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An Act to—

(a) reform the law concerning employment relations and the negotiation of individual and collective employment agreements in the employment sector in the Cook Islands; and

(b) provide for maternity leave payments by the Crown to eligible employees; and

(c) make consequential amendments.

(12 December 2012

The Parliament of the Cook Islands enacts as follows—

1 Title

This Act is the Employment Relations Act 2012.

2 Commencement

This Act comes into force on a date or dates to be appointed by the Queen's Representative, by Order in Executive Council, and different dates may be appointed for different islands and for different sections of this Act.

3 Interpretation

In this Act unless the context otherwise requires—

Association means a group or society of employees or employers that exists, in whole or in part, to further the interests of the employees or employers who belong to it, whether incorporated or not, and includes a union

Casual employee means an employee—

(a) whose working hours are irregular; or

(b) who works intermittently; or

(c) who is employed for short term work only

Collective agreement means an employment agreement binding on one or more employers and two or more employees

Cook Islander has the meaning given by the Entry, Residence and Departure Act 1971-71

De facto relationship: see section 4

Disability means a congenital or permanent physical impairment, including any sensory impairment, or an intellectual or developmental disability, or a loss or abnormality of physiological or anatomical structure or function, or a psychiatric disability

Employee means a person engaged to work under an agreement or contract of service and—

(a) includes—

(i) a person paid by the number of units the person produces; and

(ii) a person intending to work; but

(b) does not include an independent contractor engaged under a contract for services

Employees' organisation means an association of employees

Employer means a person who employs an employee or employees

Employment agreement means an agreement under which an employee is employed and includes—

(a) an individual employment agreement; and

(b) a collective employment agreement

Employment dispute: see section 60

Foreign worker means an employee who is not—

(a) a Cook Islander; or

(b) a permanent resident; or

(c) the child or spouse of a Cook Islander or permanent resident

Full time employee means an employee, other than a casual employee, who—

(a) is employed by an employer for at least 35 hours a week; and

(b) has regular hours of work each week; and

(c) has a reasonable expectation that he or she will continue to be employed by the employer for at least 35 hours a week

Individual employment agreement means an employment agreement that is binding on only one employer and one employee

Inspector means a person designated by the Secretary as an inspector under section 78

Minimum terms and conditions means the terms and conditions provided for by sections 31 to 34, and 36 to 51

Minister means the Minister of the Crown who, with the authority of the Prime Minister, is responsible for the administration of this Act

Ministry means the Department that, with the authority of the Prime Minister, is responsible for the administration of this Act

Normal hours of work, for an employee, means—

(a) the days of the week that the employee is normally required to work; and

(b) the number of hours that the employee is normally required to work on each of the employee's working days

Ordinary rate of pay, for an employee, means the rate of pay the employee is entitled to, under the employee's employment agreement, for the employee's normal hours of work

Part time employee means an employee, other than a casual employee, who—

(a) is employed by an employer for less than 35 hours a week; and

(b) has regular hours of work each week; and

(c) has a reasonable expectation that he or she will continue to be employed by the employer for those hours each week

Permanent resident has the meaning given by the Entry, Residence and Departure Act 1971-71

Person intending to work means a person who has accepted an offer of employment

Prescribed means prescribed by regulations made under this Act

Personal grievance: see section 61

Public holiday, in relation to an employee, means a day, other than a Sunday, that the Public Holidays Act 1999 provides is to be observed as a public holiday at the location at which the employee is employed

Public Service has the meaning given by the Public Service Act 2009

Representative means a person or association that represents the interest of employers or employees in—

(a) negotiations for a collective agreement or individual employment agreement; or

(b) employment disputes

Salaried employee means an employee whose wages are calculated on the basis of an annual salary rather than as an hourly rate

Secretary means the Head of Department of the Department responsible for the administration of this Act

Spouse means—

(a) either of two persons who are married; or

(b) either of two persons who are in a de facto relationship

Wages means money or any other thing paid, delivered, or given, or required to be paid, delivered or given, to an employee by an employer as recompense, reward, remuneration, or consideration for services, work, or employment carried out by the employee

Wages, time and leave record means a record kept under section 52

Working days, for an employee, means the days the employee is normally required to work

Work site means any building, office, or place at which one or more employees are employed.

4 Definition of de facto relationship

(1) For the purposes of this Act, a de facto relationship means a man and a woman who are living together as if they were husband and wife.

(2) In determining whether a person is in a de facto relationship, the following factors may be considered—

(a) the length of the period during which the parties have been living together (or lived together):

(b) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties:

(c) the degree of mutual commitment to a shared life:

(d) the degree of shared care and support of children.

(3) No finding in respect of any of the specific factors listed in subsection (2), or any specific combination of them, is necessary for a finding that there is or has been a de facto relationship.

Part 1
Objects of this Act

5 Objects of this Act

The objects of this Act are—

(a) to create a regulatory framework for good employment relations between employers and employees:

(b) to provide for freedom of association:

(c) to provide choice for employers and employees in their employment agreements:

(d) to ensure all employees are employed under at least the minimum terms and conditions:

(e) to provide for the rights and responsibilities of employers and employees:

(f) to establish a framework for resolution of employment disputes encouraging, so far as is consistent with the interests of justice, speedy and low cost dispute resolution in order to minimise the possible adverse effects of such disputes:

(g) to promote observance in the Cook Islands of the principles underlying international agreements to which the Cook Islands is a party; and

(h) to promote the sustainable social and economic development of the Cook Islands.

6 Application of Act

This Act applies throughout the Cook Islands.

7 Application of the Act to the Crown

This Act binds the Crown.

Part 2
Freedom of Association and Collective Agreements

Freedom of association

8 Object of subpart

The object of this subpart is to establish that—

(a) employees and employers have the freedom to choose whether or not to form an association or be members of an association for the purpose of advancing their collective employment interests; and

(b) no person may, in relation to employment issues, confer any preference or apply any undue influence, directly or indirectly, on another person because the other person is or is not a member of an association.

9 Voluntary membership of employees' and employers' associations

A contract, agreement or other arrangement between persons must not require a person—

(a) to become or remain a member of an employees' association or employers' association or a particular employees' association or employers' association; or

(b) to cease to be a member of an employees' association or employers' association or a particular employees' association or employers' association; or

(c) not to become a member of an employees' association or employers' association or a particular employees' association or employers' association.

