating to the family of recruit**

- (1) The recruiting of the head of a family shall not be deemed to involve the recruiting of any member of his family.
- (2) In default of an express agreement to the contrary there shall be implied in any agreement for a member of his family to accompany a recruit a condition that the said member may remain with him during the period of his contract.

**45 Chiefs and public officers not to recruit or assist recruiting**

- (1) No chief or person holding any public office shall directly or indirectly procure or assist in procuring recruits or receive from any source whatsoever any consideration for so doing.
- (2) No person shall give or promise to give a chief or public officer any consideration as an inducement to such chief or public officer to procure or assist in procuring recruits, or as a reward for having so procured or assisted in procuring recruits.

**46 Licensees' assistants to obtain a permit**

- (1) No person shall assist a licensee in the recruiting of workers unless he has been approved by the Commissioner and has been furnished with a permit by the licensee.
- (2) Licensees shall be responsible for the proper conduct of such assistants.



**47 Remuneration of licensees' agents**

A licensee who employs another licensee as his agent otherwise than on a fixed salary shall not remunerate the agent at the rate of more than \$4 per head of the workers recruited, or at such other rate as may be prescribed.

**48 Licensees to keep records**

Every licensee shall keep in such form as the Commissioner may require records of his recruiting operations.

**49 Examination of recruits**

- (1) Workers recruited under licence shall, before their employment begins —
  - (a) be brought before the Commissioner; and
  - (b) be medically examined by a medical officer or, if such be not available, a person approved for that purpose by the Health Officer as near as may be convenient to the place of recruitment:

Provided that, where it has been impracticable for the worker to be medically examined before his employment begins, the Commissioner may authorise the departure prior to medical examination of a worker, if he considers that the worker is fit for the journey and the prospective employment, and if he is satisfied that the worker will be medically examined on arrival at the place of employment or as soon as possible thereafter.

- (2) The Commissioner when any such recruit is so brought before him shall satisfy himself that the provisions of this Part, and of any regulations made thereunder, have been observed, and that the recruit has not been subjected to pressure or recruited by misrepresentation or mistake.

**50 Recruiter to defray expenses of journey, etc.**

- (1) The recruiter shall defray all expenses connected with the journey of the workers to the place of employment and shall ensure that whenever possible suitable transport is provided and in all cases adequate accommodation, food, water and medicines.
- (2) In the event of the death of any recruited worker or of any dependant occurring during any journey to the place of employment from the place of recruitment the recruiter shall provide decent interment and pay the reasonable expenses of burial.

**51 Return to home of recruit and his family in certain circumstances**

- (1) A recruit who —

- (a) becomes incapacitated by sickness or accident during the journey to his place of employment; or
- (b) is found on medical examination to be unfit for employment; or
- (c) is not engaged after being recruited, for a reason for which he is not responsible; or
- (d) is found by the Commissioner to have been recruited by pressure or by misrepresentation or mistake,

and the family of such recruit and the family of a recruit who dies during the journey to the place of employment shall be returned to their homes at the expense of the recruiter or employer who shall be jointly and severally liable for the same.

- (2) Should a recruiter and employer fail to fulfil their obligations under this section the said obligations may be discharged by the Commissioner and the costs thereof met out of public moneys and recovered from the recruiter or employer as the case may be as a civil debt.
- (3) A recruit who without reasonable excuse fails to avail himself of any proper and lawful facilities for repatriation afforded by a recruiter or employer shall forfeit his right to repatriation under his section.

## **52 Advances against wages**

- (1) Any advance made to a recruit before he takes up his employment shall not exceed an agreed month's wages, and not more than one-quarter of such advance shall be recovered out of each month's wages; and no advance made in excess of 1 month's wages shall be recoverable from the recruit.
- (2) A worker-recruiter shall not make advances of wages to recruits.

## **53 Penalty**

Any person who acts in contravention of, or fails to comply with, any of the provisions of this Part, or who shall recruit any person by means of any fraud, falsehood, intimidation, coercion or misrepresentation, shall be liable to a fine of \$50.

# **PART VI - WRITTEN CONTRACTS OF EMPLOYMENT**

## **54 Interpretation**

In this Part, unless the contrary intention appears, the term "contract" means a contract which is required by section 55 to be made in writing.

**55 Certain contracts to be in writing**

- (1) Save as provided in subsection (2) a contract of employment by which a worker enters the service of an employer as a manual worker for remuneration, and which —
  - (a) is made for a period exceeding 1 month or for more than 30 working days; or
  - (b) stipulates conditions of employment which differ materially from those customary in the district of employment for similar work,shall be made in writing, and shall be signed by the parties in the presence of and be attested by the Commissioner.
- (2) This section shall not apply —
  - (a) except as provided by section 99, to contracts of apprenticeship made in accordance with Part X; or
  - (b) to contracts under which the only or principal remuneration granted to the worker is the occupancy or use of land belonging to his employer.
- (3) If a contract which is required to be made in writing and attested has not been made in writing and attested as required by this section, it shall be deemed to be a contract of employment from month to month determinable as provided by the provisions of section 3.
- (4) If an omission to make any contract in writing or to have any contract attested, in breach of subsection (1), is due to the wilful act or negligence of the employer, the worker shall be entitled to apply to the Commissioner for the cancellation of such contract under section 64, and for an award of compensation and order by the Commissioner under the said section.
- (5) Except as provided in section 61(3), all the provisions of this Part relating to contracts shall apply to contracts providing for the re-engagement of workers:  
Provided however that it shall be lawful for the Commissioner acting in his discretion to exempt any such contract from the provisions of section 59.

