

REPUBLIC OF KIRIBATI
(No. 2 of 1998)

I assent,

Beretitenti
Assented: 9th July 1998

**ACT TO MAKE PROVISION FOR THE SETTLEMENT OF TRADE DISPUTES
AND THE REGULATION OF INDUSTRIAL RELATIONS, AND FOR
CONNECTED PURPOSES**

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

Short Title

1. This Act (hereinafter referred to as this Code) may be cited as the Industrial Relations Code, 1998.

Constitutional Provision

2. In relation to matters concerning public officers, this Act shall be read subject to Chapter VII and S.13 of the Constitution.

Interpretation

3. In this Code unless the context otherwise requires –

“board” means a board of inquiry appointed under section 18;

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

“commission” means the Incomes Commission established under section 19;

“employee” means any person who has entered into or works under a contract of service with an employer whether express or implied, whether entered into orally or in writing and whether it is a contract of service, apprenticeship or learnership or a contract personally to execute any work or labour;

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

“essential service” means any service, by whomsoever rendered and whether rendered to the Government or any other person, specified in the Schedule;

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

“organisation” means a trade union or other association representative of employees or employers, as the case may be;

“Registrar” means the Registrar of Industrial Relations appointed under the provisions of section 4 of this Act;

“strike” means the cessation of work by a body of employees acting in combination, or a concerted refusal or a refusal under a common understanding of any number of employees to continue to work for an employer or to undertake particular work, done as means of compelling or influencing their employer or any employee or body of employees, or to aid other employees in compelling or influencing their employer or any employee or body of employees, to do or to refrain from doing anything and includes any interruption or slowing down of work by any number of employees acting in concert or under a common understanding (including any action commonly known as a “sit down strike” or a “go slow”);

“trade dispute” means any dispute or difference whether existing or apprehended between employers and employees or between employees and employees connected with the employment or non-employment or with the terms or conditions of or affecting the employment or with the conditions of labour of any person and includes disputes regarding the dismissal or suspension of employees, allocation of work or recognition of agreements:

Provided that it shall not include any dispute or difference implicating –

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

“trade union” means a trade union registered under the Trade Unions and Employer Organisations Act 1998;

“tribunal” means an arbitration tribunal appointed under section 12;

“unlawful” means, with reference to a strike, lock-out or boycott, declared unlawful by this Code or by the Minister or Registrar thereunder.

PART II REGISTRAR OF INDUSTRIAL RELATIONS

Appointment of Registrar

4. (1) There shall be a Registrar of Industrial Relations.

(2) The Registrar shall, unless otherwise expressly provided by this Code, perform the duties imposed and exercise the powers conferred on the Minister by this Code.

(3) The Registrar shall by notice be appointed by the Beretitenti acting in accordance with the advice of the Public Service Commission.

(4) A person shall not be appointed as the Registrar unless he appears to be a person who is competent in matters relating to industrial relations.

Tenure of office

5. (1) A person appointed as Registrar shall hold office for such period, not exceeding 2 years, as is specified in his instrument of appointment, but shall be eligible for re-appointment

(2) The Beretitenti acting in accordance with the advice of the Public Service Commission may at any time terminate the appointment of the Registrar for misbehaviour, incompetence, or inability to perform his function by reason of a physical or mental disability after consultation with the Minister.

Resignation

6. The Registrar may at any time resign his office by notice in writing addressed to the Beretitenti and such resignation shall take effect as from the date of the receipt of such notice by the Bereretitenti.

PART III PROCEDURE FOR SETTLEMENT OF DISPUTES

Reporting of trade disputes

7. (1) Any trade dispute may be reported to the Minister or to the Registrar by or on behalf of any party to the dispute, or by the Minister to the Registrar pursuant to section 9(1)(b) or section 10(4).

(2) Where a trade dispute is referred to both the Minister and the Registrar, the Registrar will take no further steps in the matter unless the trade dispute is referred to him by the Minister under section 9(1)(b).

(3) A report of a trade dispute under this section shall be in writing addressed to the Minister or Registrar and shall set out in full the matters in issue between the parties to the dispute and the steps which have been taken by the parties to obtain a settlement

through any machinery for the settlement of trade disputes which may exist otherwise than by virtue of this Code.

