

Chapter 174.  
***Industrial Relations Act 1962.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 174.

***Industrial Relations Act 1962.***

ARRANGEMENT OF SECTIONS.

**PART I – PRELIMINARY.**

1. Interpretation.
  - “award”
  - “Board of Inquiry”
  - “common rule”
  - “Industrial Council”
  - “the Minimum Wages Board”
  - “party”
  - “registered award”
  - “registered determination of the Minimum Wages Board”
  - “the regulations”
  - “this Act”
  - “Tribunal”
2. Application.
3. Delegation.

**PART II – INDUSTRIAL MATTERS GENERALLY.**

***Division 1 – Industrial Councils.***

4. Establishment of Councils.
5. Functions of Councils.

***Division 2 – Boards of Inquiry.***

6. Establishment of Boards.
7. Functions of Boards.
8. Meetings of Boards.
9. Publication of reports.

***Division 2A – National Tripartite Consultative Council.***

- 9A. Interpretation.
- 9B. Establishment etc., of National Tripartite Consultative Council.
- 9C. Alternates.

- 9D. Vacation of office of members representing employers' and employees'.
- 9E. Functions of the Council.
- 9F. Meetings of the Council.
- 9G. Quorum for meeting.
- 9H. Recommendations or minutes of the Council.
- 9I. Office of the Secretariat to the Council.
- 9J. Office of the Director of the Secretariat.
- 9K. Committees.
- 9L. Functions of the Committee.

***Division 3 – Minimum Wages Board.***

- 10. Establishment of Minimum Wages Board.
- 11. Conditions of employment of Chairman.
- 12. Oath and affirmation of office.
- 13. Meetings of Minimum Wages Board.
- 14. Reference of matters to Minimum Wages Board.
- 15. Effect of reference.
- 16. Determinations by Minimum Wages Board.
- 17. Inconsistency with other determinations, etc.

***Division 4 – Arbitration Tribunals.***

- 18. Establishment of Tribunals.
- 19. Oath and affirmation of office.
- 20. Vacancies.
- 21. Making of awards.

***Division 5 – Inspectors.***

- 22. Duties of Inspectors.
- 23. Powers of Inspectors.

**PART III – SETTLEMENT OF INDUSTRIAL DISPUTES.**

- 24. Inquiries into industrial disputes, etc.
- 25. Report of industrial disputes.
- 26. Negotiated settlements.
- 27. Assistance during negotiations.
- 28. Compulsory conferences.
- 29. Reference of disputes to Tribunals.
- 30. Special provision for certain disputes.
- 31. Inquiry on reference.

**PART IV – AWARDS.**

- 32. Awards by Tribunals.
- 32A. Boards of Reference.
- 33. Filing and registration of agreements.
- 34. Preference to members of organizations.
- 35. Limitation of awards to industrial matters.
- 36. Retrospectivity of awards.
- 37. Application of awards in certain cases.
- 38. Inconsistency with other awards and determinations.
- 39. Awards restricting employment.

**PART V – REGISTRATION, DISALLOWANCE, ETC., OF AWARDS  
AND DETERMINATIONS.**

- 40. Registration of awards.
- 41. Reference of award or determination to National Executive Council.
- 42. Disallowance of awards, etc.
- 43. Publication of awards, etc.
- 44. Effect of awards, etc.
- 45. Copies of awards, etc.

**PART VI – COMMON RULES.**

- 46. Declaration of common rules.
- 47. Effect of gazettal of common rules.
- 48. Period of common rules.

**PART VII – CONDUCT OF PROCEEDINGS.**

- 49. Exclusion of other arbitration provisions.
- 50. Regulation of proceedings.
- 51. Mediation.
- 52. Evidence.
- 53. Representation.
- 54. Publicity of proceedings.
- 55. Protection of trade secrets, etc.
- 56. Inspection of books, etc.
- 57. Direction to register.

**PART VIII – OFFENCES.**

- 58. Failure to comply with awards, etc.
- 59. Powers of National Court as to enforcement of awards, etc.
- 60. Unauthorized publication.
- 61. Failure to answer questions, etc.
- 62. Offences in relation to hearings.
- 63. Injuring employee or employer on account of industrial action.
- 64. Penalties imposed by organizations on persons observing awards.
- 65. Contracts entered into by agents of employers.

**PART IX – MISCELLANEOUS.**

- 66. Fees and allowances.
- 67. Delegation of duties, etc., of employers.
  - “employee”
  - “employer”
- 68. Regulations.



INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Industrial Relations Act 1962,***

Being an Act relating to the better development of industrial relations and the prevention and settlement of industrial disputes, to be incorporated and read as one with the *Industrial Organizations Act 1962*.

**PART I. – PRELIMINARY.**

**1. INTERPRETATION.**

In this Act, unless the contrary intention appears—

“**award**” means—

- (a) an award made by a Tribunal in respect of an industrial dispute referred to it under Section 29 or 30; or
- (b) an agreement deemed to be an award by virtue of Section 33;

“**Board of Inquiry**” means a Board of Inquiry established under Section 6;

“**common rule**” means a registered award declared to be a common rule under Section 46;

“**Industrial Council**” means an Industrial Council formed under Section 4;

“**the Minimum Wages Board**” means the Minimum Wages Board established by Section 10;

“**party**”, in relation to a matter arising before a Tribunal, a Board of Inquiry, the Minimum Wages Board or the Departmental Head in connection with any provision of this Act, includes any person who, in its or his opinion, ought properly to be treated as a party;

“**registered award**” means an award that has been—

- (a) registered by the Registrar; and

(b) notified in the National Gazette,  
in accordance with this Act;

**“registered determination of the Minimum Wages Board”** means a determination of the Minimum Wages Board in respect of a matter referred to it under Section 14 that has been—

(a) registered by the Registrar; and  
(b) notified in the National Gazette,  
in accordance with this Act;

**“the regulations”** means any regulations made under this Act;

**“this Act”** includes the regulations;

**“Tribunal”** means an Arbitration Tribunal established under Section 18.

## 2. APPLICATION.

(1) Subject to Subsection (2), this Act applies to and in relation to the State and an authority constituted by or under a law.

(2) This Act does not apply to or in relation to a matter or thing to which the *Public Services Conciliation and Arbitration Act 1969* or the *Teaching Service Conciliation and Arbitration Act 1971*, or any other law relating to the settlement of trade or industrial disputes, applies.

## 3. DELEGATION.

The Departmental Head may, by writing under his hand, delegate to an officer all or any of his powers and functions under this Act (except this power of delegation).



**PART II. – INDUSTRIAL MATTERS GENERALLY.**

***Division 1.***

***Industrial Councils.***

**4. ESTABLISHMENT OF COUNCILS.**

(1) Any number of employers and employees in a trade or industry, and registered organizations representing any such employers or employees, may by agreement form an Industrial Council for the purpose of–

- (a) fostering the improvement of industrial relations between those employers and employees; and
- (b) encouraging the free negotiation of the terms and conditions of employment of those employees; and
- (c) promoting the peaceful settlement of disputes or differences as to the terms and conditions of employment of those employees.

(2) An Industrial Council formed under Subsection (1) shall consist of–

- (a) such representatives of the employers and employees; and
- (b) such members of any registered organizations representing the employers or employees,

as the employers and employees, or the registered organizations, as the case may be, determine.

(3) The members of an Industrial Council–

- (a) shall appoint, or may request the Departmental Head to appoint, as occasion requires one of their number to be Chairman of the Council; and
- (b) may terminate the appointment of the Chairman of the Council at any time.