10 Preference

(1) A contract, agreement, or other arrangement between persons must not confer on a person, because the person is or is not a member of an association or a particular association—

(a) any preference in obtaining or retaining employment; or

(b) any preference in relation to terms or conditions of employment or opportunities for training, promotion, or transfer.

(2) Subsection (1) is not breached simply because an employee's employment agreement or terms and conditions of employment are different from those of another employee employed by the same employer.

(3) To avoid doubt, this Act does not prevent a collective agreement containing a term or condition that is intended to recognise the benefits—

(a) of a collective agreement:

(b) arising out of the relationship on which a collective agreement is based.

11 Undue influence

(1) A person must not exert undue influence, directly or indirectly, on another person with the intention of inducing the other person—

(a) to become or remain a member of an association or a particular association; or

(b) to cease to be a member of an association or a particular association; or

(c) not to become a member of an association or a particular association; or

(d) in the case of an individual who is authorised to act on behalf of employees or employers, not to act on their behalf or to cease to act on their behalf; or

(e) to resign from or leave any employment on account of the fact that the other person is or, as the case may be, is not a member of an association or of a particular association.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction,—

(a) in the case of an individual, to a fine not exceeding $1000; or

(b) in any other case, to a fine not exceeding $5000.

Collective agreements

12 Negotiation of collective agreements

A collective agreement may be negotiated between one or more employers and two or more employees employed by that employer, or by those employers.

13 Representation in negotiation of collective agreements

Employers or employees negotiating a collective agreement may choose to conduct their own negotiations, or be represented by a representative.

14 Authority to represent

(1) An employer or employee must not be represented by a representative in the negotiation of a collective agreement unless the employee or employer has given a written authority to the representative.

(2) If an employer or employer has given a representative a written authority to represent the employer or employee in negotiations, each other person with whom the negotiations are conducted must—

(a) accept the representative; and

(b) unless the employer or employee withdraws the authority - negotiate with the representative and not with the employer or employee.

15 Ratification of settlement

(1) If a group of employees or employers is represented by a representative in the negotiation of a collective agreement, the persons represented must, before negotiations commence, agree with their representative on the procedure to be followed for the ratification of the agreement by the persons represented.

(2) The representative must, before negotiations commence, advise the other parties to the negotiations of the agreed ratification procedure.

(3) The agreed ratification procedure is binding on the group of employees or employers to which it relates.

(4) A representative must not sign a collective agreement unless the persons represented by the representative have ratified the agreement in accordance with the procedure agreed to in accordance with subsection (1).

16 Parties to a collective agreement

The following persons may be a party to a collective agreement—

(a) an employer or employee covered by the agreement:

(b) the representative of an employer or employee covered by the agreement.

17 Form and content of collective agreements

(1) A collective agreement must be in writing and signed by the parties to the agreement.

(2) A collective agreement must contain the following—

(a) the date the agreement commences:

(b) the date or event on which the agreement expires:

(c) any other relevant events that are to occur; and

(d) the name of each employer covered by the agreement; and

(e) the name of each employee covered by the agreement or a description of the employees covered by the agreement:

(f) procedures for resolution of employment disputes; and

(g) procedures for varying the agreement.

(3) A collective agreement may also contain any other terms and conditions agreed to by the parties.

18 New employees

(1) A collective agreement may contain a term that allows new employees to be covered by the agreement and become a party to the agreement.

(2) In this section, "new employees" means persons who become employees of an employer covered by the agreement after the agreement has commenced.

19 Harsh or oppressive behaviour

(1) A person must not use harsh or oppressive behaviour during the negotiation of a collective agreement.

(2) A person must not be a party to a collective employment agreement that is harsh or oppressive.

(3) In determining whether a collective agreement is harsh or oppressive, or a whether a party behaved in a harsh or oppressive manner during negotiation of a collective agreement, consideration must be given to all relevant circumstances surrounding the creation of the agreement.

20 Commencement and expiry of collective agreements

(1) If a collective agreement has been ratified in accordance with the procedure agreed to in accordance with section 15, the agreement comes into force—

(a) if the agreement specifies a commencement date – on that date; or

(b) if the agreement does not specify a commencement date - on the date on which the last party to the agreement signs the agreement.

(2) A collective agreement expires on the earliest of the following dates—

(a) if the agreement specifies an expiry date – that date; or

(b) if the agreement specifies that it expires on an event – the date the event occurs; or

(c) three years after the date on which the agreement comes into force.

(3) However, if, at the date of expiry of a collective agreement, a new collective agreement has not commenced, the collective agreement continues in force in relation to the employment of an employee covered by the agreement until the earliest of the following events—

(a) a new collective agreement commences that covers the employee; or

(b) the employee and employer enters into an individual employment agreement.

21 Wage fixing terms

If a collective agreement contains provisions that fix a basis or method for the calculation of wages (wage fixing terms), the agreement may state that the wage fixing terms apply for a specified term not exceeding the term of the collective agreement.

22 Variation of collective agreement

A collective agreement may be varied by written agreement of the parties to the agreement.

Part 3
Individual Employment Agreements

23 Form of individual employment agreements

An individual employment agreement may be an agreement in writing signed by the employer and employee or an oral agreement between the employer and employee.

24 Content of individual employment agreements

(1) An individual employment agreement must contain the following—

(a) the date the agreement commences:

(b) if the agreement is for a fixed term - the date the agreement expires:

(c) the names of the employee and employer:

(d) a description of the work to be performed by the employee:

(e) the employee's normal hours of work:

(f) provisions for payment of wages, salary, leave; and

(g) procedures for resolution of employment disputes.

(2) An individual employment agreement may also contain any other terms and conditions agreed to by the parties.

25 Individual employment agreements not to be harsh or oppressive

(1) A person must not use harsh or oppressive behaviour during the negotiation of an individual employment agreement.

(2) A person must not enter into an individual employment agreement that is harsh or oppressive.

(3) In determining whether an individual employment agreement is harsh or oppressive, or a whether a party behaved in a harsh or oppressive manner during negotiation of an individual employment agreement, consideration must be given to all relevant circumstances surrounding the creation of the agreement.

