

**ATTORNEY GENERAL'S CONFERENCE**

**03 - 04 DECEMBER 2004**

**(The Warwick Fiji)**

**EMPLOYMENT RELATIONS**

**BILL 2004 :**

**Trade Unions & Dispute  
Resolution Processes**

# OVERVIEW

- Consolidate & strengthen labour-related legislation
- Legislative policy framework:
  - Promote welfare & prosperity
  - Productive & fair employment relations
  - Establish rights & duties of parties to disputes
  - Compliance with ILO Conventions & Constitutional provisions and Court decisions.
  - Promote Good faith bargaining
  - Establish Institutions

# MINIMUM TERMS & CONDITIONS

- Application
- Oral/written contracts
- Wages Council Orders
- Protection of wages
- Holidays & Leave (Maternity)
- Hours of work
- Wages

# PRODUCTIVE & FAIR EMPLOYMENT RELATIONS

- Equal employment opportunity
- Minimum terms & conditions
- Build relations on good faith
- Know & address inequality of bargaining power
- Promote collective bargaining power
- Protect integrity of individual choice
- Promote mediation as primary resolution– Adjudication as last resort
- Redundancy

# ILO PRINCIPLES

- Fiji ratified 24 ILO conventions (including 8 core conventions)
- Forced Labour (C.29)
- Abolition of Forced Labour (C.105)
- Child Labour (C. 182)
- Minimum Age (C. 138)
- Discrimination Employment and Occupation (C. 111)
  - Sexual Harassment
  - Equal Employment Opportunities
- Rights to organize & Collective Bargaining (C. 98)
- Freedom of Association & Protection of the Right to Organize (C. 87)
- Equal Remuneration (C.100)

# CONSTITUTIONAL PROVISIONS

- Freedom of forced labour (s.24)
- Workers – join unions (s.33)
- Employers –form associations (s.33)
- Bargain collectively (s.33)
- Fair labour practices (humane/working conditions) (s.33)
- Equality/Discrimination (38)

# GOOD FAITH BARGAINING

- Principles of good faith
- Duties of good faith
- Bargaining arrangement
- Code of good faith
- Information disclosure
- Multi-party bargaining
- Breach & Remedies

# INSTITUTIONS

- Labour Advisory Board
- Wages Councils
- Mediation Services
- Employment Tribunal
- Employment Court
- Appeals

# LEGISLATION TO BE REPEALED AND REPLACED

- Employment Act (Cap 92)
- Trade Unions Act (Cap 96)
- Trade Unions (Recognition) Act 1998 (Cap 96A)
- Trade Disputes Act (Cap 97)
- Wages Councils Act (Cap 98)
- Public Holidays Act (Cap 101)

# STRUCTURE OF THE BILL

- Repeal & replace 6 Acts
- 22 Parts, 267 Clauses & 8 Schedules
- New Features
  - Fundamental Rights & Principles
  - Equal Employment Opportunities
  - Good faith
  - Women & Children
  - Employment grievances
  - Institutions
  - Redundancy

# PART 1 - PRELIMINARY

- Long Title – elaborate
- Commencement – Deferred commencement
  - regulations/rules
  - new institutions
  - administration (budget/staff)
- Application
  - all workers
  - except police, RFMF, Prisons (ILO C. 87 allows national legislation to determine extent of guarantees for freedom of association & right to organize)
- Interpretation
  - definition of terms

## PART 2 – RIGHTS & PRINCIPLES (NEW)

- Forced Labour
- Discrimination
- Male/female – equal pay for work of equal value
- Right to join or not to join union
- Can discriminate on “special measures” only for special objective

# **PART 3 – LABOUR ADVISORY BOARD (EXISTING)**

- **Establishment**
  - Tri-partite body
- **Functions**
  - advise Minister on all employment relation matters
  - inquire & report on employment relation matters
  - advise Minister on ILO instruments
  - monitor Labour-Management Consultation (LMC)
- **Labour Management Consultation**
  - LMC Committee is to be established where more than 20 employees are employed
  - where worker/employer committees already in place they may perform such role.
- **Other matters – terms of appt., meetings & annual reports**

# **PART 4 – ADMINISTRATION**

## **(Appointments, etc)**

- Administration of Act
- Role of CEO
- Officers
- Powers and functions of officers
- Interest & confidentiality

# PART 5 – CONTRACTS OF SERVICE (EXISTING)

- All contracts to be in compliance with Act
- Oral contracts
  - less than 30 days
- Presumptions
  - period (Cl. 27)
  - termination (Cl. 30)
  - new contracts – unless specified is deemed to be entered into for a indefinite period
  - oral contracts (Cl. 35)
- Written Contracts
  - over one month (old 6 months)
  - foreign contracts
  - expatriate contracts

# **PART 5 – CONTRACTS OF SERVICE (Cont'd)**

- Forms & contents
  - schedule 6
- Termination procedures
  - Individual contracts
  - Collective agreement
- Notice
  - to be given in writing.