(4) The method of calling of, and the procedure to be followed at, meetings of an Industrial Council are as determined by it.

**5. FUNCTIONS OF COUNCILS.**

An Industrial Council may–

- (a) make arrangements for the alteration of, or for the settlement of disputes or differences as to, the terms and conditions of employment of the employees represented on the Council by–
  - (i) free negotiation; or
  - (ii) conciliation or arbitration otherwise than under Part III.; or
- (b) subject to Section 33, agree as to such terms and conditions of employment.

***Division 2.******Boards of Inquiry.*****6. ESTABLISHMENT OF BOARDS.**

(1) There shall be such Boards of Inquiry as the Head of State, acting on advice, establishes for the purposes of this Act.

(2) A Board of Inquiry shall consist of—

(a) a Chairman; and

(b) not less than three other members (of whom at least one shall not be an officer of the Public Service),

appointed by the Head of State, acting on advice, by notice in the National Gazette.

**7. FUNCTIONS OF BOARDS.**

(1) A Board of Inquiry shall inquire into and report on such matters as are referred to it under this Act.

(2) In respect of each matter referred to it under this Act, a Board of Inquiry shall submit a report to the Minister without delay.

(3) A Board of Inquiry may, if it thinks fit, make an interim report pending the submission of a report under Subsection (2).

(4) A Board of Inquiry may authorize a member of the Board to inquire into and report to it on any aspect of a matter referred to it under this Act.

(5) A member of a Board of Inquiry authorized under Subsection (4) has and may exercise for the purposes of the inquiry and report all the powers and functions of a Board of Inquiry under this Act.

**8. MEETINGS OF BOARDS.**

(1) Meetings of a Board of Inquiry shall be held at such times and places as the Chairman of the Board determines or as the Head of State, acting on advice, directs.

(2) At a meeting of a Board of Inquiry—

(a) the Chairman shall preside; and

(b) all matters shall be determined in accordance with the majority of the votes of the members present; and

(c) in the event of an equality of votes on a matter, the Chairman has a casting, as well as a deliberative, vote.

(3) A Board of Inquiry may continue to act notwithstanding a vacancy in the office of a member of the Board, and an act, proceeding or requirement of a Board shall not be questioned or invalidated by reason only of a vacancy having occurred in the office of a member of the Board.

(4) Subject to this Act, the procedures of a Board of Inquiry are as determined by it.

**9. PUBLICATION OF REPORTS.**

Subject to this Act, the Minister may cause or permit to be published, in such manner as he thinks proper—

- (a) the whole or any part of a report or interim report by a Board of Inquiry in respect of a matter referred to it under this Act; or
- (b) any information obtained by a Board of Inquiry in the course of an inquiry under this Act.

***Division 2A.<sup>1</sup>***

***National Tripartite Consultative Council.***

**9A. INTERPRETATION.**

<sup>2</sup>In this Division, “**the Council**” means the National Tripartite Consultative Council established by Section 9B.

**9B. ESTABLISHMENT ETC., OF NATIONAL TRIPARTITE CONSULTATIVE COUNCIL.**

<sup>3</sup>(1) The National Tripartite Consultative Council is hereby established.

(2) The Council shall consist of—

- (a) the following Ministers representing the Government:—
  - (i) the Minister responsible for labour and employment matters, who shall be the Chairman of the Council; and
  - (ii) the Minister responsible for finance and planning matters; and
  - (iii) the Minister responsible for trade and industry matters; and
  - (iv) the Minister responsible for minerals and energy matters; and
- (b) six members representing the following employer groups:—
  - (i) Employers’ Federation of Papua New Guinea; and
  - (ii) Papua New Guinea Chamber of Commerce; and
  - (iii) Lae Chamber of Commerce; and
  - (iv) Papua New Guinea Chamber of Mines and Petroleum; and
  - (v) Rural Industries Council; and
- (c) six members representing the following employee groups:—

<sup>1</sup> Division 2A inserted by *Industrial Relations (Amendment) Act 1991* (No. 7 of 1992), s1.

<sup>2</sup> Section 9A inserted by *Industrial Relations (Amendment) Act 1991* (No. 7 of 1992), s1.

<sup>3</sup> Section 9B inserted by *Industrial Relations (Amendment) Act 1991* (No. 7 of 1992), s1.

- (i) public sector unions; and
- (ii) private sector unions.

(3) The members of the Council referred to—

- (a) in Subsection (2)(b) shall be appointed by notice in the National Gazette by the Minister after consultation with the employer groups referred to; and
- (b) in Subsection (2)(c)—shall be appointed by notice in the National Gazette by the Minister after consultation with the Trade Union Congress,

for a term of two years and are eligible for re-appointment.

(4) Each member referred to in Subsection (2)(b) and (c) shall be paid an attendance fee and allowances as are fixed by the Minister responsible for finance and planning matters.

#### **9C. ALTERNATES.**

<sup>4</sup>(1) For each of the members appointed under Section 9B(2)(b) and (c), an alternate member may be appointed in the same manner and subject to the same conditions as the member for whom he is the alternate.

(2) In the event of the inability of a member to carry out his functions, his alternate member has and may exercise all the powers, functions, duties and responsibilities of the member and this Act applies accordingly.

(3) The alternate member may attend all meetings of the Council but shall not, except where he is attending in the absence of the member, take part in the proceedings or be counted towards a quorum.

#### **9D. VACATION OF OFFICE OF MEMBERS REPRESENTING EMPLOYERS' AND EMPLOYEES'.**

<sup>5</sup>(1) Where a member referred to in Section 9B(2)(b) or (c)—

- (a) becomes permanently incapable of performing his duties; or
- (b) resigns his office by written notice to the Chairman; or
- (c) is absent from any three consecutive meetings of the Council; or
- (d) nominates for election to, or becomes a member of, the National Parliament or of a provincial legislature,

the Minister shall terminate his appointment.

(2) Where—

- (a) in the case of a member referred to in Section 9B(2)(b)—the groups referred to in that Paragraph; or

<sup>4</sup> Section 9C inserted by *Industrial Relations (Amendment) Act 1991* (No. 7 of 1992), s1.

<sup>5</sup> Section 9D inserted by *Industrial Relations (Amendment) Act 1991* (No. 7 of 1992), s1.

- (b) in the case of a member referred to in Section 9B(2)(c)—the Trade Union Congress,

request the Minister to terminate the appointment of the member, the Minister shall comply with the request .

(3) The Minister may, at any time, by written notice, advise a member referred to in Section 9B(2)(b) or (c) of his intention to terminate the appointment of the member for inability, inefficiency, incapacity or misbehaviour, as the case may be.

(4) If the member referred to in Subsection (3) fails, within 14 days of receipt of the notice referred to in that subsection, to reply by written notice to the satisfaction of the Minister responsible for labour and employment matters, his appointment is terminated.

(5) Where the appointment of a member is terminated under this section, the Minister responsible for labour and employment shall, by notice in the National Gazette, declare his office vacant.

(6) Where an office is declared vacant under Subsection (5), the vacancy shall be filled in accordance with Section 9B(3).

## **9E. FUNCTIONS OF THE COUNCIL.**

<sup>6</sup>The Council is established for the purposes of—

- (a) seeking ways and methods of improving the climate of industrial relations throughout the working environment; and
- (b) fostering a continual interchange of views between the Government and representatives of both employers and employees throughout all formal business sectors; and
- (c) giving practical reality to the views referred to in Paragraph (b) by encouraging representatives of employers and employees to take such action as to ensure that the views become working measures in the industrial and commercial environment; and
- (d) promoting the use of modern management techniques and the use of such industrial practices as will lead to a proper understanding between all parties concerned and encourage the taking of action which will increase harmony at the work place; and
- (e) promoting industrial harmony between citizens and non-citizens of the working community.