26 Copy of written agreement must be provided to employee

If an employer and employee enter a written individual employment agreement, the employer must give a copy of the agreement to the employee before the employment commences.

Part 4
Minimum Terms and Conditions of Employment

27 Object of Part 4

The object of this Part is to ensure that the employment of all employees is subject to at least the minimum terms and conditions of employment.

28 Minimum terms and conditions – no employment agreement

If an employee does not have an employment agreement the employment of the employee is taken to be subject to the minimum terms and conditions.

29 Minimum terms and conditions – employment agreement

(1) The terms and conditions of employment provided for by an employment agreement must not be less favourable to the employee than the minimum terms and conditions, but may be more favourable to the employee.

(2) If an employment agreement provides for a matter covered by the minimum terms and conditions in way that is more favourable to the employee than the minimum terms and conditions, the provisions of the agreement apply, rather than the minimum terms and conditions, in relation to the matter.

(3) If an employment agreement does not provide for a matter covered by the minimum terms and conditions, or provides for such a matter in a way that is less favourable to the employee than the minimum terms and conditions, the employment of the employee is taken to be subject to the minimum terms and conditions in relation to the matter.

(4) However, subsections (3) and (4) are subject to subsection 42(2).

Hours of work and breaks

30 Young workers

(1) An employer must not employ a person who is under 13 years of age.

(2) An employer must not, without the approval of the Secretary, employ a school-age person—

(a) during normal school hours; or

(b) for more than 10 hours per week outside normal school hours; or

(c) for work other than light work.

(3) The Secretary may only give approval under subsection (2) if satisfied that the employment will not give rise to any educational or occupational safety and health risks to the school-age person.

(4) A person who contravenes subsection (1) or (2) commits an offence and is liable, on conviction,—

(a) in the case of an individual, to a fine not exceeding $1000; or

(b) in any other case, to a fine not exceeding $5000.

(5) In this section—

(a) a person is a "school-age person" if the person is—

(i) aged at least 13 years; and

(ii) aged less than 16 years, unless the Head of Ministry of the Ministry of Education has permitted the person to leave school on the basis that the person has secured other appropriate training or employment (for example, an apprenticeship)

(b) **light work** means work that does not threaten the child's health and safety, or hinder the child's education or vocational orientation and training.

31 Overtime pay

(1) If an employee, other than a salaried employee, works more than 40 hours in a week the employer must pay the employee overtime at the rate of one and a half times the employee's ordinary rate of pay for each hour worked in the week in excess of 40 hours.

(2) An employee may refuse to work more than 40 hours a week if it would be unreasonable to require the employee to do so (for example, the employee was not given reasonable notice of the extra hours, or there are health and safety reasons that would make it unreasonable).

32 Rest and meal breaks

(1) An employee who works at least 3 hours is entitled to take a rest period of not less than 10 minutes during the 3 hours.

(2) In addition, an employee who works more than 5 hours is entitled to a rest and meal period of at least 30 minutes after 5 hours work (including any rest break taken in accordance with subsection (1)).

Wages

33 Minimum rate of pay

An employee is entitled to be paid at a fair and reasonable rate, not less than the minimum rate or rates of pay prescribed by the Regulations, that is commensurate with—

(a) the rate normally paid to workers for the same, or similar, work; and

(b) the duties required of the employee; and

(c) the employee's experience and capabilities.

34 Review and amendment of minimum rate of pay

The Minister must review the minimum rate or rates of pay, prescribed by the Regulations, on an annual basis.

35 Method of payment of wages

(1) An employer must pay wages to an employee in the form of money, and not in any other form.

(2) An employer must pay wages to an employee as soon as the wages are due.

(3) An employer may, at the employee's request, pay wages by cash, electronic funds transfer, postal order, money order, specific cheque, or lodgement at a financial institution.

(4) An employer must pay wages to an employee at regular intervals as provided for by the employment agreement between the employer and employee.

(5) With each payment of wages, the employer must give the employee a written statement showing—

(a) the days and hours of worked:

(b) the gross amount of wages earned:

(c) any deductions made, including the reasons for those deductions; and

(d) the net amount of wages due and payable.

36 Wages protection

(1) An employer must not deduct money from an employee's wages except—

(a) in accordance with this Act; or

(b) as required by the Income Tax Act 1997; or

(c) as required by the Cook Islands National Superannuation Fund Act 2000; or

(d) with the prior agreement of the employee; or

(e) as required by a court order.

(2) An employer must not impose any conditions on the way in which an employee may spend the employee's wages.

(3) If an employer has overpaid an employee—

(a) the employer must, as soon as practicable, notify the employee and make arrangements with the employee for repayment of the overpayment; and

(b) the employee must repay the overpayment as soon as practicable.

Leave entitlements

37 Annual leave

(1) A fulltime employee is entitled to 10 working days annual leave, paid at the employee's ordinary rate of pay, for each 12 month period during which the employee is working or on paid leave.

(2) A part time employee is entitled to a number of annual leave days proportional to 10 working days for the number of hours worked proportional to full time hours for each 12 month period during which the employee is working or on paid leave.

(3) An employer may require an employee to work for a minimum period, not exceeding 6 months, before the employee takes annual leave for the first time after commencing his or her employment with the employer.

(4) The employee and employer must agree when the employee is to take annual leave, and the employer must, when considering an employee's request for leave, take into account work requirements and the need to provide to the employee reasonable opportunities for rest and relaxation.

(5) If an employee's employment is terminated before the employee has taken all annual leave to which the employee is entitled at the date of termination, the employee is entitled to be paid out any outstanding annual leave from the date of termination.

38 Public holidays

(1) An employee, other than a casual employee, is entitled to a holiday with pay, at the employee's ordinary rate of pay, if a public holiday falls on a day which would normally be a working day for the employee.

(2) However, if an employee, including a casual employee, is required by his or her employer to work on a public holiday, the employee is entitled to—

(a) be paid an hourly rate for work on the public holiday, as agreed between the employer and employee but not less than—

(i) for casual employees—double the hourly rate the employee was paid in the working day (other than a public holiday) preceding the public holiday; or

(ii) for full time and part time employees—double the employee's ordinary rate of pay; or

(b) have an extra day added to his or her annual leave entitlement; or

(c) receive time off in lieu for the time worked on the public holiday; or

(d) another reasonable arrangement that is not less favourable to the employee than the arrangements mentioned in paragraphs (a) to (c), as agreed between the employer and employee .