(4) Where the Minister or Registrar is of the opinion that a report of a trade dispute does not contain sufficient particulars of the matters required to be set out by subsection (3) he may require further written particulars to be given to him and in that case the report shall not be deemed to have been made in accordance with this section until the Minister or Registrar is satisfied that the particulars so required have been given.

(5) Every person reporting a trade dispute or giving further written particulars to the Minister or Registrar under this section shall forthwith give by hand or send by registered post a true copy of the report thereof or of the written particulars to each of the other parties to the dispute.

(6) The Minister or Registrar may by notice appoint persons to receive reports of trade disputes and further written particulars under this section on his behalf and every such person on receipt of such a report or such particulars shall forthwith transmit the contents thereof to the Minister or Registrar by such means as he thinks most expeditious.

Powers of Registrar on report of trade dispute

8. (1) Subject to section 7(2) the Registrar shall consider every trade dispute of which a report has been made to him in accordance with section 7 and shall as soon as practicable take any one or more of the following steps as seem to him most expedient for promoting a settlement of the dispute –

- (a) where he is of the opinion that any appropriate machinery for the settlement of trade disputes which may exist otherwise than by virtue of this Code has not been made use or sufficient use of by the parties to the dispute, refer the dispute back to the parties for negotiation or further negotiation and settlement through that machinery;
- (b) in any event refer the dispute back to the parties and if he thinks fit make proposals to the parties or to any of them upon which a settlement of the dispute may be negotiated by them;
- (c) endeavour to conciliate the parties under section 11;
- (d) refer the dispute to an arbitration tribunal under section 12.

(2) A decision of the Registrar under subsection (1) shall be recorded in writing and shall as soon as practicable be communicated in writing by hand or by registered post to the parties to the dispute or to their representatives or to the Ministers

(3) Where a trade or other dispute has been reported to the Registrar in compliance or purported compliance with section 7 and the Registrar is of the opinion that the matters or some of the matters in issue do not constitute or form part of a trade dispute that opinion shall be recorded in writing and communicated in accordance with subsection (2).

Powers of Minister on report of trade dispute

9. (1) The Minister shall consider every trade dispute of which a report has been made to him in accordance with section 7 and may take any one or more of the following steps as seem to him most expedient for promoting a settlement of the dispute –

- (a) where he is of the opinion that any appropriate machinery for the settlement of trade disputes which may exist otherwise than by virtue of this Code has not been made use or sufficient use of by the parties to the dispute, refer the dispute back to the parties for negotiation or further negotiation and settlement through that machinery;
- (b) refer the dispute to the Registrar under section 7;
- (c) in any event refer the dispute back to the parties and if he thinks fit make proposals to the parties or to any of them upon which a settlement of the dispute may be negotiated by them;
- (d) refer the dispute to a board of inquiry under section 18;
- (e) refer the dispute to the Income Commission under section 19.

(2) A decision of the Minister under subsection (1) shall be recorded in writing and shall as soon as practicable be communicated in writing by hand or by registered post to the parties to the dispute or to their representatives or to the Registrar.

(3) Where a trade or other dispute has been reported to the Minister in compliance or purported compliance with section 7 and the Minister is of the opinion that the matters or some of the matters in issue do not constitute or form part of a trade dispute that opinion shall be recorded in writing and communicated in accordance with subsection (2).

Further action by Minister or Registrar

10. (1) Where the Minister or Registrar has taken a step under section 8(1) or 9(1) as the case may be and is informed in writing by any party to the dispute that settlement of the dispute has not thereby been effected and the Minister or Registrar as the case may be is satisfied that the dispute has not in fact been settled, he may within 7 days of being so informed inform the parties or their representatives that he intends to take a further step under section 8(1) or 9(1) as the case may be.

(2) Where the Minister or Registrar as the case may be does not inform the parties or their representatives in accordance with subsection (1) that he intends to take a further step under section 8(1) or 9(1) as the case may be, or where having done so he does not take that step within 7 days of notifying the parties under subsection (1) the procedures prescribed by this Code for the settlement of trade disputes shall be deemed to be exhausted.