**56 Form and particulars of contract**

Every contract shall be in triplicate and shall contain in clear and unambiguous terms all that may be necessary to define the rights and obligations of the parties thereto and shall in all cases include the following particulars —

- (a) the name of the employer or group of employers and, where practicable, of the undertaking and the place of employment.
- (b) the name of the worker, the place of engagement and the place of origin of the worker, and any other particulars necessary for his identification;
- (c) where possible the names and addresses of the next of kin of the worker;

- (d) the nature of the employment;
- (e) the duration of the employment and the method of calculating this duration;
- (f) the appropriate period of notice to be given by the party wishing to terminate the contract due regard being had to the provisions of section 63 and to the fact that such provisions refer to an equitable settlement of monetary and other questions;
- (g) the rate of wages and method of calculation thereof, the manner and periodicity of payment of wages, the advances of wages, if any, and the manner of repayment of any such advances;
- (h) the measures to be taken to provide for the welfare of the worker and any dependant who may accompany him under the terms of the contract;
- (i) the conditions of any repatriation; and
- (j) any special conditions of the contract.

## **57 Attestation of contracts**

- (1) Every contract shall be presented to the Commissioner for attestation, and before attesting any such contract the Commissioner shall —
  - (a) ascertain that the employee fully understood the terms of the contract before signing it, has freely consented to the contract, and that his consent has not been obtained by coercion or undue influence, or as the result of misrepresentation or mistake; and
  - (b) satisfy himself that —
    - (i) the contract is in due legal form;
    - (ii) the terms of the contract are in accordance with the requirements of this Act and any other Act for the time being in force;
    - (iii) that the provisions of the law relating to medical examination have been complied with;
    - (iv) that the terms of the contract are not manifestly unfair to the worker; and
  - (c) require the worker to declare himself not bound by any previous engagement.
- (2) The Commissioner may refuse to attest any contract in respect of which he is not satisfied in regard to any of the matters set out in subsection (1) and any contract the Commissioner has refused to attest shall have no further validity.
- (3) If the omission to make any contract in writing or present any contract to the Commissioner for attestation is due to the wilful act or the negligence of the employer, the worker shall be entitled to apply to the Commissioner for the

cancellation of such contract under section 64 and for an award of compensation and order by the Commissioner under the said section.

- (4) Any agreement not made in writing when required by this Part to be so made and any contract not attested in accordance with the provisions of this Part shall not be enforceable except during the period of 1 month from the making thereof but either party shall be entitled to have any such agreement drawn up in writing or any such contract presented for attestation, as the case may be, at any time prior to the expiry of the period for which it was made.

## **58 Disposal of copies of contract**

When the contract has been attested the Commissioner shall deliver 1 copy to the employer, and 1 copy to the worker.

## **59 Medical examination**

- (1) The employer shall cause every worker who enters into a contract to be medically examined by a medical officer or a person approved for that purpose by the Health Officer.
- (2) Such examination shall be made and a medical certificate of fitness for the type of work upon which he is to be engaged issued before the attestation of the contract:

Provided that, where it has been impracticable to have the worker so medically examined before the attestation of the contract, the attesting officer may dispense with the requirement but shall in such case endorse the contract to this effect, and the worker shall be so examined at the earliest possible opportunity thereafter.

- (3) The Commissioner may exempt from the requirement of medical examination workers entering into contracts for —
  - (a) employment in any agricultural undertaking not employing more than 25 workers; or
  - (b) employment in the vicinity of the worker's home on work which is not of a dangerous character or likely to be injurious to the health of the workers.

## **60 Workers under 18 years may not enter into contract**

Workers whose age is, or appears to the Commissioner to be, less than 18 years shall not be capable of entering into a contract.

**61 Maximum duration of contracts**

- (1) The maximum period of service which may be stipulated or implied in any contract involving a journey within Tuvalu from the place of recruitment to the place of employment or a journey from a place of recruitment in Tuvalu to a place of employment in the Island of Nauru shall in no case exceed 12 months if the worker is not accompanied by his family or 2 years if he is so accompanied.
- (2) The maximum period of service which may be stipulated or implied in any contract involving a journey from a place of recruitment in Tuvalu to a place of employment (not being in the Island of Nauru) outside Tuvalu shall in no case exceed 2 years if the worker is not accompanied by his family or 3 years if the worker is accompanied by his family.
- (3) The maximum period of service which may be stipulated or implied in any contract providing for the re-engagement of any worker upon the expiration of any contract made by him shall not, in any case in which the last-mentioned contract is one to which subsection (1) applies, exceed 21 months if the worker is accompanied by his family or 12 months if he is not, or, in any case in which such last-mentioned contract is one to which subsection (2) applies, exceed 33 months if such worker is accompanied by his family or 21 months if he is not:

Provided however that if service for the period stipulated or implied in a contract for the re-engagement of any worker upon the expiration of a contract, together with the period served under such last-mentioned contract at the time of its expiration, will involve the separation of such worker from his family for any period in excess of 18 months, such worker shall not begin service under the contract providing for his re-engagement until he has had the opportunity to return to his home at his employer's expense:

Provided further that the Commissioner may grant an exemption from the provisions of this section when he considers its application impracticable or undesirable.