39 Sick leave

(1) A full time employee is entitled to 5 working days sick leave, paid at the employee's ordinary rate of pay, for each 12 month period during which the employee is working or on paid leave.

(2) A part time employee is entitled to a number of sick leave days proportional to 5 working days for the number of hours worked proportional to full time hours for each 12 month period during which the employee is working or on paid leave.

(3) Sick leave is to be used when the employee is unable to work because the employee is sick or has suffered an injury.

(4) An employer may require an employee to work for a minimum period, not exceeding 6 months, before the employee takes sick leave for the first time after commencing his or her employment with the employer.

(5) To be entitled to sick leave, the employee must—

(a) as soon as reasonably practicable, ensure that the employer is notified of the employee's absence and the reason for that absence:

(b) produce, at the employer's request, a written certificate, certifying the employee's inability to work and stating why the employee is unable to work, signed by—

(i) a qualified medical practitioner; or

(ii) where a qualified medical practitioner is not available, and the island is an island in the Cook Islands other than Rarotonga, a qualified nurse.

(6) In order to verify an entitlement to take sick leave, an employer may require an employee to undergo a medical examination at the employer's expense.

40 Maternity Leave

(1) An employee who is pregnant, other than a casual employee, is entitled to 6 weeks maternity leave.

(2) The employee must not commence the leave earlier than 2 weeks before the employee's expected delivery date, and must commence the leave no later than the date of the birth.

(3) If the employee returns to work at the expiry of the maternity leave or within 6 weeks of the birth, the employee is entitled to return to the position usually held by her prior to taking maternity leave, or to an equivalent position, on conditions equivalent to those which would have applied to her had she not taken maternity leave.

(4) The employee must, if requested by her employer, give the employer a written medical certificate from a qualified medical practitioner confirming the pregnancy and the expected date of delivery.

41 Payment of maternity leave

(1) Subject to subsections (3) and (4), an eligible employee on maternity leave in accordance with section 41 is entitled to be paid by the Crown at the minimum rate of pay prescribed under section 34 based on a 40 hour working week.

(2) Despite section 30, if the employee's employment agreement provides for the payment of maternity leave by the employer—

(a) the employer must make the payment in accordance with the agreement; and

(b) the payment by the employer is additional to any payment by the Crown to which the employee is entitled under subsection (1).

(3) To avoid any doubt, an eligible employee who, at the time of the birth, has more than one employer, is entitled to be paid for her maternity leave under subsection (1) in relation to only one employer.

(4) If the employee is a foreign worker, subsection (1) does not apply to the employee and the employee's maternity leave must be paid for by the employee's employer at not less than the minimum rate of pay prescribed under section 34.

(5) In this section, an employee is an "eligible employee" if the employee—

(a) is a registered taxpayer having pay as you earn deductions from her salary pursuant to sections 145 to 156 of Part IX of the Income Tax Act 1997 in respect of the employment for which the payment of maternity leave relates; and

(b) is not a public service employee (whether or not the employee has any other form of employment) who is entitled to be paid while on maternity leave under the Public Service Act 2009 or regulations or instructions made or issued under that Act.

42 Paternity leave

An employee, other than a casual employee, who is the spouse of a person who gives birth is entitled to 2 working days paid leave, paid at the employee's ordinary rate of pay, and 3 working days unpaid leave, in the 6 weeks following the birth.

Termination and Redundancy

43 Termination by employee

An employee wishing to terminate his or her employment agreement with an employer must give the employer at least one week's notice of the termination.

44 Termination by employer

An employer wishing to terminate the employment of an employee may only do so for reasons relating to one of more of the following—

(a) the employee's capacity to carry out the duties required by the employment agreement:

(b) the employee's conduct:

(c) a restructure of the employee's business, for genuine reasons, that creates a redundancy of an employee position.

45 Notice for termination relating to capacity

(1) If an employer terminates the employment of an employee for reasons relating to the capacity of the employee, the employer must either—

(a) give the employee not less than 7 days notice before the termination; or

(b) pay the employee not less than one week's pay (at the employee's ordinary rate of pay) in lieu of notice.

(2) Subsection (1) does not apply to a casual employee.

46 Notice for termination relating to conduct other than serious misconduct

(1) If an employer terminates the employment of an employee for reasons relating to the conduct of the employee (other than serious misconduct), the employer must either—

(a) give the employee not less than 7 days notice before the termination; or

(b) pay the employee not less than one week's pay (at the employee's ordinary rate of pay) in lieu of notice.

(2) Subsection (1) does not apply in relation to a casual employee.

47 Termination relating to serious misconduct

An employer may terminate the employment of an employee, without notice, for reasons relating to serious misconduct by the employee.

48 Notice for termination relating to redundancy

(1) If an employer terminates the employment of an employee for reasons relating to a genuine restructure of the employee's business, the employer must either—

(a) give the employee not less than 2 week's notice of the termination (not including any period during which the employee is on annual leave); or

(b) pay the employee not less than 2 week's pay (at the employee's ordinary rate of pay) in lieu of notice.

(2) In addition, the employer may pay the employee a final redundancy payment having regard to the employee's length of service and seniority (in addition to any entitlements mentioned in section 50).

(3) Subsections (1) and (2) do not apply in relation to a casual employee.

49 Entitlements on termination

(1) Upon termination of employment, the employer must, as soon as practicable, pay the employee—

(a) for any accrued annual leave not taken at the time of termination (at the employee's ordinary rate of pay); and

(b) any outstanding pay or other entitlements owing to the employee at the date of termination.

(2) However, paragraph (1) (a) does not apply if the employee chooses to take the annual leave after the date of termination in accordance with subsection 38(5).

50 Employer must give reasons for termination

(1) Before issuing a notice to terminate the employment of an employee for reasons relating to the capacity or conduct of the employee, the employer must—

(a) tell the employee, in writing, of the reasons for the termination; and

(b) give the employee a reasonable opportunity to respond and make submissions to the employer about why the employee's employment should not be terminated.