(3) Notwithstanding that a trade dispute has not been reported to him under section 7, the Minister may refer a trade dispute to the Registrar under section 7 or as if it had been

so reported and whether or not the parties to the dispute thereto consent where he is satisfied that the dispute has jeopardised or may jeopardise the essentials of life or the livelihood of the inhabitants of Kiribati or a significant section thereof or may endanger the public safety or the life of the community.

PART IV
CONCILIATION, ARBITRATION, SETTLEMENT AND INQUIRY IN TRADE
DISPUTES

Conciliation

11. (1) For promoting a settlement of a trade dispute reported to him in accordance with section 7 the Registrar may endeavour to conciliate the parties to the dispute by taking any one or more of the following steps –

- (a) appoint an independent person, the Registrar considers suitable, to act as a conciliator; or
- (b) appoint a conciliation panel consisting of an independent chairman, who may be any person the Registrar considers suitable, one or more persons representative of employers and an equal number of persons representative of employees; or
- (c) by order determine or suspend the operation of any of the aforesaid conciliation measures.

(2) A person appointed under this section to act as a sole conciliator or as chairman of a conciliation panel shall inquire into the causes and circumstances of the trade dispute by communication with the parties thereto and shall endeavour to bring about a settlement of the dispute and shall report the outcome to the Registrar.

(3) The terms of every settlement of a trade dispute effected under this section shall be set out in writing, shall be signed by or on behalf of the parties to the dispute and, where appropriate, by the conciliator or the chairman of the conciliation panel and a true copy of the text signed as aforesaid, shall be lodged with the Registrar.

Arbitration tribunals

12. For promoting a settlement of a trade dispute reported to him in accordance with section 7 the Registrar may refer the dispute to an arbitration tribunal appointed by him which shall consist of –

- (a) a sole arbitrator, or
- (b) an arbitrator assisted by one or more assessors nominated by or on behalf of the employers concerned and an equal number of assessors nominated by or on behalf of the employees concerned or where there is a trade union by the trade union; or

- (c) one or more arbitrators selected by the Registrar from a panel nominated by or on behalf of the employers concerned and an equal number of arbitrators selected by the Registrar from a panel nominated by or on behalf of the employees concerned or where there is a trade union by the trade union and an independent chairman.

Procedure of tribunals

13. (1) Where a tribunal is constituted in accordance with section 12 (b) any award of the tribunal shall be made and issued by the arbitrator alone and where a tribunal is constituted in accordance with section 12 (c) any award shall be made by all the members if they are in agreement and otherwise by the chairman alone.

(2) Where a tribunal is constituted in accordance with section 12 (b) or (c) and a vacancy occurs in the membership thereof the tribunal may with the consent of the parties to the dispute act notwithstanding the vacancy or the Registrar may appoint another person to fill the vacancy in accordance with section 12.

(3) No act, proceeding or determination of a tribunal shall be called in question or invalidated by reason of a vacancy in its membership.

Awards to be final and binding

14. (1) Every award of a tribunal in relation to a trade dispute shall be final and shall not be liable to be challenged, reviewed, questioned or called in question in any court save on the ground of lack of jurisdiction.

(2) (a) Subject to subparagraph (b) any award of a tribunal in relation to a trade disputed may be made so as to have retrospective effect;

(b) No award may retrospectively reduce any salary wages or allowances or any other sum of money whatsoever payable to an employee under a contract of service in force at the time the award is made.

(3) A tribunal shall not have jurisdiction to consider or make an award in relation to the dismissal or purported dismissal of an employee or the termination or purported termination of an employee's contract of employment, and the tribunal shall not have the power to award to any party to a dispute damages, compensation or costs or to compel any employer to reinstate an employee or former employee.

(4) Every award of a tribunal in relation to a trade dispute shall be binding on the employers and employees to whom the same relates and, as from the date of publication of such award or, where the award is made retrospective, from the date specified therein, it shall be an implied term of the contract between the employers and employees to whom the award relates that the rate of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance with such award until varied by a subsequent award or by agreement.

Tribunal's award not to conflict with any law

15. Where any trade dispute referred to a tribunal involves questions as to wages, hours of work or otherwise as to the terms or conditions affecting employment which are regulated by or under any statutes or regulations other than this Code the tribunal shall not make any award inconsistent with such law or which is less favourable to employees than any material award or order made in pursuance thereof.