- (4) The Commissioner may after consultation with any employers' and workers' organisations representative of the interests concerned, exclude from the application of this section contracts entered into between employers and literate workers whose freedom of choice in employment is satisfactorily safeguarded; such exclusion may apply generally, or to workers in any specified industry or undertaking or to special groups of workers.

**62 Transfer to other employment**

- (1) The transfer of any contract from one employer to another shall be subject to the consent of the worker and the endorsement of the transfer upon the contract by the Commissioner.
- (2) Before endorsing the transfer upon the contract the Commissioner —

- (a) shall ascertain that the worker has freely consented to the transfer and that his consent has not been obtained by coercion or undue influence or as a result of misrepresentation or mistake; and
- (b) in any case in which by such transfer the worker —
  - (i) will change his form of employment from one which is the subject of an exemption made under the provisions of section 59(3); or
  - (ii) will be subject to such change in conditions as in the opinion of the Commissioner renders such a course advisable,  
may require the worker to be medically examined or re-examined as the case may be by a medical officer or other person approved for that purpose by the Health Officer.

### **63 General termination of contract**

- (1) A contract shall be terminated —
  - (a) by the expiry of the period for which it was made; or
  - (b) by the death of the employer or worker before the expiry of the term for which it was made.
- (2) The termination of a contract by the death of the worker shall be without prejudice to the lawful claims of any person entitled to claim through or under him.
- (3) If the employer is unable to fulfil a contract or if owing to the sickness or accident the worker is unable to fulfil the contract, the contract may be terminated with the consent of the Commissioner subject to conditions safeguarding the right of the worker to wages earned, any deferred pay due to him, any compensation due to him in respect of accident or disease, and his right to repatriation.
- (4) A contract may be terminated by agreement between the parties with the consent of the Commissioner subject to conditions safeguarding the worker from the loss of his right to repatriation unless the agreement for the termination of the contract otherwise provides and to the Commissioner being satisfied —
  - (a) that the worker has freely consented to the termination and that his consent has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake; and
  - (b) that all monetary liabilities between the parties have been settled.
- (5) A contract other than a contract to perform some specific work without reference to time, may be terminated by either party giving to the other notice of such termination in accordance with the terms of the contract, the minimum requirements of which shall be —

- (a) where the duration is for more than 1 month the period of notice shall be not less than 14 days and may be given only after the expiry of the first month of employment, or
- (b) where the duration is for 1 month or less the period of notice shall be not less than 7 days:

Provided that an equitable settlement of monetary and other conditions including the question of repatriation shall be agreed upon between the worker and the employer, and in default of such agreement either party may refer the matter to the Commissioner who shall make such order, including the award of any subsistence expenses reasonably incurred pending such order, as may be just and equitable.

#### **64 Cancellation of contract by Commissioner**

- (1) A contract may be cancelled by an order of the Commissioner if the worker is subject to ill-usage in person or property or if in pursuance of the provisions of this Act the worker applies to the Commissioner so to do and in such event the Commissioner may award the worker reasonable compensation and order it to be paid by the employer.
- (2) It shall be a defence to any charge of failing to comply with an order for the payment of compensation under this section that the amount of such compensation was unreasonable but the onus of establishing such unreasonableness shall be upon the defendant in the proceedings.

#### **65 Dismissal by the employer without notice**

An employer shall not dismiss a worker employed by him without notice except in the following circumstances —

- (a) where the worker is guilty of misconduct, whether in the course of his duties or not, inconsistent with the fulfilment of the express or implied conditions of his agreement;
- (b) for wilful disobedience to lawful orders given by the employer;
- (c) for lack of the skill which the worker expressly or implicitly warrants himself to possess;
- (d) for habitual or substantial neglect of his duties;
- (e) for absence from work without leave from the employer or absence without other reasonable cause.