(2) Subsection (1) does not apply in relation to a casual employee.

Wages, time and leave records

51 Wages, time and leave record

(1) An employer must keep a record (a wages, time and leave record), in English, of the following information for each employee employed by the employer—

(a) the employee's name:

(b) the employee's age, if aged under 20 years:

(c) the employee's address:

(d) the date on which employment commenced:

(e) the kind of work in which the employee is usually employed:

(f) whether the employee is employed under a collective agreement or under an individual employment agreement:

(g) if the employee is employed under a collective agreement—

(i) the title and expiry date of the collective agreement; and

(ii) if the agreement provides for classifications of employees - the employee's classification

(h) if necessary for calculating the employee's wages, the hours between which the employee is employed on each day, and the days of the employee's employment during each wages period:

(i) the wages paid to the employee in each wages period and the method of calculation:

(j) the date on which the employee becomes entitled to annual leave:

(k) the dates on which leave is taken:

(l) the amount paid in respect of each period of leave taken:

(m) proof of payment of any amounts paid by the employer to the employee; and

(n) any other information specified by an inspector.

(2) The employer must also keep proof of payment of any amounts paid by the employer to the employee.

(3) The following persons may ask an employer for access to, a copy of, or an extract from, part or all of the wages, time and leave record relating to the employment of an employee by the employer at any time in the previous 3 years—

(a) the employee:

(b) a representative of the employee; or

(c) an inspector.

(4) The employer must comply with a reasonable request made under subsection (3).

Part 5
Discrimination, Harassment and Duress

52 Representative

(1) For purposes of this Part a representative, in relation to an employer, means a person

(a) who is employed by that employer; and

(b) who either

(i) has authority over the employee alleging the grievance; or

(ii) is in a position of authority over other employees in the workplace of the employee alleging the grievance.

53 Employer must not discriminate

(1) An employer, or representative of an employer, must not take adverse action against an employee or a prospective employee directly or indirectly because of a prohibited ground of discrimination mentioned in section 55.

(2) However, this section does not apply if –

(a) the adverse action is taken because of the inherent requirements of the particular position concerned; or

(b) the action is taken against an employee of an institution conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed and is taken:

(i) in good faith; and

(ii) to avoid injury to the religious susceptibilities of adherents of that religion or creed.

(A)

54 Adverse action

(1) An employer or representative of an employer takes adverse action against an employee if the employer—

(a) terminates the employee's employment for reasons relating to the employee's capacity or conduct; or

(b) subjects the employee to a detriment in circumstances in which other employees employed by that employer on work of the description would not be dismissed or subjected to such detriment; or

(c) retires the employee or causes the employee to retire or resign.

(2) For subsection (1) (b), an employer or representative of an employer subjects an employee to a detriment if the employer's action has a detrimental effect on the employee's employment, employment performance or employment satisfaction.

(3) An employer or representative of an employer takes adverse action against a prospective employee if the employer refuses to employ the prospective employee, or discriminates against the prospective employee in relation to the terms and conditions of employment offered to the prospective employee.

55 Prohibited grounds of discrimination

For section 53, the prohibited grounds of discrimination are—

(a) race, ethnic origin, skin colour or appearance:

(b) national origin:

(c) opinion and belief:

(d) religion:

(e) gender or sexual preference:

(f) disability:

(g) age:

(h) health status:

(i) Maternity.

56 Sexual harassment

(1) An employer, or the representative of an employer, must not sexually harass an employee in the employee's employment.

(2) An employee is sexually harassed in the employee's employment if the employee's employer, or a representative of the employer,—

(a) directly or indirectly makes a request of that employee for sexual intercourse, sexual contact, or other form of sexual activity that contains—

(i) an implied or overt promise of preferential treatment in the employee's employment; or

(ii) an implied or overt threat of detrimental treatment in the employee's employment; or

(iii) an implied or overt threat about the present or future employment status of the employee; or

(b) by the use of written or spoken language, visual material, or physical behaviour, of a sexual nature, directly or indirectly subjects the employee to behaviour—

(i) that is unwelcome or offensive to the employee (whether or not that is conveyed to the employer or representative); and

(ii) that, by its nature or through repetition, has a detrimental effect on the employee's employment, job performance, or job satisfaction.

57 Racial harassment

(1) An employer, or the representative of an employer, must not racially harass an employee in the employee's employment.

(2) An employee is racially harassed in the employee's employment if the employee's employer, or a representative of the employer, uses written or spoken language, visual material, or physical behaviour, that directly or indirectly—

(a) expresses hostility against, or brings into contempt or ridicule, the employee on the ground of the race, colour or ethnic or national origins of the employee; and

(b) is hurtful or offensive to the employee (whether or not that is conveyed to the employer or representative); and

(c) has, by its nature or though repetition, a detrimental effect on the employee's employment, job performance, or job satisfaction.

58 Duress

(1) An employer, or the representative of an employer, must not subject an employee to duress in the employee's employment in relation to membership or non-membership of an employees' association.

(2) For the purposes of this Act, an employee is subject to duress in the employee's employment in relation to membership or non-membership of an employees' association if the employee's employer, or a representative of that employer, directly or indirectly—

(a) makes membership of an employees' association, or of a particular employees' association, a condition to be fulfilled if the employee wants to retain his or her employment; or

(b) makes non-membership of an employees' association, or of a particular employees' association, a condition to be fulfilled if the employee wants to retain his or her employment; or

(c) exerts undue influence on the employee, or offers, or threatens to withhold or does withhold, any incentive or advantage to or from the employee, or threatens to impose, or imposes, any disadvantage on the employee, with intent to induce the employee—

(i) to become or remain a member of an employees' association or a particular employees' association; or

(ii) to cease to be a member of an employees' association or a particular employees' association; or

(iii) not to become a member of an employees' association or a particular employees' association; or

(iv) if the employee is authorized to act on behalf of employees - to not to act on their behalf or to cease to act on their behalf; or

(v) on account of the fact that the employee is, or, as the case may be, is not, a member of an employees' association or of a particular employees' association, to resign from or leave any employment; or

(vi) to participate in the formation of an employees' association; or

(vii) not to participate in the formation of an employees' association.