## **9F. MEETINGS OF THE COUNCIL.**

<sup>7</sup>(1) Unless otherwise agreed in accordance with this section, the Council shall meet two times in any one year to conduct its business or affairs under this Division

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<sup>6</sup> Section 9E inserted by *Industrial Relations (Amendment) Act 1991* (No. 7 of 1992), s1.

<sup>7</sup> Section 9F inserted by *Industrial Relations (Amendment) Act 1991* (No. 7 of 1992), s1.

and such meetings shall be called by the Chairman, who shall give at least six weeks' notice of such meeting.

(2) A third or any subsequent meeting of the Council may only be held in any one year where at least two of the following groups constituting the Council so request the Minister:—

- (a) the group of Ministers representing the Government referred to in Section 9B(2)(a); and
- (b) the group of members representing employer groups referred to in Section 9B(2)(b); and
- (c) the group of members representing employee groups referred to in Section 9B(2)(c).

(3) At a meeting of the Council—

- (a) the Chairman shall preside; and
- (b) all matters before the Council shall be those on an agenda previously set by the members of the Council; and
- (c) all matters shall be agreed upon through consensus and not by the taking of a vote; and
- (d) where after discussion in relation to a matter no consensus is reached, the matter shall be closed and may then be referred to a subsequent meeting for further discussion.

(4) The Council may make only recommendations to the National Executive Council in relation to a matter.

### **9G. QUORUM FOR MEETING.**

<sup>8</sup>(1) At any meeting of the Council the quorum shall be eight members consisting of—

- (a) at least two members of those members referred to in Section 9B(2)(a); and
- (b) at least three members of those members referred to in Section 9B(2)(b); and
- (c) at least three members of those members referred to in Section 9B(2)(c).

### **9H. RECOMMENDATIONS OR MINUTES OF THE COUNCIL.**

<sup>9</sup>(1) For the purposes of this section, “**public authority**” means any—

- (a) government body; or
- (b) State Service; or

<sup>8</sup> Section 9G inserted by *Industrial Relations (Amendment) Act 1991* (No. 7 of 1992), s1.

<sup>9</sup> Section 9H inserted by *Industrial Relations (Amendment) Act 1991* (No. 7 of 1992), s1.

(c) authority or instrumentality or other body (corporate or unincorporate), established by or under Constitutional Law or an Act of the Parliament and declared by the Minister, by notice in the National Gazette, to be a public authority.

(2) All recommendations or minutes of the Council in relation to any matter shall be submitted to the National Executive Council.

(3) If the National Executive Council approves a recommendation or part of a recommendation of the Council, it shall direct—

- (a) the Chairman of the Council; or
- (b) a public authority to whom the recommendation relates,

to take such appropriate legislative or other measures as are necessary to ensure that such recommendations are brought into effect.

#### **9I. OFFICE OF THE SECRETARIAT TO THE COUNCIL.**

<sup>10</sup>(1) The Office of Secretariat to the Council is hereby established.

(2) The Departmental Head of the Department of Personnel Management shall, in relation to the Office of the Secretariat, create an office and provide adequate staff, for the purposes of the Secretariat.

#### **9J. OFFICE OF THE DIRECTOR OF THE SECRETARIAT.**

<sup>11</sup>(1) There shall be a Director of the Secretariat to the Council.

(2) The tenure of office of the Director together with the terms and conditions of employment are as determined by the Head of State, acting on the advice of the Minister.

(3) The Director shall—

- (a) be responsible to the Minister for all policy matters relating to the deliberations of the Council; and
- (b) be responsible to the Secretary of the Department responsible for labour and employment matters for all administrative matters relating to the office of the Secretariat.

#### **9K. COMMITTEES.**

<sup>12</sup>(1) There shall be a Committee of the Council which shall consist of six committee members being—

- (a) two of the members referred to in Section 9B(2)(a) of whom one shall be the Chairman; and
- (b) two of the members referred to in Section 9B(2)(b); and

<sup>10</sup> Section 9I inserted by *Industrial Relations (Amendment) Act 1991* (No. 7 of 1992), s1.

<sup>11</sup> Section 9J inserted by *Industrial Relations (Amendment) Act 1991* (No. 7 of 1992), s1.

<sup>12</sup> Section 9K inserted by *Industrial Relations (Amendment) Act 1991* (No. 7 of 1992), s1.

(c) two of the members referred to in Section 9B(2)(c).

(2) Meetings of the Committee shall be held at such times and places as the Chairman may determine.

(3) At any meeting of the Committee the quorum shall be at least three members each member representing his respective group referred to in Subsection (1)(a), (b) and (c).

**9L. FUNCTIONS OF THE COMMITTEE.**

<sup>13</sup>The functions of the Committee are—

- (a) to monitor progress of activities and programmes of the Council; and
- (b) formulate agendas for the Council meeting; and
- (c) ensure that action plans based on Council resolutions are carried out by the Secretariat; and
- (d) formulate and approve press statements for the Chairman to release.

***Division 3.***

***Minimum Wages Board.***

**10. ESTABLISHMENT OF MINIMUM WAGES BOARD.**

(1) A Minimum Wages Board is hereby established.

(2) The Minimum Wages Board shall consist of—

- (a) a Chairman; and
- (b) not less than four other members,

appointed by the Head of State, acting on advice, by notice in the National Gazette.

(3) The members of the Minimum Wages Board referred to in Subsection 2(b) shall be appointed ad hoc for each particular matter referred to the Board under this Act.

(4) If the membership of the Minimum Wages Board for the purposes of any matter referred to it includes a representative or representatives of employers or employees, the members shall be appointed in such a way as to ensure equal numbers of employers' and employees representatives.

**11. CONDITIONS OF EMPLOYMENT OF CHAIRMAN.**

The tenure of office of the Chairman of the Minimum Wages Board and his terms and conditions of employment are as determined by the Head of State, acting on advice.

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<sup>13</sup> Section 9L inserted by *Industrial Relations (Amendment) Act 1991* (No. 7 of 1992), s1.



**12. OATH AND AFFIRMATION OF OFFICE.**

Before entering on the duties of his office, a member of the Minimum Wages Board shall take an oath or make an affirmation in the prescribed form.

**13. MEETINGS OF MINIMUM WAGES BOARD.**

(1) Meetings of the Minimum Wages Board shall be held at such times and places as the Chairman of the Board determines or as the Head of State, acting on advice, directs.

(2) At a meeting of the Minimum Wages Board—

(a) the Chairman shall preside; and

(b) all matters shall be determined in accordance with the majority of the votes of the members present; and

(c) in the event of an equality of votes on a matter, the Chairman has a casting, as well as a deliberative, vote.

(3) The Minimum Wages Board may continue to act notwithstanding a vacancy in an office of a member of the Board (other than the office of the Chairman), and an act, proceeding or determination of the Board shall not be questioned or invalidated by reason only of a vacancy having occurred in the office of a member of the Board.

(4) Subject to this Act, the procedures of the Minimum Wages Board are as determined by it.