#### **66 Contracts for service outside Tuvalu**

Where any contract made in Tuvalu relates to employment in any place outside Tuvalu —



- (a) the attestation of the contract required by section 55 shall take place before the Commissioner before the worker leaves Tuvalu;
- (b) the medical examination required by section 59 shall take place at the latest at the place of departure of the worker from Tuvalu;
- (c) a person whose apparent age is less than either the minimum age prescribed in section 60 or the minimum age of capacity for entering into a contract allowed by the law of the place of employment if such minimum age is higher than that prescribed in section 60 shall not be capable of entering into a contract;
- (d) the contract shall contain a provision that it is not transferable unless such transfer is endorsed on the contract by a public officer of the place of employment;
- (e) the duration stipulated in the contract shall not exceed either the maximum period prescribed in section 61 or the maximum period prescribed by the law of the place of employment whichever is less;
- (f) if the laws of the place of employment are substantially the same as this Part the conditions under which the contract is subject to termination and any question of exemption from liability for repatriation shall be determined by the law of the place of employment;
- (g) if the laws of the place of employment differ from the laws of Tuvalu in respect to repatriation the Commissioner may require such deposit or security from the employer as he deems necessary and such deposit or security may be used to defray the costs of repatriation at the discretion of the Commissioner;
- (h) the Commissioner shall co-operate with the appropriate authority of the place of employment to ensure the application of the provisions of section 71(2);
- (i) the Commissioner may require the employer to deposit cash or enter into a bond as security for the cost of repatriation of the worker.

## **67 Extraterritorial contracts for employment in Tuvalu**

When a contract made in any place outside Tuvalu (in this section referred to as the place of origin) relates to employment in Tuvalu —

- (a) If such place of origin has enacted laws substantially the same as this Part and the parties to the contract have complied with all the provisions of such laws prior to the worker leaving such place of origin, then —
  - (i) the endorsement of a transfer on a contract shall be made by the Commissioner as provided in section 62;
  - (ii) the conditions under which the contract is subject to termination shall be determined by the provisions of this Act;

- (iii) if the employer fails to fulfil his obligations in respect of repatriation the said obligations may be discharged by the Commissioner as provided in section 69 and such expenses may be recovered from the employer as a debt due to the Government;
  - (iv) the authority which may exempt the employer from liability for repatriation expenses and exercise any other powers conferred upon a competent authority in the place of origin shall be the Commissioner;
  - (v) the Commissioner shall co-operate with the appropriate authority of the place of origin to ensure the application of the provisions of section 71(2).
- (b) If such place has not enacted laws substantially the same as this Part or if it has enacted such laws and any party to the contract has not fully complied with any provisions thereof in respect of such contract then the whole of the provisions of this Part or such portion thereof as has not been complied with shall be complied with immediately upon the arrival of the worker in Tuvalu and thereafter the provisions of this Part shall be deemed to apply *mutatis mutandis* as if such contract had been entered into in Tuvalu.

## **68 Employment of immigrant workers**

No person shall knowingly employ any immigrant worker unless he has obtained a licence from the Commissioner to do so in such form and subject to such conditions as may be prescribed:

Provided that, for the purposes of this section, if an immigrant worker has terminated his contract in accordance with the provisions of section 63 he shall not be regarded as an immigrant worker.

## **69 Rights and obligations of worker and employer in respect of repatriation**

- (1) Every worker who is a party to a contract under this Act and who has been brought to the place of employment by an employer or by any person acting on behalf of the employer shall have the right to be repatriated at the expense of the employer to his place of origin or to the place of engagement, if the latter be nearer to the place of employment and the laws of the place of engagement permit, in the following cases —
- (a) on the termination of the contract by expiry of the period for which it was made;
  - (b) on the termination of the contract by reason of the inability of the employer to fulfil the contract;

- (c) on the termination of the contract by reason of inability of the worker to fulfil the contract owing to sickness or accident;
  - (d) on the termination of the contract by notice subject to the provisions of the particular contract and Part VI of this Act;
  - (e) on the cancellation of the contract under section 64;
  - (f) on the termination of the contract by agreement between the parties, unless the Commissioner otherwise decides.
- (2) Where any dependant of the worker has been brought to the place of employment by the employer or by any person acting on behalf of the employer such dependant shall be repatriated at the expense of the employer whenever the worker is repatriated or in the event of his death.
- (3) The expenses of repatriation shall include —
- (a) travelling and subsistence expenses during the journey; and
  - (b) subsistence expenses during the period, if any, between the date of termination of the agreement or contract and the date of repatriation; and
  - (c) provision of decent interment and the payment of the reasonable expenses of burial in the event of death of a worker occurring during the course of, or pending, repatriation.
- (4) The employer shall not be liable for subsistence expenses in respect of any period during which the repatriation of the worker has been delayed —
- (a) by the worker's own choice; or
  - (b) for the reasons of *force majeure* unless the employer has been able during the said period to use the services of the worker at the rate of wages stipulated in the expired contract.
- (5) Every immigrant worker who is ordered to leave Tuvalu in accordance with the provisions of any law for the time being in force in Tuvalu shall be repatriated at the expense of the employer to his place of origin or to the place of engagement, if the latter be nearer to the place of employment and the laws of the place of engagement permit.
- (6) If the employer fails to fulfil his obligation in respect of repatriation the said obligation shall be discharged by or under directions of the Commissioner and any sum expended may be covered from the employer or employers by civil suit as a debt due to the Government.