Part 6
Disputes

Preliminary

59 Application of Part 6

This Part does not apply to in relation to—

(a) the public service; or

(b) disputes to which the Disability Act 2008 applies.

Employment disputes

60 Employment dispute

For the purposes of this Act, **employment dispute** means—

(a) a dispute between an employer and employee, or a former employee and former employer, about—

(i) the interpretation, application or operation of an employment agreement; or

(ii) an alleged breach of an employment agreement; or

(b) a failure by the employer to provide at least the minimum terms and conditions; or

(c) a personal grievance.

61 Personal grievance

(1) An employee has a personal grievance against a current or former employer (the employer) if the employee claims that—

(a) the employee's employment has been unjustifiably terminated by the employer; or

(b) the employee's employment, or a condition of the employee's employment, is adversely affected by an unjustifiable action by the employer (other than an action deriving solely from the actual or disputed interpretation, application, or operation of a provision of the employment agreement between the employee and employer); or

(c) the employer discriminated against the employee in his or her employment in contravention of section 55; or

(d) the employer sexually harassed the employee in contravention of section 56:

(e) the employer racially harassed the employee in contravention of section 57:

(f) the employer has subjected the employee to duress in contravention of section 58.

(2) For the purposes of this Act, the question of whether an employee's employment has been unjustifiably terminated, or an action was justifiable, must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the termination or action occurred.

Dispute resolution process

62 Representation in disputes

An employer (or group of employers) or an employee (or group of employees) may be represented by an appointed representative in the dispute resolution process set out in this Part.

63 Parties must try to resolve disputes

(1) If an employment dispute arises between and employer and employee (the parties), the parties must try to negotiate a resolution of the dispute between themselves.

(2) If the employment agreement between the parties contains a dispute resolution procedure, the parties must use that procedure.

(3) If the dispute relates to the interpretation, application or operation of a collective agreement, the person bringing the claim must tell all parties to the agreement about the claim.

(4) If the dispute relates to a personal grievance, the employee must inform the employer about the personal grievance within 60 days of the action giving rise to the personal grievance.

64 Mediation of employment disputes

(1) If an employment dispute arises between and employer and employee (the parties), and the parties cannot resolve the dispute, either party may, by written notice to the other party, refer the dispute for mediation.

(2) The mediation must be undertaken by a mediator agreed to by the parties, or, if the parties cannot agree on a mediator, a mediator appointed by the Secretary.

(3) Each party may be represented by a representative at the mediation and have the assistance of a support person at the mediation.

(4) The mediator must decide how the costs of the mediation are to be borne by the parties.

65 Mediation procedure

(1) If an employment dispute has been referred for mediation under section 64, the mediator must determine the nature of the dispute and attempt to settle the dispute between the parties as quickly and fairly as possible.

(2) The mediator may take any or all of the following actions—

(a) notify the parties in writing of the date, time and place of the mediation:

(b) gather information to assist the mediator in his or her consideration of the dispute:

(c) may make recommendations to the parties:

(d) if requested by the parties, make findings in relation to the interpretation, application or operation of the employment agreement.

(3) If the dispute is settled, whether in whole or in part, the terms of the settlement must be recorded in a written settlement agreement.

(4) A settlement agreement is binding on the parties and may be enforced by way of proceedings in the High Court.

(5) If the dispute is not settled by the mediation, either party may refer the dispute for arbitration by an arbitral tribunal under the Arbitration Act 2009.

66 Remedies

(1) This section applies if an employment dispute between an employee and employer has been resolved by the parties or mediation, or has been the subject of arbitration.

(2) The final settlement, decision, or award in relation to the dispute may include, as appropriate, one or more of the following remedies—

(a) reimbursement by the employer or former employer to the employee of a sum equal to the whole or any part of the wages lost by the employee as a result of the matter in dispute to a maximum of 3 months at the employee's ordinary rate of pay:

(b) reinstatement of the employee to his or her former position or to a position that is not less advantageous than the former position:

(c) payment of compensation by the employer to the employee.

(3) If an arbitral tribunal determines that an employee's employment has been unjustifiably terminated, the arbitral tribunal must, in deciding the nature and amount of any remedy, consider the extent to which the employee's own actions contributed to the situation that gave rise to the termination and, if appropriate, reduce the remedy accordingly.

67 Confidentiality and privilege

(1) Except as required by law or agreed to by the parties to an employment dispute, the matters discussed, raised, agreed, admitted or determined during mediation—

(a) must not be disclosed by the parties or any other person attending the mediation; and

(b) are not admissible in a court, tribunal or other forum, or before a person acting judicially, except for the purpose of enforcing a settlement agreement arising from the mediation.

(2) If the parties to the mediation reached a settlement agreement, a breach by one of the parties of this section is a breach of an essential term of the settlement agreement.

(3) A person who breaches confidentiality in contravention of this section commits an offence and is liable, on conviction,—

(a) in the case of an individual, to a fine not exceeding $1000; or

(b) in any other case, to a fine not exceeding $5000.

68 Arrears

(1) This section applies if an employer—

(a) fails to pay wages or other money payable to an employee; or

(b) pays an employee wages or other money at a rate lower than the rate at which the employer is required to pay the employee, resulting in any underpayment.

(2) The wages or other money owing to the employee may be recovered by the employee, in part or in full, by an action commenced in the High Court by—

(a) the employee; or

(b) the employee's representative.

(3) Where a claim comes before the Court for determination, the Court must consider whether mediation will constructively contribute to resolving the matter and if it thinks fit, direct the parties to use mediation.

(4) Where the Court gives a direction under subsection (3) the parties must comply with the direction and attempt in good faith to reach an agreement and proceedings in relation to the claim before the Court are suspended until the parties have done so or the Court otherwise directs (whichever first occurs)

(5) An action to recover wages or other money under this section must be commenced within 3 years from the day on which the claim arose.

69 Failure to keep or produce records

(1) If a claim is brought under section 68 to recover wages or other money payable to an employee, the person bringing the claim may call evidence to show that—

(a) the employer of the employee failed to keep or produce a wages time and leave record in relation to the employee as required by this Act or the Regulations; and

(b) the failure prejudiced the person's ability to bring an accurate claim.