Publication of award

16. An award of a tribunal shall be transmitted in writing to all parties concerned in the arbitration proceedings, to the Registrar who shall as soon as practicable cause the award to be published in such manner as he thinks fit.

Interpretation of awards

17. Any question arises as to the interpretation of any award of a tribunal the Registrar or any party to the original dispute may apply to the tribunal for a decision on the question and the tribunal shall decide the matter after hearing the parties or without such hearing if the consent of the parties thereto has first been obtained and the determination of the tribunal shall be notified to the parties, to the Registrar and shall be deemed to form part of and shall have the same effect in all respects as the original award.

Boards of inquiry

18. (1) The Minister may at any time order an inquiry into the causes and circumstances of a trade dispute by a board of inquiry and, without prejudice to the generality of the foregoing, may for promoting a settlement of a trade dispute reported to him in accordance with section 7 refer the dispute to such a board.

(2) A board of inquiry shall consist of a chairman and such number of other members as the Minister may determine, or if he thinks fit of one person alone, all of whom shall be appointed by the Minister:

Provided that where the Minister appoints members representing the interests of employers he shall appoint an equal number of members representing the interests of employees and vice versa.

(3) A report of a board and any minority report shall be submitted in writing to the Minister.

(4)(a) Subject to sub-paragraph (b) the Minister may cause to be published in such manner as he may think fit any information obtained or conclusions arrived at by a board as a result or in the course of any inquiry.

(b) There shall not be included in any report or publication made or authorised by a board or the Minister any information obtained by the board in the course of the inquiry as to individual business, organisation or other concern whatsoever which is not available otherwise than through

evidence give at the inquiry except with the consent of the secretary of the organisation or to the person or other body in question or shall any person concerned in the inquiry disclose any such information without such consent.

(5) Any person who prints or publishes any information or who discloses any information in contravention of subsection (4) thereby commits an offence and shall upon conviction be liable to a fine not exceeding \$5000 and to a term of imprisonment not exceeding 6 months.

Incomes Commission

19. The Minister may by order establish an Incomes Commission to whom he may refer for consideration all matters relating to levels of minimum wages, incomes, other remuneration, benefits or wage differentials or any other matter connected with any trade, industry, undertaking, public service or statutory body or any combination thereof which in the opinion of the Minister it is desirable for the Commission to consider including any trade dispute reported to him in accordance with section 7 in order to promote a settlement thereof.

20. (1) The members of the Commission shall be appointed by the Minister and shall comprise –

- (a) an independent chairman; and
- (b) equal numbers of persons representing the interests of employers and employees respectively.

(2) The Minister may at any time revoke the appointment of any member of the Commission so long as the numbers of members representing the interests of employers and employees respectively remain equal.

(3) Where the Minister is of the opinion that the membership specified in subsection (1) (b) is inappropriate for the consideration of a particular matter he shall appoint thereunder such persons as he considers suitable to consider the matter and those person shall be the members of the Income Commission in relation to that particular matter; provided that their membership shall lapse so soon as their deliberation of the matter is concluded.

Appointments to be final

21. Every appointment made by the Minister or Registrar as the case requires, to a board, commission, tribunal or conciliation panel or a conciliator shall be final and shall not be questioned by any party to the trade dispute in question.

Regulation of proceedings

22. Save as is expressly provided for in this Code or in any regulations made under this Code, a tribunal board or the Commission may regulate the procedure in any proceedings under this Code as it thinks fits.

Duties in relation to trade disputes

23. All parties to a trade dispute and every person appointed under this Part shall where appropriate take into account in considering any proposed settlement, award or recommendation in respect of the dispute –

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

Evidence

24. (1) For the purpose of dealing with any matter referred to it under this Code a tribunal, board or the Commission may elicit all such information as in the circumstances it may consider necessary without being bound by the rules of evidence in civil or criminal proceedings and may by order require any person –

- (a) to furnish, in writing or otherwise, such particulars in relation to any matter as may be required;
- (b) to appear before it and give evidence on oath or otherwise; and
- (c) to produce any material documents as may be cited.