**14. REFERENCE OF MATTERS TO MINIMUM WAGES BOARD.**

(1) Subject to this Act, the Head of State, acting on advice, may refer to the Minimum Wages Board for determination any matter relating to minimum wages and conditions of employment of employees other than apprentices, including matters relating to—

(a) minimum rates of pay; and

(b) allowable deductions from wages for—

(i) food, accommodation or issues supplied by employers; and

(ii) recruitment and repatriation costs; and

(c) deferred wages; and

(d) allowances; and

(e) penalty and overtime rates; and

(f) hours of work; and

(g) leave.

(2) In referring a matter to the Minimum Wages Board, the Head of State, acting on advice, shall specify the terms of reference of the Board in relation to the matter.

(3) The Head of State, acting on advice, shall cause a copy of the terms of reference to be given to the Registrar.

(4) A matter may be referred to the Minimum Wages Board notwithstanding the fact that it is the subject of, or is connected with, an industrial dispute, whether or not the dispute is the subject of other proceedings under this Act.

## **15. EFFECT OF REFERENCE.**

Notwithstanding this Act, where a matter has been, or is, referred to the Minimum Wages Board under Section 14—

(a) no action, or further action, shall be taken under Part III. on any industrial dispute as to any thing within the terms of reference of the Board; and

(b) no agreement shall be registered under Section 33 in relation to any such thing,

until—

(c) the determination of the Board has been registered under Section 40; or

(d) the end of a period of one month, or such further period as the Head of State, acting on advice, directs, after any reference of the determination to the National Executive Council under Section 41,

whichever first occurs.

## **16. DETERMINATIONS BY MINIMUM WAGES BOARD.**

(1) The Minimum Wages Board shall deal, without delay, with any matter referred to it under Section 14, and shall make a determination on it.

(2) A determination of the Minimum Wages Board may differentiate between different parts of the country, different industries and different occupations.

(3) Subject to Subsection (4), a determination of the Minimum Wages Board has no effect until the date on which it is notified in the National Gazette in accordance with Section 43.

(4) In a matter that has been referred to the Minimum Wages Board under Section 14, and is the subject of, or is related to, an industrial dispute, a determination of the Minimum Wages Board does not, except with the consent of all parties to the dispute, have effect before the date on which notice under Section 25 was given to the parties to the dispute unless—

(a) the Minimum Wages Board for a special reason determines otherwise; and

(b) the Head of State, acting on advice, consents.

(5) Each determination of the Minimum Wages Board shall be filed with the Registrar for registration.

**17. INCONSISTENCY WITH OTHER DETERMINATIONS, ETC.**

A determination that is inconsistent with another such determination or with an award may be made by the Minimum Wages Board.

***Division 4.***

***Arbitration Tribunals.***

**18. ESTABLISHMENT OF TRIBUNALS.**

(1) The Head of State, acting on advice, may, by instrument under his hand, establish an Arbitration Tribunal to deal with an industrial dispute.

(2) The constitution of a Tribunal shall be as specified by the Head of State, acting on advice, in the instrument establishing the Tribunal.

(3) The Head of State, acting on advice—

(a) may at any time revoke the establishment of a Tribunal; and

(b) may establish another Tribunal to deal with the dispute in relation to which the first-mentioned Tribunal was established.

**19. OATH AND AFFIRMATION OF OFFICE.**

Before entering on the duties of his office, a member of a Tribunal shall take an oath or make an affirmation in the prescribed form.

**20. VACANCIES.**

(1) Where a Tribunal inquiring into an industrial dispute consists of more than one person and a vacancy occurs in the membership of the Tribunal, the Tribunal may, with the consent of all parties to the dispute, continue to act notwithstanding the vacancy.

(2) Where a Tribunal continues to act by virtue of Subsection (1), an act, proceeding, determination or award of the Tribunal shall not be questioned or invalidated by reason of the vacancy.

**21. MAKING OF AWARDS.**

A Tribunal shall deal with the industrial dispute in relation to which it was established without delay, and in any case within—

(a) 21 days after the date of reference; or

(b) such further time as the Head of State, acting on advice, allows in the circumstances of a particular case.

***Division 5.******Inspectors.*****22. DUTIES OF INSPECTORS.**

For the purposes of this Act, an Inspector has such duties and shall make such investigations and reports in relation to the observance of this Act and of awards, common rules and registered determinations of the Minimum Wages Board as are prescribed or as the Departmental Head directs.

**23. POWERS OF INSPECTORS.**

(1) For the purposes of carrying out his duties under this Act, an Inspector may, subject to Subsection (2), at all reasonable times and with or without notice to any person—

- (a) enter on and inspect any premises, land, place, building, mine, vehicle, vessel or aircraft in or in respect of which—
  - (i) an industry or trade is carried on; or
  - (ii) work is being or has been done or commenced; or
  - (iii) any matter or thing is taking or has taken place,
    - in relation to which—
  - (iv) there is an industrial dispute; or
  - (v) an award has been made; or
  - (vi) an offence against this Act is suspected; and
- (b) inspect any work, material, machinery, appliance, article, book or document in or on any such premises, land, place, vehicle, vessel or aircraft, and interview any employee in or on them or it; and
- (c) examine a person who is or is believed or suspected to be an employee; and
- (d) question any person in regard to any matter that in his opinion affects or may affect the employment, safety, health or welfare of employees; and
- (e) require any person to produce any document in his possession or control in any way relating to employees, and take a copy of or extract from any such document; and
- (f) require any person to produce any food, clothing or article in his possession or control that is issued or kept for issue to employees.

(2) A mine shall not be entered or inspected under Subsection (1) by a person other than a qualified inspector of mines or mining engineer except in the presence of a qualified inspector of mines or mining engineer.

**PART III. – SETTLEMENT OF INDUSTRIAL DISPUTES.**

**24. INQUIRIES INTO INDUSTRIAL DISPUTES, ETC.**

(1) Where an industrial dispute exists or is apprehended, the Head of State, acting on advice, may direct the Departmental Head to refer to a Board of Inquiry, for inquiry and report, any matter connected with the economic or industrial conditions of Papua New Guinea that is involved in the dispute.

(2) Where an industrial dispute exists or is apprehended, the Departmental Head may, with the approval of the Head of State, acting on advice—

- (a) inquire into the causes and circumstances of the dispute; or
- (b) if he thinks fit, refer to a Board of Inquiry, for inquiry and report, any matter that, in his opinion, is connected with or relevant to the dispute.

**25. REPORT OF INDUSTRIAL DISPUTES.**

(1) A person who is concerned or interested, or is likely to be concerned or interested, in an industrial dispute may report the dispute to the Departmental Head.

(2) An employer or an industrial organization who is a party to or is involved in an industrial dispute that gives rise, or seems likely to give rise, to a strike or lock-out, must immediately notify the Departmental Head or an officer of the Department.

Penalty: A fine not exceeding K100.00.

(3) If he has not already acted under this Part, the Departmental Head—

- (a) shall inquire into an industrial dispute reported under Subsection (1) or (2); and
- (b) may, by written notice or by telegram, require the parties to the dispute to enter into negotiations for the settlement of the dispute within 14 days after the date of the notice.

**26. NEGOTIATED SETTLEMENTS.**

(1) Subject to Section 57, for the purpose of negotiating a settlement of an industrial dispute in a case where no registered organization of employers or employees exists that is, in the opinion of the Departmental Head, sufficiently representative of the employers or employees, or any of them, the employers or employees may, on the invitation of the Departmental Head, appoint such number of representatives, not exceeding five, as they think proper.

(2) The representatives appointed under Subsection (1) may act on behalf of the employers or employees by whom they were appointed in negotiating a settlement of the dispute.

(3) Subsections (1) and (2) apply notwithstanding any other law.