## 70 Exemption from obligation to repatriate

The Commissioner may exempt the employer from liability for repatriation expenses in the following cases —

- (a) when the Commissioner is satisfied —

- (i) that the worker by a declaration before the Commissioner has signified that he does not wish to exercise his right to repatriation; and
- (ii) that the worker has been settled at his request or with his consent at or near the place of employment;
- (b) when the Commissioner is satisfied that the worker by his own choice has failed to exercise his right of repatriation before the expiry of 30 days from the date of termination of the agreement or contract;
- (c) when the liability of the employer has been provided for under any of the provisions of any fund established under the provisions of this Act or any regulation thereunder;
- (d) when the agreement or contract has been terminated otherwise than by reason of the inability of the worker to fulfil the agreement or contract owing to sickness or accident and the Commissioner is satisfied —
  - (i) that in fixing the rates of wages proper allowance has been made for the payment of repatriation expenses by the worker; and
  - (ii) that suitable arrangements have been made by means of a system of deferred pay or otherwise to ensure that the worker has funds necessary for the payment of such expenses.

## **71 Employer to provide transport**

- (1) The employer shall whenever possible provide transport for workers who are being repatriated.
- (2) The Commissioner shall take all necessary measures to ensure and may give such directions to the employer or to any person acting on behalf of the employer as will ensure —
  - (a) that all vehicles or vessels used for transport of workers are suitable for such transport, are in good sanitary condition and are not overcrowded;
  - (b) that when it is necessary to break the journey for the night suitable accommodation is provided for the workers;
  - (c) that when the workers have to make long journeys on foot the length of the daily journey is compatible with the maintenance of their health and strength; and
  - (d) that in the case of long journeys suitable arrangements are made for medical assistance and for the welfare of the workers.
- (3) When the workers have to make long journeys in groups they shall be conveyed by a responsible person to be approved by the Commissioner.

## 72 Summaries of law

The Commissioner may cause to be printed in English or in any appropriate language concise summaries of the provisions of this Part relating to contracts, and every employer upon being directed so to do by the Commissioner and upon being furnished by him with the aforesaid summaries shall exhibit the same in such manner as the Commissioner may require.

## 73 Penalty

Any person who acts in contravention of, or fails to comply with, any of the provisions of this Part, or an order made by the Commissioner pursuant thereto, shall be liable to a fine of \$100, and may, where the offence is under section 64, be further ordered to pay such compensation as the Commissioner has awarded under that section, which compensation shall be recovered as a fine.

# PART VII - FORCED LABOUR

## 74 Interpretation

In this Part —

“**forced or compulsory labour**” means all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily, 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;
- (c) unpaid labour on minor communal works lawfully required by a local government council.

**75 Prohibition of forced labour**

Any person who exacts, procures or employs forced or compulsory labour is guilty of an offence and shall be liable to a fine of \$100.

**PART VIII - EMPLOYMENT OF WOMEN****76 Interpretation**

For the purposes of this Part —

“**night**” means the interval between 6 o'clock in the evening and 6 o'clock the next morning;

“**women**” includes all persons of the female sex.

**77 Prohibition of employment of women at night**

Women shall not be employed during the night in any undertaking, except where the night work —

- (a) has to do with raw materials or materials in course of treatment which are subject to rapid deterioration; or
- (b) is necessitated by an emergency which it was impossible to foresee and which is not of a recurring character; or
- (c) is that of a responsible position of management held by a woman who is not ordinarily engaged in manual work; or
- (d) is that of nursing and of caring for the sick, or other health or welfare work; or
- (e) is carried on in a cinematograph or other theatre while such theatre is open to the public; or
- (f) is carried on in connection with a hotel or guest house, or with a bar, restaurant or club; or
- (g) is carried on by a registered pharmacist; or
- (h) is not prohibited by an international convention applying to Tuvalu and is specifically declared by the Minister by order to be work upon which women may be so employed.

**78 Suspension of prohibition**

The Minister may by order from time to time suspend the prohibition of the employment of women during the night when in case of serious emergency the public interest so demands.

**79 Prohibition of employment of women in mines**

- (1) No woman shall be employed on underground work in any mine:  
Provided that this subsection shall not apply —
  - (a) to women holding positions of management who do not perform manual work; or
  - (b) to women employed in health or welfare services.
- (2) In this section the expression “mine” shall include any undertaking, whether public or private, for the extraction of any substance from under the surface of the earth.

**80 Women employed to be permitted to be absent from work in certain circumstances**

- (1) Notwithstanding any agreement to the contrary express or implied, an employer shall allow a woman employee to leave her work upon production by her of a medical certificate given by a medical practitioner stating that her confinement will probably take place within 6 weeks, and shall not permit her to work during the 6 weeks following her confinement.
- (2) While absent from her work in pursuance of the provisions of subsection (1) a woman employee shall be entitled to be paid not less than 25 per cent of the wages she would have earned had she not been so absent.
- (3) An employer shall allow a woman employee who is nursing a child half an hour twice a day during her working hours for this purpose.