(2) Notwithstanding subsection 1, if any person objects to furnishing any particulars, answering any question or producing any document on the ground of confidentiality or

that it will tend to incriminate him or on any other lawful ground he shall, subject to subsection (3), not be required to furnish such particulars, answer such question or produce such document nor shall he be liable to any penalties for refusing to do so.

(3) Where objection is taken to the production of a document on the ground that the contents thereof are confidential the tribunal, board or the Commission may nevertheless by order require production of the document and consideration of its contents in camera and shall take all such further steps as may seem necessary and practicable to preserve the confidential nature of the document.

(4) A conciliator or conciliation panel appointed under section 11 may for the purpose of dealing with a trade dispute referred to it under this Code by order require any party to the dispute to appear before it.

(5) Any person who without reasonable excuse fails to obey any order made under this section thereby commits an offence and shall be liable upon conviction to fine not exceeding \$500 or to a term of imprisonment not exceeding 3 months and in any proceedings for an offence under this section the proof of reasonable excuse shall lie on the person charged with the offence.

(6) Any person who being required by an order under subsection (1) (a) or (b) to furnish particulars or to give evidence not on oath wilfully furnishes information or makes a statement which he knows to be false or does not believe to be true thereby commits an offence and shall be liable upon conviction to a fine not exceeding \$2000 and to a term of imprisonment not exceeding 2 years.

Representation of parties

25. (1) In any proceedings under this Code before a tribunal, board or the Commission a party to those proceedings may –

- (a) appear in person; or
- (b) be represented by an advocate or as provided by subsection (2).

(2) A party to proceedings under this Ordinance may –

- (a) being an organisation, be represented by a member, officer or employee of the organisation; or
- (b) not being an organisation, be represented by –
 - (i) an employee of that party; or
 - (ii) a member, officer or employee of any organisation of which that party is a member.

Sitting may be in public or private

26. (1) A tribunal, board or the Commission, subject to sections 10 (9) and 10 (10) of the Constitution, may by order exclude the public and representatives of the news media from any proceedings under this Code.

(2) Any person who fails to comply with an order made under subsection (1) –

- (a) may be arrested and removed by any police officer from the place where the tribunal Board or Commission is sitting; and
- (b) thereby committed an offence and shall be liable upon conviction to a maximum fine of \$500 or to a term of imprisonment not exceeding 6 months.

(3) A report or summary of proceedings before a tribunal, board or the Commission under this Code at which the public has been present, which is not fair and accurate shall not be published by any person.

(4) No comment in respect of proceedings before a tribunal, board or the Commission under this Code shall be published until the Minister or the Registrar has caused the award or the result of the inquiry, as the case may be, to be published.

(5) Any person who contravenes subsections (3) and (4) this section shall be liable to a maximum fine of \$1000 and to a term of imprisonment not exceeding 12 months.

PART V ADHERENCE TO AGREEMENTS AND AWARDS

Strike, lock-out or boycott unlawful where procedures are not exhausted

27. (1) Subject to subsection (2), a strike, lock-out or boycott which takes place in furtherance of a trade dispute before the procedures prescribed by this Code for the settlement of trade disputes are exhausted shall be unlawful.

(2) A strike, lock-out or boycott shall not be unlawful by virtue of this section if –

- (a) 21 days have elapsed since the date on which the report of the trade dispute in furtherance of which the strike, lock-out or boycott has taken place was made to the Minister or Registrar in accordance with section 7; and
- (b) the Minister has taken no step under section 9 (1) or if he has taken such a step his decision has not been communicated to the parties to the dispute or to their representatives in accordance with section 9 (2).
- (c) the Registrar has taken no step under section 8 (1) or if he has taken such a step his decision has not been communicated to the parties to the dispute or to their representatives in accordance with section 8 (2).

Strike, lock-out or boycott where award or agreement still in force

28. (1) Where it appears to the Minister that there is an actual, declared or anticipated strike, lock-out or boycott arising out of a trade dispute in any undertaking and the Minister is satisfied –

- (a) that the matters to which the trade dispute relates have been settled by an agreement or award; and
- (b) that the agreement or award is expressed to have effect until a date which has not been reached, the Minister may if he thinks fit take any one or more of the following steps –
 - (i) invite the parties to the dispute to show cause as to why they should not comply with that agreement or award until the date on which it will cease to have effect;
 - (ii) invite the parties to the dispute to comply with that agreement or award;
 - (iii) by order declare any strike, lock-out or boycott (whether actual, declared or anticipated) arising out of that dispute to be unlawful until a date specified in the order which date shall be no later than any date referred to in paragraph (b).