# PART 5 – CONTRACTS OF SERVICE (Cont'd)

- Summary Dismissals
  - on gross misconduct
  - willful disobedience
  - lack of skill or qualification
  - habitual negligence of duties
  - continual absence without permission
  - Right to reasons
- No wages
  - detention/imprisonment

## PART 6 – WAGES (EXISTING)

- Payment
  - Personal
  - Bank A/C
- Statement/records
  - Manual/electronic
  - Evidentiary purpose
  - Records to be maintained for 6 years
- Deductions
  - 50% normal maximum
  - 75% exception (for housing loans from approved lenders)

# **PART 6 (CONT'D) – WAGES COUNCILS (EXISTING)**

- **Establishment**

- Minister makes an order establishing a council
- Equal numbers of employers and workers organization and 3 independent members appointed by Minister.
- Other terms set out in schedule 7

- **Wages Regulation Orders**

- Council makes the proposal for Ministers approval
- Set minimum terms and conditions, including wages

# PART 7 – HOLIDAYS & LEAVE (EXISTING)

- **Public Holidays**

- 12 days paid public holidays (declared under Cl.65)
- Special public holidays (Minister) (Cl.66)
- To be eligible for payment worker must be at work the day before and the day after public holiday unless absences is for any other valid reasons.

- **Annual Leave**

- 10 working days (minimum)
- Service deemed to have continued if worker reengaged within one month
- Leave forfeited if absent for more than 20 working days

- **Sick Leave**

- 10 working days (minimum)
- Entitled after 3 months of service

- **Bereavement Leave**

- 3 working days (minimum)
- Entitled after 3 months of service.

## PART 8 – HOURS OF WORK (EXISTING)

- 6-day working week – 48hrs (maximum) normal
- 5-day working week – 45hrs (maximum) normal
- Overtime pay after normal hours
- Exceptions
  - Managerial/executive positions
  - Consultants
  - Special rates based on special skills, etc

# PART 9 – EQUAL EMPLOYMENT OPPORTUNITIES (NEW)

- Prohibited grounds of discrimination (ILO C.111)
- Sexual harassment
- Discrimination in employment matters
- Equal pay (ILO C.100)
- Exceptions –
  - Age/gender as genuine requirement or safety
  - Gender for religious purposes
  - Disability based on special circumstances/risk
  - Positions of a political nature
  - Family status
  - Females on underground work (ILO C.45)

# PART 9 – EQUAL EMPLOYMENT OPPORTUNITIES (Cont'd)

- Sexual Harassment
  - Worker (Harassed) vs. Employer (perpetrator, co-worker)
- Policies/Guidelines on Sexual Harassment
  - Employer to develop prevention policy
  - LAB to formulate National Policy Guidelines
- Options (including discrimination) (Cl. 111(5))
  - Remedy under this Act
  - Remedy under Human Rights Commission Act
  - Not both

## PART 10 – CHILDREN (NEW)

- Prohibited forms of child labour (ILO C. 182)
  - Slavery, sale and trafficking in children, debt bondage
  - Forced or compulsory labour or recruitment
  - Production and manufacturing of illicit drugs
  - Prostitution or pornography
- Minimum age (ILO C.138)
  - 15 years
  - 13 - 15 years can be employed in a workplace in which members of the same family or other communal or religious groups are employed
- Trade union rights
- Hours of work - Maximum 8 hrs a day with 30mins break after 4 hrs.
- Other restrictions
  - Underground mines, against wishes of parent and night work

# PART 11 – MATERNITY LEAVE (EXISTING)

- Entitlements
  - First 3 births – full pay
  - From 4<sup>th</sup> birth – fixed allowance (\$7.50 per day or 50% of wages whichever is greater)
  - No dismissal or terms less favourable before proceeding on Maternity leave
  - May be promoted
- Period – 84 consecutive days
  - Extension on grounds of health (Max 3 months after which employer may dismiss)
  - Multi employer (jointly liable)