**81 Restriction on dismissal of woman employee**

No employer shall give notice of dismissal to a woman employee who is absent in pursuance of the provisions of section 80, or who remains absent as a result of illness certified by a medical practitioner to arise out of pregnancy or confinement and rendering her unfit for work until such absence has exceeded in all a period of 12 weeks.

**82 Penalty**

Any person who acts in contravention of, or fails to comply with, any of the provisions of this Part commits an offence and shall be liable to a fine of \$50.

## **PART IX - EMPLOYMENT OF CHILDREN AND OTHER YOUNG PERSONS**

### **83 Interpretation**

- (1) For the purposes of this Part —  
“**night**” has the same meaning as in Part VIII; and  
“**ship**” means any sea-going vessel or boat whatsoever (other than a ship of war) engaged in maritime navigation, whether privately or publicly owned.
- (2) The Minister for the purposes of this Part may by notice exclude from the definition of “industrial undertaking” —
  - (a) processes conducted for the preservation and despatch of the agricultural products of any particular undertaking or class of undertaking; and
  - (b) undertakings in respect of which, from their nature and size, adequate supervision may be impracticable.

### **84 Employment of children under 14 forbidden**

A child under the age of 14 shall not be employed.

### **85 Employment of persons under 15**

- (1) A person under the age of 15 shall not be employed or work —
  - (a) in any industrial undertaking, or in any branch thereof except in employment approved by the Minister; or
  - (b) on any ship.
- (2) Nothing contained in the preceding subsection shall prevent the employment of a person under the age of 15 years upon work upon a school-ship or a training-ship when such work is approved and supervised by a public authority.

### **86 Employment underground of male persons under 16**

A male person under the age of 16 shall not be employed underground in any mine.

### **87 Employment of persons under 18**

A male person under the age of 18 shall not be employed or work —



- (a) underground in any mine unless he has attained the age of 16 and produces a medical certificate of a medical practitioner or a person approved for that purpose by the Health Officer attesting his fitness for such work;
- (b) on any ship as a trimmer or stoker:  
Provided that a male person between the ages of 16 and 18 may be employed on a ship mainly propelled by means others than steam or as a trimmer or stoker on a ship exclusively engaged in the coastal trade if he is certified by a medical practitioner to be physically fit for such work;
- (c) on any kind of work on a ship unless certified by a medical practitioner to be fit for such work:  
Provided that in urgent cases the Commissioner may permit the embarkation of a male person under the age of 18 without prior medical examination, and in such case the employer shall at his own expense have such person medically examined by a medical practitioner at the first place of call at which there is a medical practitioner, and should such practitioner not attest such person as fit for the work, the employer shall at his own expense return such person as a passenger to the port or place where he was engaged, or to his home, whichever is the nearer; or
- (d) during the night in any industrial undertaking:  
Provided that a male person over the age of 16 may be so employed with the permission in writing of the Commissioner.

## **88 Register of young persons**

Every employer in an industrial undertaking and every master of a ship shall keep a register of all persons under the age of 18 years employed in such undertaking or on such ship, and shall enter therein the names of such employed persons, the dates of their birth and the dates when their employment begins and ceases; and such register shall at all reasonable times be open to inspection by the Commissioner or other officer authorised by him.

## **89 Presumption of age**

- (1) If in the case of proceedings in respect of an offence under the provisions of this Part it is alleged by the person conducting the prosecution that the person in respect of whom the offence was committed was under the age of 18, 16, 15 or 14, as the case may be, at the date of the commission of the alleged offence the magistrate shall, after such inquiry as he may think necessary and after hearing any evidence that may be tendered by either party to the proceedings determine the age of the said person and such determination shall be final.

- (2) It shall be a sufficient defence to any charge against an employer or master of a ship for contravening or failing to comply with any provision of this Part if it shall be made to appear to the court before which the charge is brought that the person so charged had reasonable cause to believe that the child or other young person employed was of an age at which the child or other young person could be employed without contravening this Part.

## 90 Penalty

Any person who acts in contravention of, or fails to comply with, any of the provisions of this Part, shall be liable to a fine of \$50.

# PART X - APPRENTICES

## 91 Interpretation

In this Part —

“**guardian**” includes any person lawfully having charge of a person under the age of 16.

## 92 Contracts of apprenticeship of person over 14 and under 16

The parent or guardian of a person above the age of 14 and under the age of 16 years may, with the consent of such person, apprentice him to an employer to train him or have him trained systematically for a trade or employment in which art or skill is required, for any term not exceeding 5 years.

## 93 The Commissioner may appoint person to execute contract of apprenticeship

Whenever any person above the age of 14 years and under the age of 16 years is without known parents or guardian, the Commissioner may, with the consent of such person, appoint some fit and proper person to execute a contract of apprenticeship on his behalf.

## 94 Contracts of apprenticeship of persons over 16 years

Any person of the age of 16 years or upwards, not being under any contract of apprenticeship may apprentice himself for any term not exceeding 5 years, to any trade or employment in which art or skill is required.

**95 Assignment of contracts of apprenticeship**

A contract of apprenticeship may, with the consent of the parties endorsed thereon and with the permission of the Commissioner, be assigned.