(2) Where the Minister decides not to take any of the steps set out in subsection (1) then he shall refer the matter to the Registrar who shall take any one or more of the steps referred to in subsection (1).

Effective date of orders

29. (1) Every order made by the Minister or Registrar as the case may be under section 28 (iii) shall be published by exhibition at the Public Office of the Beretitenti and shall come into operation on the day next following the day on which it is so published unless otherwise provided therein.

(2) The Minister or Registrar as the case may be shall as soon as practicable after an order has been published in accordance with subsection(1) further publish such order in such manner as he may think fit for the purpose of bringing its contents to the attention of the persons affected thereby.

Offences where strike, lock-out or boycott unlawful

30. (1) Any person who takes part in or acts in furtherance of any unlawful strike, lock-out or boycott shall be liable to a fine not exceeding \$100 and to a term of imprisonment not exceeding 3 months.

(2) Any person who knowing that a strike, lock-out or boycott is unlawful causes, procures or counsels or in any way whatsoever encourages, persuades or influences

others or solicits, incites or attempts to procure others to take part in any such strike, lock-out or boycott shall be liable each to a conviction maximum fine of \$2000 and to a term of imprisonment not exceeding 1 year.

Legal presumptions

31. Where in any proceedings for an offence under section 30 (1) it is proved that the accused person –

- (a) ceased work or refused to continue work or to undertake particular work, being work which in terms of his employment he was bound to do; or
- (b) closed a place of employment or suspended work or being an employer refused to continue to employ persons employed by him; or
- (c) systematically refused to hold or abstained from holding relations or dealings of any kind with another person, in circumstances which give the court reasonable ground to suppose that he was taking part in or acting in furtherance of an unlawful strike, lock-out or boycott, the court shall presume that he was taking part in or acting in furtherance of an unlawful strike, lock-out or boycott unless he proves to the satisfaction of the court that he acted as aforesaid for reasons wholly unconnected with an unlawful strike, lock-out or boycott, as the case may be.

Prohibition of expulsion of members

32. (1) No person being a member of an organisation who refuses to take part or to continue to take part in any unlawful strike, lock-out or boycott shall by reason of such refusal or by reason of any action taken by him under this section be subject to expulsion from membership of any organisation or to any fine or other penalty or to deprivation of any right or benefit to which he or his personal representatives would otherwise be entitled or liable to be placed in any respect either directly or indirectly under any disability or to any disadvantage as compared with other members of the organisation notwithstanding anything to the contrary in the rules or constitution of an organisation,

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

PART VI PROTECTION OF ESSENTIAL SERVICES, LIFE AND PROPERTY

Interpretation

33. In this Part –

“break” means, in relation to an employee’s contract of service, do any act or make any omission which amounts to a breach of the contract of service under which he is employed;

“contract of service” means any contract whether express or implied whether entered into orally or in writing, to employ or serve as an employee for any period of time and whether it is a contract of service, apprenticeship or leadership or a contract personally to execute any work or labour.

Breach and procurement of breach of contract by employee an offence

34. (1) Subject to section 35 –

- (a) any employee in an essential service who wilfully breaks his contract of service knowing or having reasonable cause to believe that the consequences of his so doing offence either alone or in combination with others will be to deprive the public or any section of the public of that essential service or substantially to diminish the enjoyment of that essential service by the public or any section of the public shall be liable upon conviction to a fine not exceeding \$500 and to a term of imprisonment not exceeding 1 year;
- (b) any person who causes, procures or counsels or in any way whatsoever encourages, persuades or influences or solicits, incites or attempts to procure any employee in an essential service to break his contract of service knowing or having reasonable cause to believe that the probable consequences of that employee so doing either alone or in combination with others will be to deprive the public or any section of the public of that essential service by the public or any section of the public shall be liable upon conviction maximum to a fine of \$700 and to a term of imprisonment not exceeding 18 months.