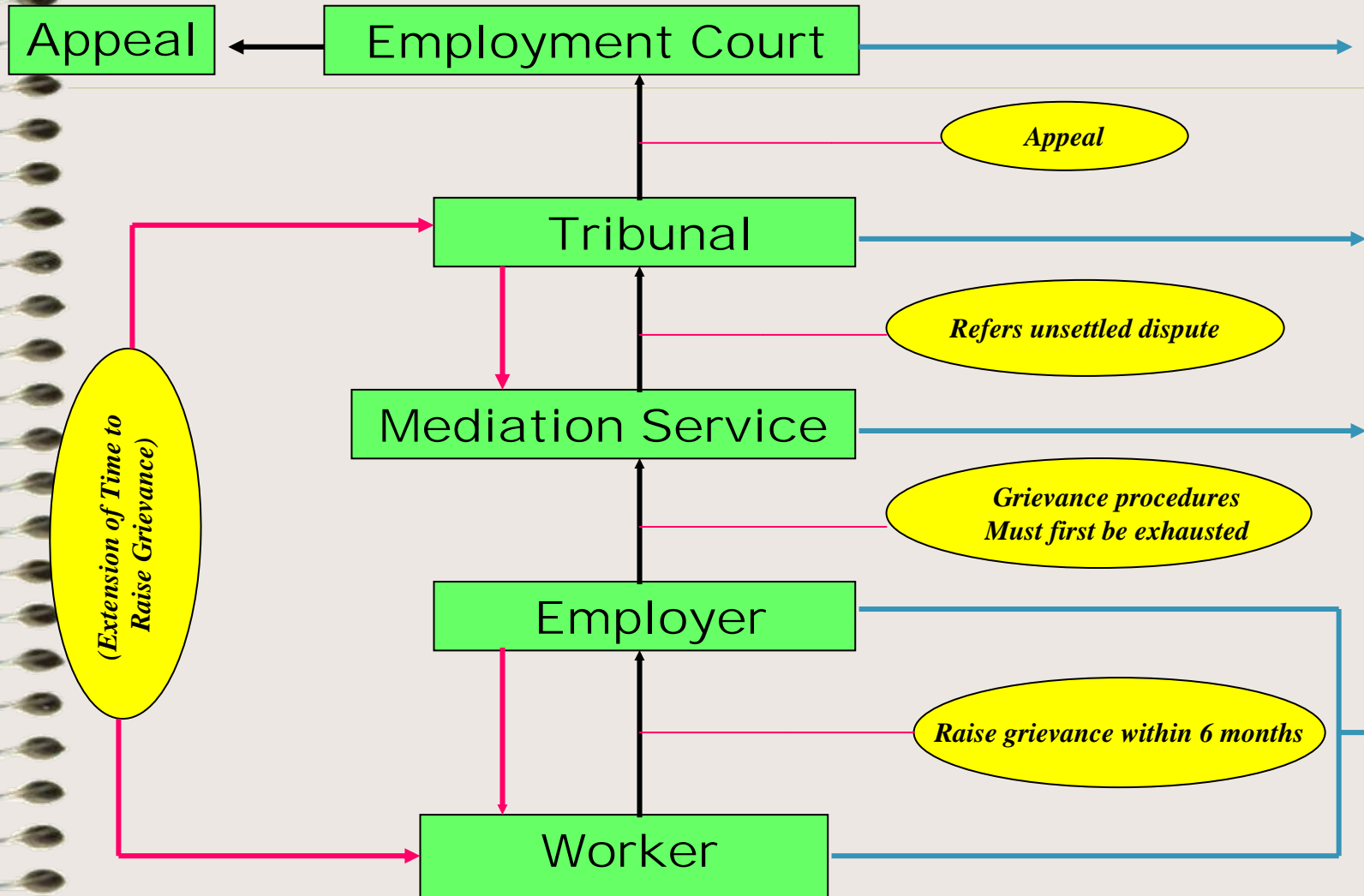
# PART 12 – REDUNDANCY (NEW)

- Grounds
  - Economic
  - Technical
  - Structural
- 30 days notice requirements (Cl. 107)
  - Workers and their representatives
  - CEO (Cl. 108)
- Consultation (Cl. 107(1)(b))
  - Aversion of redundancy
  - Minimize termination
  - Mitigate
- Redundancy Package (Cl. 109)
  - Minimum of one week for each completed year of service

# PART 13 – EMPLOYMENT GRIEVANCES (NEW)

- Grievance (grounds)
  - Dismissals
  - Disadvantages
  - Discrimination
  - Sexual harassment
  - Duress
- Procedures (Cl.111)
  - Set out in employment contract (otherwise Schedule 1 applies)
  - Reported to employer within 6 months
  - Workers may be assisted by a representative including assistance by trade union.
- Privileged statements (Cl. 114)
  - those given during mediation.