(2) If evidence mentioned in subsection (1) is given, the Court may, unless evidence to the contrary is given, accept as proved all claims made by the employee in relation to—

(a) the wages paid to the employee; and

(b) the hours, days, and time worked by the employee.

Part 7
Health, Welfare and Safety in Employment

70 Employers' and employees' duties

(1) An employer must take all reasonably practicable steps to maintain a safe and healthy working environment for the employer's employees.

(2) An employee must take all reasonably practicable steps to ensure their safety while at work and that no action or inaction of the employee while at work causes harm to any other person.

(3) The Regulations may prescribe matters relating to health, welfare and safety of employees at work sites (for example by setting out a health, welfare and safety code).

(4) Failure to comply with subsection (1) or with a regulation mentioned in subsection (3) commits an offence and is liable, on conviction,—

(a) in the case of an individual, to a fine not exceeding $1000; or

(b) in any other case, to a fine not exceeding $5000.

71 Procedure following accidents

(1) This section applies if an accident occurs at a worksite and the accident causes death or serious bodily injury to an employee employed at the worksite.

(2) The employee's employer must, within 48 hours after the accident, give the Ministry a written notice specifying—

(a) the nature of the accident:

(b) the name, residential address and age of the employee; and

(c) the measures (if any) taken by the employer as a result of the accident.

(3) As soon as practicable after receiving notice of an accident, an inspector must conduct a full inquiry into the nature and cause of the accident and the nature and extent of any injuries caused by the accident.

(4) In this section, "serious bodily injury" means an injury which causes the injured person to be hospitalised for a period of 48 hours or more within 7 days of the accident.

72 Register of accidents

(1) An employer must keep a register of all accidents that occur at a worksite at which the employer employs employees.

(2) The regulations may prescribe particulars that must be included in, or attached to, the register in relation to each accident.

(3) The register must be in the form approved by the Secretary.

73 Dangerous machinery and occupations

(1) If an employee operates dangerous machinery, the employee's employer must ensure the employee is given appropriate training in the safe use of the machinery before the employee operates the machinery.

(2) An employer must not require an employee aged under 18 years to work in a hazardous occupation.

(3) An employer who fails to comply with subsection (1) or (2) commits an offence and is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $1000; or

(b) in any other case, to a fine not exceeding $5000.

(4) An inspector may prohibit work in an occupation which the inspector believes is likely to cause serious injury to any person.

(5) However, an inspector may revoke a prohibition made under subsection (4) if the inspector is satisfied that adequate safety precautions have been provided.

(6) In this section, "dangerous machinery" and a "hazardous occupation" is prescribed by the Regulations to be dangerous machinery or a hazardous occupation.

74 Inspector may serve requisitions on employer

(1) This section applies if an inspector has reasonable grounds to believe that an employer is not complying with a provision of this Act or the Regulations relating to health, welfare and safety.

(2) The inspector may, by written requisition to the employer or the employer's agent, require the employer to—

(a) comply with the requirements of this Act or the Regulations; or

(b) remedy any defect to the satisfaction of the inspector.

(3) The requisition must be served on the employer by—

(a) delivering it to the employer or the employer's agent; or

(b) delivering it to the work site; or

(c) posting it by registered letter addressed to the employer or the employer's agent.

(4) If an employer or his or her agent is served with a requisition the employer must comply with the requisition.

(5) An employer who fails to comply with subsection (4) commits an offence and is liable, on conviction,—

(a) in the case of an individual, to a fine not exceeding $1000; or

(b) in any other case, to a fine not exceeding $5000.

75 Review of requisition

(1) This section applies if an employer has been served with a requisition under section 74.

(2) If the employer considers the requisition is unreasonable, the employer may ask the Secretary, in writing, to review the requisition.

(3) A request for review must be given to the Secretary within 14 days after the day the employer was served with the requisition.

(4) If the Secretary receives a request for review, the Secretary must review the requisition, and either confirm the requisition, with or without modifications, or withdraw the requisition.

(5) The Secretary must inform the employer, in writing, of the Secretary's decision.

Part 8
General Administration

76 Secretary's responsibilities

The Secretary is responsible to the Minister for the proper administration of this Act.

77 Designation of inspectors

(1) The Secretary may designate an employee of the Ministry to be an inspector for the purposes of this Act and the Regulations.

(2) The Secretary must give each inspector a certificate of designation.

(3) An inspector must produce his or her certificate of designation for inspection if requested to do so in the course of his or her duties.

78 Employers must assist inspectors

(1) An inspector may, as reasonably required in the exercise of his or her powers under this Act, ask to enter a work site and inspect, examine or inquire into any matter.

(2) An employer must comply with a reasonable request of an inspector under subsection (1).

79 General powers of inspectors

An inspector may, in the ordinary course of exercising his or her functions under this Act and the Regulations, do any of the following—

(a) enter, inspect, and examine a work site at any reasonable hour on giving 24 hours notice in writing to the employer:

(b) at any time during ordinary working hours, ask an employer to verify in writing an entry in the employer's wages, time and leave record:

(c) exercise such other powers as may be reasonably necessary for the inspector to carry out his or her functions.

80 Powers of entry, search and seizure

(1) If an inspector has reasonable cause to suspect that an offence against this Act has been committed, the inspector may, at any reasonable time, enter and examine a work site for the purpose of investigating the suspected offence.

(2) If an inspector enters a work site under this section, the inspector may exercise any of the following powers—

(a) request any person present to assist the inspector:

(b) require an employer to produce for inspection and examination any books, registers, notices, records, lists or other documents required to be kept under this Act or the Regulations:

(c) take any document produced under paragraph (b):

(d) copy, or take an extract of, any document:

(e) carry out any examination, test or enquiry to ascertain whether this Act and the Regulations are being complied with:

(f) interview any of the following persons, alone or in the presence of another person—

(i) an employer:

(ii) any person whom the inspector finds at a work site:

(iii) any person whom the inspector has reasonable cause to believe is employed at a work site, or has been employed at a work site within the preceding month

(g) require any person who has been interviewed under paragraph (f) to sign a statement about the matters which the person was questioned about:

(h) take samples of materials or substances used or handled at the work site, for the purpose of analysis, subject to the employer or the employer's representative being notified prior to the sample being taken.