**27. ASSISTANCE DURING NEGOTIATIONS.**

(1) At any time during negotiations for the settlement of an industrial dispute, a party to the dispute may apply to the Departmental Head for assistance in the negotiations.

(2) On receipt of an application under Subsection (1), the Departmental Head shall—

- (a) attend the negotiations; and
- (b) endeavour to negotiate an agreement between the parties as to the terms of settlement of the dispute.

**28. COMPULSORY CONFERENCES.**

(1) Where notice under Section 25(3)(b) is given to the parties to an industrial dispute, then if—

- (a) at any time before the expiration of the period of 28 days from the date of the notice—
  - (i) a party to the dispute has refused to negotiate, or to negotiate further, for the settlement of the dispute; or
  - (ii) the parties to the dispute consent; or
- (b) at the expiration of the period referred to in Paragraph (a) no settlement of the dispute has been effected,

the Departmental Head may, subject to Subsection (2), by written notice to the parties to the dispute require them to attend a conference, at a time and place fixed in the notice, for the purpose of endeavouring to arrange a settlement of the dispute under his supervision.

(2) Where in a trade or industry in which there is an industrial dispute there is an arrangement for the settlement of industrial disputes by conciliation or arbitration that—

- (a) has been made in pursuance of an agreement between employers (or a registered organization representing employers) and employees (or a registered organization representing employees) in the trade or industry; and
- (b) applies to the parties to the dispute,

the Departmental Head shall not require the attendance of parties to a dispute in the trade or industry at a conference under Subsection (1) unless—

- (c) at the expiration of the period of 28 days referred to in Subsection (1)(a) no settlement of the dispute by means of the arrangement has been effected; or
- (d) a party to the dispute has refused to proceed, or to proceed further, under the arrangement; or

(e) the parties to the dispute consent to or request the conference.

(3) Notwithstanding Subsections (1) and (2), where in his opinion it is desirable in the public interest to do so the Departmental Head may, whether or not notice has been given under Subsection (1) or Section 25, by written notice to the parties to an industrial dispute require them to attend a conference, at a time and place fixed in the notice, for the purpose of endeavouring to arrange, under his supervision, a settlement of the dispute.

(4) Except to the extent that the Departmental Head directs that it be held in public, a conference called under this section shall be held in private.

(5) At a conference called under this section, the Departmental Head shall preside and shall endeavour, by all means at his disposal—

(a) to conciliate the parties to the dispute; and

(b) to effect a settlement of the dispute.

(6) Where, under Subsection (5), the Departmental Head effects a settlement of an industrial dispute, the parties to the dispute shall record, in writing, the agreement as to the terms of settlement.

## **29. REFERENCE OF DISPUTES TO TRIBUNALS.**

(1) Where the Departmental Head is unable to effect under Section 28 a settlement of an industrial dispute, he shall report the dispute to the Minister.

(2) The Head of State, acting on advice—

(a) shall, if so required by the parties to the dispute; or

(b) may, if the Head of State, acting on advice, thinks fit,

direct the Departmental Head to refer an industrial dispute reported under Subsection (1) to a Tribunal for decision and the making of an award.

## **30. SPECIAL PROVISION FOR CERTAIN DISPUTES.**

(1) This section applies to and in relation to an industrial dispute that—

(a) in the opinion of the Head of State, acting on advice, is of such importance that, in the public interest, it should be dealt with as provided in this section; and

(b) is so declared by him by notice in the National Gazette.

(2) Where in relation to an industrial dispute to which this section applies—

(a) in the opinion of the Departmental Head no suitable means of settling the dispute exists; or

(b) an attempt to negotiate a settlement of the dispute has failed; or

(c) an attempt to conciliate the parties to the dispute has failed; or

- (d) in the opinion of the Departmental Head a settlement of the dispute is unduly delayed; or
- (e) 21 days have elapsed since the dispute was reported to the Departmental Head and no settlement has been negotiated; or
- (f) a party to the dispute so requests,

the Departmental Head shall, notwithstanding anything in this Part, report the dispute to the Minister.

(3) Where a dispute is reported to the Minister under Subsection (2), the Head of State, acting on advice, may, if he thinks it proper to do so, refer the dispute to a Tribunal for decision and the making of an award.

(4) Where the Departmental Head reports an industrial dispute to the Minister under Subsection (2) and the Head of State, acting on advice, thinks it proper to refer the dispute for settlement to a Tribunal, the reference shall be made within—

- (a) seven days from the date on which the dispute was reported to the Minister; or
- (b) such further time as the Head of State, acting on advice, allows in any particular case.

(5) The Head of State, acting on advice, may at any time refer an industrial dispute to which this section applies to a Tribunal for decision and the making of an award.

### **31. INQUIRY ON REFERENCE.**

Where an industrial dispute is referred to a Tribunal under Section 29 or 30, the Tribunal shall—

- (a) inquire into the dispute without delay; and
- (b) make an award deciding the matters in issue between the parties to the dispute.



**PART IV. – AWARDS.**

**32. AWARDS BY TRIBUNALS.**

(1) An award of a Tribunal shall be made in such manner as is specified in the instrument establishing the Tribunal.

(2) An award of a Tribunal under this Act shall be filed with the Registrar for registration.

**32A. BOARDS OF REFERENCE.**

<sup>14</sup>(1) A Board of Reference may be appointed by–

- (a) the Departmental Head with the consent of the parties to an industrial dispute; or
- (b) a Tribunal; or
- (c) the Minimum Wages Board.

(2) The Departmental Head, or where the Board of Reference has been appointed by a Tribunal or the Minimum Wages Board, that Tribunal or that Board, may assign to a Board of Reference the function of allowing, approving, fixing, determining or dealing with in the manner and subject to the conditions specified in an award, a matter or thing which, under the award, may from time to time require to be allowed, approved, fixed, determined or dealt with by a Board of Reference.

(3) A Board of Reference appointed under this section may–

- (a) consist of one or more persons; and
- (b) include an officer of the Department.

**33. FILING AND REGISTRATION OF AGREEMENTS.**

(1) Subject to Sections 35 and 39, an agreement made under this Act between employers and employees and registered organizations, or any of them, shall be filed with the Registrar for registration and, on being registered, shall be deemed to be an award as between the parties to the agreement.

(2) Where in his opinion an agreement filed with him under Subsection (1) is inconsistent with the terms of a registered award binding on the parties to the agreement or some of them and, by reason of the inconsistency, ought not to be registered, the Registrar shall not register the agreement without the approval of the Head of State, acting on advice.

(3) Where in his opinion an agreement filed with him under Subsection (1) is inconsistent with the terms of a registered determination of the Minimum Wages Board, the Registrar shall not register the agreement without the approval of the Head of State, acting on advice.

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<sup>14</sup> Section 32A added by No. 36 of 1978.

**34. PREFERENCE TO MEMBERS OF ORGANIZATIONS.**

(1) In this section, “**conscientious belief**” means any conscientious belief, whether or not—

- (a) the grounds for the belief are of a religious character; and
- (b) the belief is part of the doctrine of any religion.

(2) An award may direct that preference shall, in relation to such matters, in such manner and subject to such conditions as are specified in the award, be given to such organizations or members of organizations as are so specified.

(3) Whenever in the opinion of a Tribunal it is necessary, for—

- (a) the prevention or settlement of an industrial dispute; or
- (b) ensuring that effect will be given to the purposes and objectives of an award; or
- (c) the maintenance of industrial peace; or
- (d) the welfare of society,

to direct that preference be given to members of organizations as provided by Subsection (2), the Tribunal shall so direct.