# EMPLOYMENT GRIEVANCE PROCESS (INDIVIDUAL WORKERS ONLY)



**GRIEVANCES SETTLED**

# PART 14 – REGISTRATION OF TRADE UNIONS (EXISTING)

- Registration (Cl. 121)
  - 7 or more members can form a union.
- Powers of Registrar
  - Determine application & register (Cl. 121)
  - Refuse to register trade unions (Cl. 126)
    - Used for unlawful purpose
    - Non compliance with registration requirements
    - Rules unlawful
    - Organized on racial basis
    - Under domination of employer (ILO Con. 98)

# PART 14 – REGISTRATION OF TRADE UNIONS (EXISTING) (Cont'd)

- Cancellation/suspension (Cl. 135, 136. 137)
  - Accounts not in accordance with Act
  - Registration obtained by a mistake
  - Used for unlawful purpose
  - Persistent and willful non-compliance of the Act
- Appoint Liquidators (Cl. 137)
- Amalgamation (Cl. 124)
  - Supported in secret ballot by more than 50% of members of each Trade Union.
- Appeals (Cl.141)
  - Decision of registrar to the E/Tribunal

## **PART 15 – RIGHTS & LIABILITIES OF TRADE UNIONS (ILO C. 87) (EXISTING)**

- Corporate entity (Cl. 146)
  - hold personal property, enter into contracts, sue and be sued etc.
- Access to workplaces (Cl. 147)
- Immunity (Legal proceedings) (Cl. 145)
- Liability in contracts (Cl. 148)
- Sale of property by court order in civil proceedings (Cl. 149)

# PART 16 – COLLECTIVE BARGAIN (NEW)

- Good faith (Cl. 151)
  - Employers, workers & unions must deal with each other in good faith
  - Best endeavors to conduct bargaining
  - Regular meetings
  - Consider and respond to proposals
  - Recognize role of person in authority
  - Only bargain with agreed representatives
  - Not to undermine bargaining process
  - Provide information to support claims
- Code of Good Faith (Cl. 154)
  - LAB to develop a code.

## PART 16 – (Cont'd)

- Collective bargaining (Cl. 155-161)
  - New agreements
    - may be initiated at any time
  - Variations of Existing agreements
    - More than one agreement with 60 days written notice.
    - One collective agreement with 30 days written notice.
  - Agreements with expiry dates
    - One agreement not before 60 days from the expiry of the agreement
    - More than one agreement 120 days before the expiry of the last collective agreement or 60 days before the expiry of the 1<sup>st</sup> applicable agreement.
- Procedures for collective bargaining
  - Bargaining to be initiated by giving a written notice to the party/parties