(2) In any proceedings in respect of an offence under this section the court shall presume the existence of a contract of service of the nature and in the particular service alleged in the charge or information relating to the proceedings unless the contrary is proved.

(3) A breach of a contract of service by an employee in an essential service shall be deemed to be wilful unless the contrary is proved.

Breach of employee’s contract not unlawful in certain circumstances

35. (1) Subject to subsection (2), an employee in an essential service shall not be guilty of an offence under section 34(1)(a) and no person shall be guilty of an offence under section 34(1)(b) if there is a trade dispute in the essential service in question and –

- (a) the procedures prescribed by this Code for the settlement of trade disputes have been exhausted; or

- (b) 21 days have elapsed since the date on which a report of the trade dispute was made to the Minister or Registrar in accordance with section 7 and the Minister or Registrar has taken no step under section 8(1) or section 9(1) or if he has taken such a step his decision has not been communicated to the parties to the dispute or to their representatives in accordance with section 8(2) or section 9(2).

(2) Subsection (1) shall not apply unless after all the procedures prescribed by this Code for the settlement of trade disputes have been exhausted or after the expiration of the period of 21 days referred to in subsection (1)(b) notice in writing of the employee's intention to break his contract of service is given by hand by him or on his behalf by a trade union of which he is a member to the Registrar and 14 days have elapsed since delivery of that notice.

(3) The Commissioner of Labour may by notice appoint persons to whom notices under subsection (2) may be given and delivery of such a notice to such a person shall be deemed to be delivery of the notice for the purposes of that subsection.

(4) Any person appointed under subsection (3) shall on delivery to him of a notice under subsection (2) transmit the contents of the notice to the Registrar by such means as he thinks most expeditious.

(5) A notice under subsection (2) shall be in such form as the Commissioner of Labour may prescribe.

Printed copy of sections 34, 35 and Schedule to be displayed by employer

36. (1) Every employer in an essential service shall cause to be posted upon such premises used for the purpose of discharging that essential service as the Registrar may by writing designate a notice in such form as the Registrar may prescribe explaining the effect of sections 34 and 35 in some conspicuous place where the same may conveniently be read by his employees as often as such notice becomes defaced, obliterated, destroyed or removed shall cause it to be replaced with all reasonable dispatch.

(2) Any employer other than the Republic who fails to comply with subsection (1) shall be liable upon conviction to a fine not exceeding \$100 for every day on which he so fails.

(3) Any person who without reasonable excuse wilfully injures, defaces, obliterated, destroys or removes any printed copy which has been posted as required by subsection (1) shall be liable upon conviction to a fine not exceeding \$1000 and in any proceedings for an offence under this subsection the proof of reasonable excuse shall lie on the person charged with the offence.

Protection of life and property

37. (1) Any employee whether an employee in an essential service or not who wilfully breaks his contract of service knowing or having reasonable cause to believe that the

probable consequences of his so doing either alone or in combination with others will be to endanger human life or public health or to cause serious bodily injury to any person or to expose valuable property to the risk of destruction, loss or serious injury shall be liable upon conviction to a fine not exceeding \$200 and to term of imprisonment not exceeding 1 year.

(2) Any person who causes, procures or counsels or in any way whatever encourages, persuades or influences or solicits or attempts to procure any employee, whether an employee in an essential service or not, to break his contract of service knowing or having reasonable cause to believe that the probable consequences of that employee so doing either alone or in combination with others will be to endanger human life or public health or to cause serious bodily injury to any person or to expose valuable property to the risk of destruction, loss or serious injury shall be liable upon conviction to a fine not exceeding \$500 and to a term of imprisonment nor exceeding 18 months.

(3) In any proceedings in respect of an offence under this section the court shall presume the existence of a contract of service of the nature alleged in the charge or information relating to the proceedings unless the contrary is proved.

(4) In any proceedings in respect of an offence under subsection (1) the court shall presume that any allegation in the charge or information in relation to the proceedings that a contract of service was wilfully broken is true until the contrary is proved.

Amendment of Schedule

38. (1) The Beretitenti, acting in accordance with advice of the Cabinet, may by order amend the Schedule –

- (a) by adding thereto further services and without prejudice to the generality of the description of any service specified therein may by such order specify any particular undertaking, activity or business or any class of undertaking, activity or business as being or as being included in an essential service;
- (b) by deleting therefrom any service.