(4) Where—

- (a) an award has, under Subsection (2), directed that preference be given to members of an organization that is an association of employees; and
- (b) on application made to the Registrar in the prescribed form and manner a person satisfies the Registrar that the person’s conscientious beliefs do not allow him to be a member of such an organization,

the Registrar shall, subject to Subsection (6), issue to the person a certificate to the effect that while the certificate, or a renewal of the certificate, is in force an employer bound by the award is not required by reason of the award to give preference to members of the organization over the applicant.

(5) A certificate under Subsection (4)—

- (a) remains in force for such period, not exceeding 12 months, as is specified in the certificate; and
- (b) subject to Subsection (6), may be renewed from time to time by the Registrar for such period, not exceeding 12 months, as the Registrar thinks proper.

(6) The Registrar—

- (a) shall not issue a certificate to a person under Subsection (4) in relation to a direction under Subsection (2) unless the person has paid to the Registrar such amount as would, in the opinion of the Registrar, be payable by the person to the organization specified in the direction in respect of entrance fees and subscriptions if the person—

- (i) became a member of the organization on the day on which the certificate is to be issued; and
  - (ii) continued to be a member for the period during which the certificate is to remain in force; and
- (b) shall not renew the certificate unless the person has paid to the Registrar the amount that would, in the opinion of the Registrar, be payable by the person to the organization in respect of subscriptions if he—
- (i) were a member of the organization immediately before the renewal of the certificate; and
  - (ii) continued to be a member for the period during which the renewed certificate is to remain in force.

(7) The Registrar shall pay any amounts received by him under Subsection (6) into the Consolidated Revenue Fund.

**35. LIMITATION OF AWARDS TO INDUSTRIAL MATTERS.**

(1) An award of a Tribunal shall relate to industrial matters only.

(2) An agreement made and registered under this Act shall be deemed to be, and is enforceable as, an award only in relation to industrial matters.

**36. RETROSPECTIVITY OF AWARDS.**

(1) Subsection (2) does not apply in relation to an industrial dispute specified in Paragraph (g) of the definition of “industrial dispute” in Section 1(1) of the *Industrial Organizations Act 1962*.

(2) Subject to Subsection (1), an award of a Tribunal under this Act does not, except with the consent of all parties to the dispute, have effect from a date before the date on which notice under Section 25 was given to the parties, unless—

- (a) the Tribunal for a special reason determines otherwise; and
- (b) the Head of State, acting on advice, consents.

**37. APPLICATION OF AWARDS IN CERTAIN CASES.**

(1) An interested party may apply to the Minister for the establishment of a Tribunal to determine any question relating to the application of an award, and the Minister may establish a Tribunal to decide the question.

(2) A decision under Subsection (1) shall—

- (a) be notified without delay to the parties concerned; and
- (b) be filed with the Registrar for registration; and
- (c) be deemed to be incorporated into and form part of the award in respect of which it is made.

**38. INCONSISTENCY WITH OTHER AWARDS AND DETERMINATIONS.**

(1) Subject to Subsection (2) and to Section 33(2) and (3), an award may be made that is inconsistent with—

- (a) another award; or
- (b) a determination of the Minimum Wages Board.

(2) Where in his opinion an award filed with him for registration under this Act is inconsistent with the terms of a registered determination of the Minimum Wages Board, the Registrar shall not register the award without the approval of the Head of State, acting on advice.

**39. AWARDS RESTRICTING EMPLOYMENT.**

This Act does not authorize an award or agreement that purports to oblige—

- (a) an employer to employ only—
  - (i) members of; or
  - (ii) persons who are willing to become, or do become, members of,  
a specified or any organization; or
- (b) an employee to restrict his entry into employment to, or to remain in employment only with, an employer who is—
  - (i) a member of; or
  - (ii) willing to become or does become a member of,  
a specified or any organization,

but this section does not affect any restrictions imposed by any other provision of this Act.

**PART V. – REGISTRATION, DISALLOWANCE, ETC., OF AWARDS AND DETERMINATIONS.**

**40. REGISTRATION OF AWARDS.**

Subject to this Act, the Registrar shall, in the prescribed manner, register an award or a determination of the Minimum Wages Board filed with him under this Act for registration.

**41. REFERENCE OF AWARD OR DETERMINATION TO NATIONAL EXECUTIVE COUNCIL.**

(1) Where the Registrar is of the opinion that an award or a determination of the Minimum Wages Board filed with him for registration under this Act—

- (a) in the case of an award—is inconsistent with a law; or
- (b) in the case of a determination—goes beyond the terms of reference of the Minimum Wages Board in relation to the matter in question; or
- (c) in any case, is—
  - (i) contrary to public policy; or
  - (ii) not in accordance with the best interests of Papua New Guinea,

he shall refer the award or determination to the National Executive Council for consideration, with details of his reasons for his opinion.

(2) The Registrar shall not register an award or determination to which Subsection (1) relates without the approval of the Head of State, acting on advice.

**42. DISALLOWANCE OF AWARDS, ETC.**

(1) The Head of State, acting on advice, may at any time disallow—

- (a) an award or a registered award; or
- (b) a determination or a registered determination of the Minimum Wages Board,

on the ground that the award or determination—

- (c) is contrary to Public Policy; or
- (d) is not in accordance with the best interests of Papua New Guinea.

(2) Notice of disallowance of a registered award or registered determination of the Minimum Wages Board shall be published in the National Gazette, and the award or determination ceases to have effect on the publication of the notice.

(3) The disallowance of a registered award or registered determination of the Minimum Wages Board—

- (a) does not affect any right or liability accrued or incurred before the date of publication of notice of the disallowance; and

- (b) revives, as from the date of publication of notice of the disallowance, any award or determination that was, wholly or in part, superseded or revoked (whether expressly or impliedly) by the disallowed award or determination.

#### **43. PUBLICATION OF AWARDS, ETC.**

On the registration of an award or a determination of the Minimum Wages Board, the Registrar shall immediately cause to be published in the National Gazette notice of—

- (a) the making of the award or determination; and
- (b) the place where copies of the award or determination may be obtained.

#### **44. EFFECT OF AWARDS, ETC.**

(1) An award or a determination of the Minimum Wages Board is of no force or effect until registered and notified in the National Gazette in accordance with this Act.

(2) Subject to this Act—

- (a) a registered award or a registered determination of the Minimum Wages Board is binding on the employers and employees to whom it relates; and
- (b) as from the date specified in the award or determination or, if no date is specified, the date of publication of the notice under Section 43 in relation to the award or determination—it is an implied term of the contract between the employers and the employees to whom it relates that the wages to be paid and the conditions of employment to be observed under the contract are in accordance with the award or determination until varied by a subsequent registered award or registered determination.

#### **45. COPIES OF AWARDS, ETC.**

On payment of the prescribed fee, any person may obtain from the Registrar a copy of a registered award or a registered determination of the Minimum Wages Board.

**PART VI. – COMMON RULES.**

**46. DECLARATION OF COMMON RULES.**

(1) Where it appears to the Head of State, acting on advice, necessary or expedient to do so, the Head of State, acting on advice, may, by notice in the National Gazette, declare that the terms of a registered award are a common rule in relation to—

- (a) such employers or class of employers; or
- (b) such employees or class of employees; or
- (c) employment in such area,

as the Head of State, acting on advice, thinks proper.