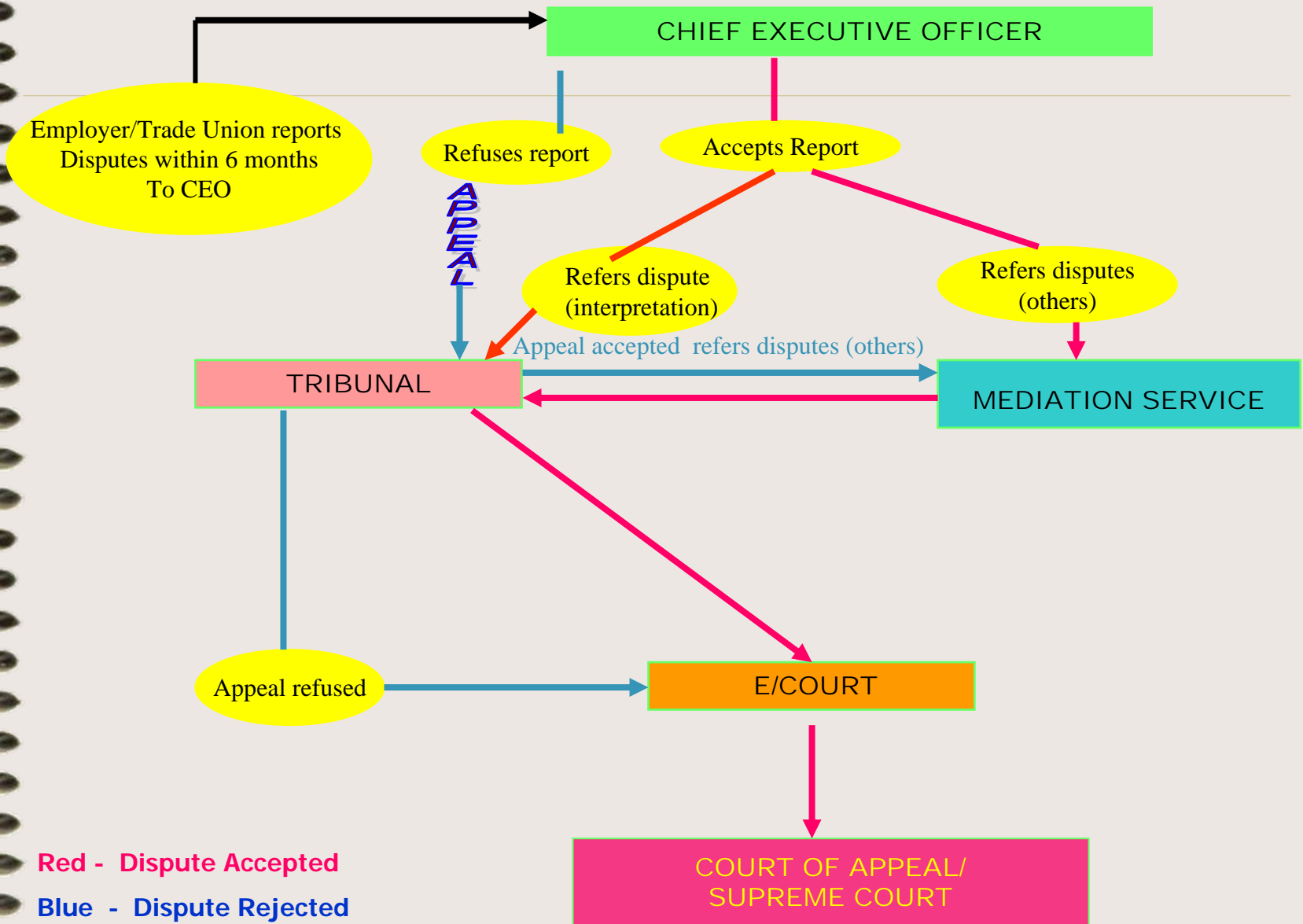
## PART 16 – (Cont'd)

- Multiplicity of parties
  - Where multiple parties are seeking for a single CA the members must support the proposal by a simple majority in a secret ballot.
- Consolidation of bargaining
  - Where 2 or more notices received employer may request (within 30 days from the 1<sup>st</sup> notice) the unions to consolidate into bargaining for a single CA.
  - Union not willing to comply with the request retains the right to initiate bargaining on its own.
- Collective Agreements (Cl. 162 – 168)
  - Form and contents
    - In writing, registered by the registrar
    - Contain coverage clause, disciplinary procedure, procedure for settlement of disputes, coming into force/expiry etc.
- “Check-Off”
  - Provision to be made for the deduction of union dues in the CA.

# PART 17 – EMPLOYMENT DISPUTES (OLD)

- Procedures (Cl. 170)
  - Employment Contract (otherwise Schedule 3 applies)
- Reporting (Cl. 171)
  - Employer
  - Trade Union
  - Within 6 months
- Role of CEO (Cl. 172)
  - Accept dispute (become “employment dispute”)
    - Refer to Tribunal (interpretation matters)
    - Refer to Mediation Services (other matters)
  - Reject (Appeal to Tribunal)

# RESOLUTION OF EMPLOYMENT DISPUTE



# PART 18 – STRIKES & LOCK OUTS (EXISTING)

- Secret Ballot (strike) (Cl. 177) – strike mandate valid for 6 months.
- Notice (Lock outs) (Cl. 178) – notice valid for 6 months.
- Unlawful strikes/lock outs (Cl. 179)
  - CA in force, within 21 days of initiation of bargaining, after dispute reported to CEO, no secret ballot/notice, in contravention of settlement/decision, continues after declared unlawful.
- Lawful strikes/lock outs (Cl. 180)
  - On grounds of health and safety provided procedures under HASAWA exhausted.