**96 Attestation of contract of apprenticeship**

A contract of apprenticeship shall not be valid unless it is in writing and is approved and attested by the Commissioner.

**97 Duties of Commissioner on attesting contract of apprenticeship**

Before attesting any contract of apprenticeship the Commissioner shall satisfy himself —

- (a) that the apprentice has freely consented to the contract;
- (b) that the apprentice has been medically examined and certified by a medical practitioner to be physically and mentally fit to be employed and trained in the trade or employment specified in the contract;
- (c) that both parties to the contract have fully understood the terms of the contract;
- (d) that provision has been made in the contract as to how the apprentice's remuneration is to be determined, and as to the scale of increments, if any;
- (e) that the provision has been made for payment of such remuneration during illness and holidays, if any;
- (f) that in any case where the apprentice is unable to return to his home at the conclusion of each day, the contract contains adequate provision to ensure that the apprentice is supplied with food, clothing, accommodation and medical attention; and
- (g) that the terms of the contract are in accordance with the provisions of this Act.

**98 Retention of apprentices after expiry of contract**

If any person retains an apprentice in his service after the stipulated period of service has expired without making any agreement for the payment of wages, the apprentice shall be entitled to recover from such person wages at the current rate payable for service similar to that performed by such apprentice.

**99 Powers of Commissioner**

The provisions of section 63 of this Act relating to the powers of the Commissioner in connection with the termination of contracts shall apply to contracts of apprenticeship.

**100 Exemption of employer from provisions of this Part**

The Commissioner may by writing under his hand exempt from the provisions of this Part contracts of apprenticeship made or to be made by any employer who satisfies him that the terms and conditions of such contracts are not less favourable to the apprentice than those provided for by this Part.

**101 Cancellation of exemption**

An exemption made under provisions of the preceding section may at any time be revoked by the Commissioner.

## **PART XI - CARE OF WORKERS**

**102 Interpretation**

In this Part the expression “dependant” means any person dependent upon the worker who is living with him at the place of employment in pursuance of an agreement between the parties to the contract of employment.

**103 Rations**

An employer shall, if required by the Commissioner, or may by agreement with the worker, provide a worker with rations on the prescribed scale:

Provided that where rations are provided by the employer, the Commissioner shall, notwithstanding the provisions of sections 16, 17 and 18, prescribing the cash equivalent of the rations which may be deducted from the wages.

**104 Water**

Every employer shall provide a sufficient and proper supply of water for workers and their dependants.

**105 Sanitary arrangements**

Every employer shall make or cause to be made sufficient and proper sanitary arrangements for workers and their dependants.

**106 Housing**

Every employer shall cause every worker who cannot return to his home at the conclusion of his daily work and his dependants to be properly and adequately housed.

**107 Medical care and treatment**

- (1) At every place of employment the employer shall provide for all workers such medical attention and treatment with medicines of good quality, first-aid equipment and appliances for the transportation of sick or injured workers as may be required by the Commissioner or Health Officer.
- (2) Every employer shall take, or cause to be taken, for treatment with as little delay as possible every worker injured or falling ill during the course of his employment and every resident worker and resident dependant on a place of employment requiring medical attention at a hospital or dispensary to the hospital or dispensary maintained for the workers at such place of employment, or, if there is no such hospital or dispensary, to the nearest hospital or dispensary maintained by the Government or approved by the Commissioner or the Health Officer and shall provide any transport necessary therefore.
- (3) The cost of maintenance and treatment in hospital of a worker and his dependants residing on the place of employment shall be borne or paid by the employer as long as the worker remains in his employment.

**108 Hospital maintained by employers**

- (1) Any employer may be required in writing by the Commissioner or Health Officer, having regard to the situation of any place of employment and the number of workers employed and resident thereon, at his own expense to provide and maintain —
  - (a) a room properly equipped as a sickroom with accommodation for not less than 10 per cent of his workers; or
  - (b) a separate building properly equipped as a hospital with accommodation for not less than 10 per cent of his workers; and
  - (c) the services of a medical practitioner or such other person as may be approved by the Health Officer.
- (2) Every employer who is required by the provisions of subsection (1) to maintain a sickroom or hospital shall keep a register of all patients admitted thereto and shall produce it for inspection on demand of the Commissioner or the Health Officer.

**109 Directions in regard to housing and sanitation**

Every employer shall observe all reasonable directions given to him by the Commissioner or Health Officer in regard to the housing of workers and the sanitation of the buildings and provision of medical facilities and attendance.

**110 Reporting of deaths**

An employer shall forthwith report the death of a person in his employment to the Commissioner and such report shall whenever possible be accompanied by a medical certificate stating the cause of death.

**111 Conveying of workers by sea**

A master or other person in charge of any vessel in which any worker is conveyed from his place of engagement for employment or recruitment, to the place of employment, or from such place of employment to his home upon repatriation, other than a vessel in respect of which a valid and unexpired certificate of seaworthiness under the Lagoon Shipping Act is in force and which is provided with sufficient duly certificated officers in accordance with the provisions of that Act, shall be guilty of an offence.