(2) Before a common rule is declared under Subsection (1), the Head of State, acting on advice, shall publish in the National Gazette and in such other publications (if any) as the Head of State, acting on advice, thinks proper, a notice—

- (a) specifying—
  - (i) the employers or class of employers; or
  - (ii) the employees or class of employees; or
  - (iii) the area,

in relation to whom or to which it is proposed to declare a common rule; and

- (b) advising that all persons and organizations interested and desiring to object may, on or before a date specified in the notice, present written objections.

(3) The Head of State, acting on advice, shall consider all objections made under Subsection (2).

**47. EFFECT OF GAZETTAL OF COMMON RULES.**

(1) Subject to Subsection (2), on the publication of a notice under Section 46(1) the registered award concerned has, notwithstanding anything in any other law, the same force and effect in relation to the persons or the area—

- (a) to which it relates; or
- (b) in relation to which it is declared to be a common rule,

as if it were an award made, registered and notified under this Act in relation to those persons or to employers and employees in that area, as the case may be.

(2) Nothing in Subsection (1) or in the award gives to an award declared to be a common rule, effect retrospective from the date of publication of the notice under Section 46(1).

**48. PERIOD OF COMMON RULES.**

Notwithstanding anything in a registered award that is declared to be a common rule under this Part, the award remains in force as a common rule until it is—

- (a) cancelled by the Head of State, acting on advice, by notice in the National Gazette; or
- (b) varied or terminated by a further registered award or common rule.



**PART VII. – CONDUCT OF PROCEEDINGS.**

**49. EXCLUSION OF OTHER ARBITRATION PROVISIONS.**

Except as provided in this Act or in an award or an agreement made under this Act, no law relating to arbitration applies to any award, proceedings or matter under this Act.

**50. REGULATION OF PROCEEDINGS.**

Subject to this Act, the procedure to be followed in proceedings before a Tribunal, a Board of Inquiry, the Minimum Wages Board or the Departmental Head under this Act are as prescribed or, in the absence of prescription, as determined by the Tribunal, the Board of Inquiry, the Minimum Wages Board or the Departmental Head, as the case may be.

**51. MEDIATION.**

(1) A Tribunal or the Departmental Head may–

- (a) at any stage of proceedings under this Act in respect of an industrial dispute, postpone or adjourn the proceedings if in its or his opinion an amicable settlement of the whole or part of the dispute may be come to by the parties; and
- (b) mediate or arrange consultation between the parties with a view to such a settlement.

(2) Mediation or consultation arranged under Subsection (1) may be in public or in private.

(3) Subject to Sections 35 and 39, an award may be made by consent of parties.

**52. EVIDENCE.**

(1) In any proceedings relating to a matter under this Act, a Tribunal, a Board of Inquiry, the Minimum Wages Board or the Departmental Head is not bound to observe strict legal procedure or to apply technical rules of evidence, but shall inform itself or himself as to the matter by such means as in the circumstances are thought necessary, and for that purpose may, by order, require a person–

- (a) to furnish, in writing or otherwise, such particulars in relation to the matter as it or he requires; or
- (b) to attend before it or him and to give evidence on oath or otherwise; or
- (c) to answer any question or produce any document or thing that, in its or his opinion, is or may be relevant to the matter.

(2) For the purposes of this Act, a requirement of a Board of Inquiry, the Minimum Wages Board or a Tribunal purporting to have been made or given by the

Board of Inquiry, the Minimum Wages Board or Tribunal shall be deemed to have been properly made or given if it is signed—

- (a) by the Chairman of the Board of Inquiry or the Minimum Wages Board, or by a member of the Tribunal, as the case requires; or
- (b) in the case of a matter into which a member of a Board of Inquiry is authorized to inquire under Section 7(4), by the member.

### **53. REPRESENTATION.**

In any proceedings before, or inquiry by, a Tribunal, a Board of Inquiry, the Minimum Wages Board or the Departmental Head under this Act, a person may be represented by his agent or by a lawyer.

### **54. PUBLICITY OF PROCEEDINGS.**

(1) Subject to Sections 51 and 55, proceedings before, and inquiries by, a Tribunal, a Board of Inquiry, the Minimum Wages Board or the Departmental Head under this Act shall be in public, unless the Tribunal, Board of Inquiry, the Minimum Wages Board or Departmental Head, as the case may be, for reasons affecting the public interest, orders otherwise.

(2) Subject to Sections 51 and 55, where any proceedings before, or inquiry by, a Tribunal, a Board of Inquiry, the Minimum Wages Board or the Departmental Head under this Act are in public, a fair and accurate report or summary of, and fair comment on, the proceedings or inquiry (including any evidence adduced) may be published, unless the Tribunal, Board of Inquiry, the Minimum Wages Board or Departmental Head, for reasons affecting the public interest, orders otherwise.

### **55. PROTECTION OF TRADE SECRETS, ETC.**

(1) In any proceedings before, or inquiry by, a Tribunal, a Board of Inquiry, the Minimum Wages Board or the Departmental Head under this Act, objection may be taken by a witness or party, or by the person entitled to the trade secret, that any information tendered as evidence relates to a trade secret, or to the profits or financial position of a witness or party.

(2) Where objection is taken under Subsection (1), information—

- (a) shall not be given in evidence except by direction of the Tribunal, Board of Inquiry, the Minimum Wages Board or Departmental Head, as the case may be; and
- (b) if given, shall not be published in a newspaper or otherwise without an order of the Tribunal, Board of Inquiry, the Minimum Wages Board or Departmental Head permitting such publication.

(3) Where a Tribunal, a Board of Inquiry, the Minimum Wages Board or the Departmental Head directs that information relating to a trade secret or to the financial position of a witness or party be given in evidence, the evidence shall, if the

witness or party, or the person entitled to the trade secret so requests, be taken in private.

**56. INSPECTION OF BOOKS, ETC.**

Any book, paper, document or thing produced in evidence before a Tribunal, a Board of Inquiry, the Minimum Wages Board or the Departmental Head may be inspected—

- (a) by the Tribunal, Board of Inquiry, the Minimum Wages Board or Departmental Head, as the case may be; and
- (b) by such of the parties as the Tribunal, Board of Inquiry, the Minimum Wages Board or Departmental Head, as the case may be, allows.

**57. DIRECTION TO REGISTER.**

Where—

- (a) the parties or witnesses, or any of them, in any proceedings before, or inquiry by, a Tribunal or the Departmental Head under this Act are not, or are not members of, a registered organization; and
- (b) in the opinion of the Tribunal or the Departmental Head, the settlement or finalization of the proceedings or the inquiry would be facilitated by the registration of those parties or witnesses, or any of them, as a registered organization or organizations,

the Tribunal or the Departmental Head, as the case may be, may—

- (c) direct them, or any of them, to apply to the Registrar for registration; and
- (d) adjourn the proceedings or inquiry to enable application to be made accordingly.

**PART VIII. – OFFENCES.****58. FAILURE TO COMPLY WITH AWARDS, ETC.**

A person who contravenes or fails to comply with a provision of a registered award, a common rule or a registered determination of the Minimum Wages Board is guilty of an offence.

Penalty: A fine not exceeding K100.00, and, in addition, in the case of a second or subsequent offence that is a continuing offence a fine not exceeding K10.00 for each day or part of a day for which the offence continues.

**59. POWERS OF NATIONAL COURT AS TO ENFORCEMENT OF AWARDS, ETC.**

(1) The National Court may–

- (a) order compliance with an award proved to the satisfaction of the Court to have been broken or not observed; or
- (b) prohibit an organization or any other person from committing or continuing a contravention of this Act or a breach or non-observance of an award.