# PART 18 – STRIKES & LOCK OUTS (EXISTING) (Cont'd)

- Power of Minister to declare strike unlawful (Cl. 181)
- Power of Employment Court to discontinue (Cl. 183)
  - on application by union, employer or minister.
- Other matters
  - Employer not liable for wages (cl. 184)
  - Records for strike (Cl. 185)
  - Prohibition from expulsion as member of union (Cl. 186)

# Part 19 – PROTECTION OF ESSENTIAL SERVICES (EXISTING)

- Strikes (Cl. 188)
  - Secret Ballot
  - 28 days notice
- Lock outs (Cl. 189)
  - 28 days notice
  - Notice of lock out to be displayed
- Notice to be displayed (Cl.190)
  - Schedule 4 (List of Essential Services)
- Mediation services
  - CEO must ensure mediation undertaken a.s.a.p (cl. 192)
- Power of Minister to declare lawful strike/lock out unlawful (Cl. 193)
  - party not willing to settle,or report etc;
  - refer to Employment Court

# PART 20 – INSTITUTIONS (NEW)

- Mediation services (Cl. 195)
  - Staff
    - Chief Mediator
    - Mediators
    - Independent mediators (special circumstances)
  - Disputes
    - Employment grievance (Cl. 111)
    - Employment disputes referred under Cl. 172
    - Referred by Tribunal (out of time) – Cl. 112(5),etc
  - Mediation process (Cl. 195/196)
  - Settlements (Cl. 198)
  - Code of Ethic (Cl. 201)
  - Confidentiality Cl. 197)

## PART 20 – INSTITUTIONS (Con't)

- Employment Tribunal (Cl. 204)
  - Chief Tribunal (legally qualified)
  - Tribunal(may or may not be legally qualified)
- Jurisdictions (Cl. 213)
  - Subordinate to the Employment Court
  - Adjudicate and determine any grievance or dispute between parties to employment contract.
  - Hear minor regulatory offences to be prescribed by regulations
  - Hear & determine appeals from CEO/Registrar
  - General jurisdiction up to \$40,000 – if not legally qualified up to \$10,000.
  - Includes hearing of claims under the Workmen's Compensation Act
- Procedures (Cl. 218/240)
  - CJ to make other rules, otherwise Magistrates' Courts Rules apply
- Other matters
  - Order compliance, recovery of wages, refer question of law to E/Court

## PART 20 – INSTITUTIONS (Con't)

- Employment Court (Cl. 221)
  - High Court Division
  - Not more than 3 judges
- Jurisdiction (Cl. 222)
  - Cases related to employment matters
  - Strikes/lock outs
  - Offences
  - Appeals from Tribunal
  - Compliance Orders
- Procedures (Cl. 240)
  - CJ to make other rules, otherwise High Court Rules apply
- Other matters
  - Case stated, prompting of wages, etc

# PART 20 – INSTITUTIONS (Cont'd)

- General Provisions
  - Registrar & other staff (Cl. 228)
  
  - Appearance (Tribunal & Court)
    - personally
    - representative
    - legal practitioner
  
  - Remedies (Tribunal & Court)
    - reinstatement
    - reimbursement
    - compensation – for humiliation loss of benefit/dignity etc.

## PART 20 – INSTITUTIONS (Cont'd)

- Appeals
  - CEO to Tribunal (Cl. 241)
  - Registrar of Trade Unions to Tribunal (Cl. 242/244)
  - Minister to E/Court (Cl. 243)
  - Employment Tribunal to E/Court (Cl. 245)
  - Employment Court (Cl. 248)
    - Supreme Court
    - Court of Appeal

## Part 21 – Offences

- Payment of wages (Cl. 250)
- Worker property – against employer (Cl. 251)
- Money owed to employer – against worker (Cl. 252)
- Unlawful strikes/lock outs (Cl. 253)
- Misuse of trade union properties (Cl. 254)
- Intimidation (Cl. 257)
- Peaceful picketing (Cl. 258)

## PART 22 – MISCELLANEOUS

- Tort action prohibited (Cl. 262)
- Civil & criminal proceedings protection (Cl. 263)
- Conspiracy in disputes (Cl. 264)
- Period of limitation – institution of proceedings (Cl. 265)
- Fixed penalties (Cl. 266)
- Regulations (Cl. 267)
- Repeals (Cl. 268)

# SCHEDULES

- 1) Procedures for settlement of employment grievances
- 2) Trade Union Rules
- 3) Procedures for settlement of disputes
- 4) List of Essential Services
- 5) Labour Management Consultation Guidelines
- 6) Contract of Service Form
- 7) Other provisions for Wages Council
- 8) Fixed Penalty Offences