(3) The inspector may be accompanied by a constable to assist in the execution of the inspector's functions.

81 Duty of non-disclosure

Except for the purposes of this Act, an inspector must not disclose to any person information acquired in the performance of the inspector's functions.

82 Personal liability

The following persons are not personally liable for any act done, or omitted to be done, by the person in good faith under this Act or the Regulations—

(a) an inspector:

(b) the Secretary:

(c) any other person appointed to a position under this Act.

Part 9
Offences, Penalties and Appeal Rights

83 Offences in relation to inspectors

(1) A person commits an offence against this Act if the person—

(a) fails or refuses to comply with a lawful or reasonable request or direction of an inspector given in the exercise of the inspector's powers or functions; or

(b) conceals a person from an inspector; or

(c) prevents a person from appearing before, or being interviewed by, an inspector; or

(d) assaults, threatens, obstructs, or delays an inspector in the exercise of the inspector's powers and functions:

(e) impersonates an inspector.

(2) A person who commits an offence under subsection (1) is liable, on conviction,—

(a) in the case of an individual, to a fine not exceeding $1000; or

(b) in any other case, to a fine not exceeding $5000.

84 Onus of proof where exemption, justification or excuse provided for

Where an exemption or matter of justification or excuse is provided by this Act the onus of proving the application of such in any proceedings under this Act shall lie with the person seeking to rely on that exemption, justification or excuse.

85 Special defence in cases of emergency

Where this Act requires any act or thing to be done and it is proved against any person that the person failed to do the act or thing, it is a defence for that person to prove that, because of an emergency prevailing at the time, to do that act or thing was not reasonably practicable.

86 Liability of employers in particular cases

In proceedings or dispute resolution processes under this Act against any person in relation of an act alleged to have been done by an employee of that person, it shall be a defence for the person to prove that he or she took such steps as were reasonably practicable to prevent the employee from doing the act or acts of that description.

87 Court may take into account compliance with code of practice

(1) A Court may, in proceedings relating to a person charged with an offence against this Act, have regard to any regulations or codes of practice, including regulations or codes of practice relating to health, welfare and safety, that—

(a) were in force at the time of the alleged failure; and

(b) relate to matters of a kind to which the provision relates.

(2) Where an employer provides evidence of compliance with regulations or codes of practice, the onus of proving non-compliance shall rest with the person alleging a breach of the Act or an offence as the case may be.

Part 10
Miscellaneous

88 Regulations

(1) The Queen's Representative may from time to time, by Order in Executive Council, make regulations to give effect to all or any of the purposes of this Act, including regulations for all or any of the following—

(a) the minimum rate or rates of pay:

(b) health, welfare and safety in employment:

(c) the particulars to be kept in a register of worksite accidents:

(d) dangerous machinery and hazardous occupations

(e) the form for requisitions:

(f) the form in which a request for inspection may be made:

(g) any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.

(2) A regulation made under this section comes into force on the date specified in the regulation, which may be before or after the date of the Order in Executive Council making the regulation.

(3) However, if the regulation does not specify a date on which it comes into force, the regulation comes into force on the date on which the regulation was made.

(4) If a regulation comes into force under this section, every determination, decision, matter or thing made or done before the regulation came into force, and affected by the regulation—

(a) if not inconsistent with the regulation - remains in force and is taken to have been determined, decided or made under the regulation; and

(b) if inconsistent with the regulation - ceases to exist unless otherwise provided by the regulation.

Transitional provisions, savings and repeals

89 Existing employment agreements

An employment agreement in force immediately before the commencement of this Act continues in force after the commencement of this Act, subject to the provisions of this Act, including the provisions relating to the minimum terms and conditions.

90 Transitional and savings provisions

(1) From the date of commencement of this Act, each decision, determination, matter or thing not inconsistent with this Act, and made or done under the enactments repealed or revoked by this Act, is taken to have been made or done under this Act, and the provisions of this Act apply accordingly.

(2) Notwithstanding the repeal of the Cook Islands Industrial and Labour Ordinance 1964 and its amendments specified in the Schedule, a person employed within the Labour Division of the Ministry immediately before the commencement of this Act is taken to be employed in the Ministry on the same terms and conditions.

(3) As soon as practicable after the commencement of this Act the Secretary must designate suitably qualified employees in the Ministry as inspectors.

(4) Unless the context otherwise requires, a reference to the Labour Division in an enactment, document, or agreement, in force immediately before the commencement of this Act, is, on the commencement of this Act, a reference to the Ministry.

(5) Any assets and liabilities of the Labour Division immediately before the commencement of this Act, become, on the commencement of this Act, assets and liabilities of the Ministry.

91 Continuation of the Minimum Wage Order 2006

Despite the repeal by this Act of the Cook Islands Industrial and Labour Ordinance 1964, until the date on which the first regulations are made under section 33 of this Act to prescribe the minimum rate of pay—

(a) the Minimum Wage Order 2006 continues in force; and

(b) the minimum wage prescribed by the Minimum Wage Order 2006 is taken to be the minimum rate of pay prescribed by section 33.

92 Repeal

The enactments mentioned in Schedule 1 are repealed.

Consequential amendment

93 Amendment of the Cook Islands National Superannuation Fund Act 2000

The Cook Islands National Superannuation Fund Act 2000 is amended as set out in Schedule 2.

[Section 92]

Schedule 1
Enactments Repealed

Cook Islands Industrial and Labour Ordinance 1964

Cook Islands Industrial and Labour Ordinance Amendment 1966, No 2

Cook Islands Industrial and Labour Ordinance Amendment 1973-74, No. 27, 38 and 39

Cook Islands Ministry of Labour and Commerce Act 1973-74

Cook Islands Industrial and Labour Ordinance Amendment 1978, No 10

Cook Islands Industrial and Labour Ordinance Amendment 2002, No 11

[Section 93]

Schedule 2
Amendment of Cook Islands National Superannuation Fund Act 2000

Section 40(2) of the Cook Islands National Superannuation Fund Act 2000 is amended by inserting the following words after 'long-service leave pay' –

"maternity leave pay (whether paid for by the employer or by the Crown),".

This Act is administered by the Ministry of Internal Affairs.
Printed under the authority of the Cook Islands Parliament—2012.