(2) The Attorney-General may, on behalf of the State, and in the public interest, apply to the National Court for an order under Subsection (1), but this subsection does not prejudice any right that any other person has to apply for such an order.

(3) Without prejudice to the operation of any other law providing for their enforcement, the powers of the National Court under Subsection (1) apply also in relation to–

- (a) awards, common rules and orders prescribing, directly or indirectly, terms and conditions of employment and made under a law other than this Act; and
- (b) provisions in force by virtue of such an award, common rule or order.

**60. UNAUTHORIZED PUBLICATION.**

Subject to Part VII, a person who–

- (a) publishes the whole or part of a report or interim report by a Board of Inquiry in respect of a matter referred to it under this Act; or
- (b) discloses any matter or information coming to the knowledge of, or obtained by, a Board of Inquiry in the course of an inquiry by it,

without having first obtained the permission of the Minister and the consent of any other person to which that permission is subject, is guilty of an offence.

Penalty: A fine not exceeding K100.00.

**61. FAILURE TO ANSWER QUESTIONS, ETC.**

(1) A person who, without reasonable excuse (proof of which is on him)–

(a) refuses or fails–

(i) to answer questions or to produce documents or things lawfully required under this Act; or

(ii) to obey an order, direction or requirement lawfully made or given under this Act; or

(b) hinders or obstructs a person in the performance of his functions or the exercise of his powers under this Act,

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(2) Where a person fails to obey an order, direction or requirement lawfully made or given under this Act, in addition to any penalty imposed on him under Subsection (1) the court imposing the penalty may, in its discretion, order him to be imprisoned until the order in respect of which the penalty is imposed is obeyed.

(3) It is a defence to a prosecution for an offence against Subsection (1) for failing without reasonable excuse to produce a document or thing if the defendant proves that the document or thing is not relevant to the matter in connection with which the production was required.

**62. OFFENCES IN RELATION TO HEARINGS.**

A person who–

(a) wilfully insults or disturbs–

(i) a Tribunal, a Board of Inquiry, or the Minimum Wages Board; or

(ii) a member of a Tribunal, a Board of Inquiry, or the Minimum Wages Board; or

(iii) the Departmental Head,

when it and or he is exercising powers or functions in or in relation to any proceeding or inquiry under this Act; or

(b) interrupts any proceedings or inquiry before a Tribunal, a Board of Inquiry, the Minimum Wages Board or the Departmental Head under this Act,

is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

**63. INJURING EMPLOYEE OR EMPLOYER ON ACCOUNT OF INDUSTRIAL ACTION.**

(1) An employer who—

- (a) dismisses an employee; or
- (b) injures him in his employment; or
- (c) alters his position to his prejudice,

because the employee—

- (d) is entitled to the benefit of an award; or
- (e) has appeared as a witness or has given evidence in any proceedings under this Act; or
- (f) being a member of an organization that is seeking better industrial conditions—is dissatisfied with his conditions,

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(2) An employee who ceases work in the service of his employer because the employer—

- (a) is entitled to the benefit of an award; or
- (b) has appeared as a witness or has given evidence in any proceedings under this Act,

is guilty of an offence.

Penalty: A fine not exceeding K50.00.

(3) In a prosecution for an offence against this section, if all the facts and circumstances constituting the offence, other than the reason for the defendant's action, are proved, proof that he was not actuated by the reason alleged in the charge is on the defendant.

(4) Where an employer has been convicted of an offence against this section, the court that convicts him may—

- (a) order that the employee be reimbursed any wages lost by him; and
- (b) direct that the employee be reinstated in his old position or in a similar position.

(5) Where the court making a direction under Subsection (4) is a District Court, the Court may, at the time of making the direction or on subsequent application to it by the Registrar or the employee concerned, order that in default of compliance with the direction the employer—

- (a) if a natural person—be imprisoned for such time, not exceeding 12 months as the Court thinks proper; or

- (b) if a corporation—be liable to a fine not exceeding K200.00, and in the case of a continuing default a fine not exceeding K20.00 for each day for which the default continues.

**64. PENALTIES IMPOSED BY ORGANIZATIONS ON PERSONS OBSERVING AWARDS.**

If—

- (a) an organization; or
- (b) the executive committee of an organization; or
- (c) the management committee of a branch of an organization,

imposes, or declares that it imposes or that it intends to impose, a penalty, forfeiture or disability of any kind on a member of the organization by reason of the fact that the member has observed, is observing or intends to observe the terms of an award, the organization is guilty of an offence.

Penalty: A fine not exceeding K200.00.

**65. CONTRACTS ENTERED INTO BY AGENTS OF EMPLOYERS.**

(1) For the purposes of this section, “**person carrying on the business of an employment agency**” includes a Native Employment Agent within the meaning of the *Native Employment Act 1958* (Adopted).

(2) A person carrying on the business of an employment agency who, as agent for an employer, makes a contract or agreement for the employment of an employee on terms and conditions less favourable to the employee than the terms and conditions of an award binding on the employer and employee is guilty of an offence.

Penalty: A fine not exceeding K200.00.

**PART IX. – MISCELLANEOUS.****66. FEES AND ALLOWANCES.**

A member of a Tribunal, a Board of Inquiry or the Minimum Wages Board (other than the Chairman of the Minimum Wages Board) shall be paid such fees and allowances (if any) as the Minister determines.

**67. DELEGATION OF DUTIES, ETC., OF EMPLOYERS.**

(1) In this section, unless the contrary intention appears—

“**employee**” includes a prospective employee;

“**employer**” includes a prospective employer.

(2) An employer may, by written notice to the Departmental Head, appoint a person in his full-time employment to have and perform such of the functions, duties and responsibilities of the employer under—

(a) this Act; or

(b) a registered award; or

(c) a registered determination of the Minimum Wages Board,

in relation to his employees and their accompanying dependants and his transit employees, or such of them as are specified in notice, other than any function, duty or responsibility that is specifically imposed by this Act or any such award or determination on the actual employer.

(3) For the purposes of this Act, the officer of the Public Service, or the officer of an authority constituted by or under any law, having immediate authority over an employee shall be deemed to have been appointed under this section to perform all the functions, duties and responsibilities of the State or of that authority, as the case may be, under this Act, and under all registered awards and registered determinations of the Minimum Wages Board, in relation to the employee.

(4) For the purposes of this Act, a person appointed or deemed to have been appointed under this section shall be deemed to be the employer in relation to the performance of the functions, duties and responsibilities for which he was appointed or is deemed to have been appointed, but this section does not relieve the actual employer of any of his duties or responsibilities (whether civil or criminal) under this Act, a registered award or a registered determination of the Minimum Wages Board.

(5) Where a person appointed or deemed to have been appointed under this section is, by virtue of Subsection (4), charged with an offence against this Act, it is a defence if he proves that, within the resources made available to him and the authority vested in him, he took all reasonable steps to ensure compliance with the provision of this Act or of any registered award or registered determination of the Minimum Wages Board in relation to which the charge is made.



**68. REGULATIONS.**

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for—

- (a) prescribing and regulating generally the procedure to be followed in proceedings before a Tribunal, a Board of Inquiry, the Minimum Wages Board or the Departmental Head; and
- (b) prescribing the method of filing and registering awards and determinations of the Minimum Wages Board; and
- (c) prescribing the forms to be used and the fees to be paid in connection with any matter arising under this Act; and
- (d) prescribing the returns to be made, records to be kept and notices to be given under this Act; and
- (e) the imposition of penalties of fines not exceeding K50.00 for offences against the regulations.

Office of Legislative Counsel, PNG