**112 Penalty**

Any person who contravenes or fails to comply with any provisions of this Part shall be liable to a fine of \$100 and to imprisonment for 6 months.

**PART XII - GENERAL****113 Application to Crown**

This Act shall bind the Crown save and except that nothing in this Act contained shall apply or be construed to apply to or in relation to the following persons —

- (a) persons in the naval, military or air services of the Crown (other than locally engaged civilian employees); and
- (b) police officers.

**114 Priority for wages among debts of bankrupt or body corporate being wound up**

In the distribution of the property of a bankrupt upon his bankruptcy, and in the distribution of the assets of any body corporate upon its winding up, there shall be

paid in priority to all other debts all wages of any worker in respect of services rendered —

- (a) to the bankrupt within 2 months before the date of the order declaring him bankrupt, or
- (b) to the body corporate within 2 months of the resolution or order winding it up or the appointment of a provisional liquidator,

as the case may be.

### **115 Criminal proceedings**

The Commissioner may institute and conduct the prosecution in any proceedings for an offence against the provisions of this Act.

### **116 Civil proceedings**

In any civil proceedings between an employer and a worker in his employment the Commissioner may appear on behalf of the worker.

### **117 Court fees**

No fees of court shall be charged in any proceedings whether civil or criminal arising out of the provisions of this Act.

### **118 Power to exempt persons from provisions of this Act**

The Minister may by order exempt any person or class or group of persons from all or any of the provisions of this Act.

## **PART XIII - REGULATIONS**

### **119 Minister may make regulations**

- (1) The Minister may make regulations generally for the better carrying out of the provisions of this Act and, without derogation from the generality of the foregoing, for all or any of the following purposes —
  - (a) the appointment and regulation of advisory boards to advise on labour matters generally and in particular to advise on fair minimum rates of wages and size of tasks;
  - (b) prescribing registers of wage payments to be kept by employers, requiring the issue to workers of statements of wage payments,

- prescribing the intervals at which wage payments shall be made and generally to ensure the proper payment of all wages earned;
- (c) prescribing the maximum size of tasks;
  - (d) prescribing the areas within which worker-recruiters, as defined in Part V, may recruit and the manner in which the operations of such worker-recruiters shall be supervised;
  - (e) the establishment of a fund or other method to make provision for securing the expense of recruitment, transport or repatriation of workers upon such terms and conditions and subject to such control as he deems necessary, and for the administration of such a fund;
  - (f) prescribing conditions under which women may be employed during the night in cases where such employment is permitted by this Act, and providing for the health and safety of women employed;
  - (g) restricting or prohibiting the employment of women in any specified class of undertaking;
  - (h) providing generally for the protection of workers and for the protection of employed children and other employed young persons under the age of 18;
  - (i) in the case of unhealthy, dangerous or onerous work, prescribing higher minimum wages than those specified in sections 84 and 85;
  - (j) prescribing the form of contracts of apprenticeship and the terms and conditions upon which such contracts may be lawfully entered into, and the rights and obligations of apprentices and their masters;
  - (k) the registration of contracts of apprenticeship;
  - (l) the number of apprentices who may be apprenticed during a specified period in any specified trade or employment;
  - (m) forbidding the taking of apprentices by persons not possessing specified qualifications;
  - (n) the provision, by such means as he may deem expedient, of adequate supervision over the employment and training of apprentices;
  - (o) the holding of examinations of apprentices and the issue of certificates based on the results thereof;
  - (p) prescribing scales for rations where such are provided by the employer under the provision of section 103;
  - (q) prescribe minimum standards of housing, furniture, sanitation and water supply for workers;
  - (r) prescribing scales of medicine and sick room and hospital equipment;
  - (s) prescribing records to be kept by employers and forms to be used for the purposes of this Act;



- (t) making provisions for persons employed in undertakings generally, or in a particular undertaking, to be entitled to holidays with or without pay;
  - (u) prescribing any fee, rate, matter or thing which is required, or appears to be expedient, to be prescribed under or in connection with this Act and to provide for the remission of fees;
  - (v) providing for the protection of persons, as regards their health and safety, against exposure to ionizing radiations in the course of their work;
  - (w) providing for indemnification of seamen against unemployment resulting from the loss or foundering of any vessel on which they have contracted for service.
- (2) Regulations made under this Act may provide for the imposition of a penalty for a breach thereof, not exceeding a fine of \$40 or imprisonment for 3 months, or to both such fine and such imprisonment.

## **PART XIV - SAVING**

### **120 Saving**

All contracts entered into between any employer and any worker valid and in force on 22nd April 1966 shall continue to be in force after such date and, subject to the express provisions contained in any such contract, the parties thereto shall be subject to and entitled to the benefits of this Act.

**ENDNOTES**

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<sup>1</sup> 1990 Revised Edition, Cap. 84 – Acts 6 of 1965, 9 of 1969, 8 of 1971, 3 of 1972, LN 33/69

<sup>2</sup> Cap. 28.12