(2) A copy of every order made under subsection (1) shall be laid before the Maneaba ni Maungatabu at its sitting next following the date on which the order comes into operation and if a resolution that such notice be revoked is passed by the House within a period of 20 days on which the House sits next following the day on which the order is laid before it the order shall be deemed to have been revoked on the day the resolution is passed.

PART VII STRIKE BALLOTS

Strike ballots

39. (1) (a) Subject to sub-paragraph (b) where a question arises whether a body of employees should strike in furtherance of a trade dispute and the number of those employees exceeds 50 that question shall be decided by a secret ballot of those employees; and

b) where the trade dispute involves employees represented by a trade union or by trade unions only members of that union or those unions shall be eligible to vote.

(2) A decision to strike taken under this section shall require a two-thirds majority of all those eligible to vote.

(3) Where a strike takes place following a ballot under this section no ballot shall be required to determine the strike but the Minister or Registrar may advise the parties to the dispute that in his opinion such a course is desirable.

(4) Notwithstanding the other provisions of this Code, a strike which takes place in furtherance of a trade dispute shall be unlawful unless this section has in every appropriate case been complied with.

(5) The Minister may make rules prescribing the manner in which ballots required by this section shall be conducted.

PART VIII MISCELLANEOUS

Certain immunities not affected

40. Nothing in this Code shall in any way affect the immunities from criminal and civil liability or process granted by Part II and III of the Trade Unions & Employers Organisation Act 1998.

Conclusion of collective agreements not affected

41. Nothing in this Code shall affect the right of trade unions or of other associations representative of employees to conclude collective agreements with employers or organisations of employers.

Liability of persons appointed under Code

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

Remuneration and expenses

43. The Beretitenti in consultation with the Minister of Finance shall determine the remuneration, including allowances, to be paid to any person appointed under this Code and the same shall be paid out of the Consolidated Fund.

Regulations

44. (1) Subject to sections 35 (5), 36 (1) and 39(5), the Beretitenti, may make regulations generally for the better carrying into effect of the provisions, objects and intentions of this Code and in particular for prescribing the procedure to be followed in any proceedings before a tribunal, board or the Commission or otherwise under this Code.

(2) The Minister or Registrar as the case requires may give directions not inconsistent with any regulations made under subsection (1) or section 39 (5) relating to the scope, method and conduct of any particular proceedings.

Consent of Attorney General required for prosecutions

45. No prosecution for an offence under this Code shall be instituted except by or with the consent of the Attorney General.

Code binds the Republic

46. Subject to section 36(2) the provisions of this Act shall binds the Republic.

Industrial Relations Code repealed

47. The industrial Relations Code (Cap.45) is repealed.

Continuation of Proceedings

48. Notwithstanding the repeal by this Act of the Industrial Code (Cap.45), any trade dispute reported to the Minister before commencement of this Act under the Industrial Relations Code (Cap.45) shall be dealt with in accordance with the provisions of that Ordinance as if this Act had not been passed.

INDUSTRIAL RELATIONS CODE ACT 1997

EXPLANATORY MEMORANDUM

1. This Act is substantially the same as the Industrial Relations Code (Cap.45). Additional matters dealt with include the creation of this position of Registrar of Industrial Relations who will have the power to deal with trade dispute, and the reduction of time limits before industrial action is permitted.
2. Part II provides for the Establishment and Appointment of a Registrar of Industrial Relations.
3. Part III provides the procedure for reporting trade disputes and sets out the powers the Minister and the Registrar have to deal with those disputes.
4. Part IV provides for Conciliation, Arbitration, Settlement and Inquiries into trade disputes as options for bringing trade disputes to an end.
5. Part V prohibits certain industrial action where an agreement between the parties has been made or where an arbitrator has made an award, or where procedures are not exhausted.
6. Part VI limits the industrial action that can be taken where the workers concerned are engaged in essential services or where life or property are at risk.
7. Part VII sets out the procedures for strike ballots.
8. Part VIII provides for miscellaneous matters necessary for giving effect to the Act.

Michael N Takabwe
Attorney General