

A BILL

entitled

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 2020

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WHEREAS it is expedient to consolidate the Trade Union Act 1965, the Labour Relations Act 1975, and the Labour Disputes Act 1992 into a single Act; to establish an Employment and Labour Code in respect of trade union, labour relations and employment related matters and to provide for general reforms in respect of such matters; to provide for civil penalties to be imposed for contraventions under the Employment and Labour Code; to provide for a single Tribunal called the Employment and Labour Relations Tribunal to hear matters referred to it under the Employment and Labour Code; and to provide for related matters;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

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PART 1 PRELIMINARY

Citation

1 This Act may be cited as the Trade Union and Labour Relations (Consolidation) Act 2020.

Interpretation

2 In this Act, unless the context otherwise requires—

“agency shop” has the meaning given in section 61(1);

“charity” means any charity registered under the Charities Act 2014;

“civil penalty” means a penalty imposed in respect of a contravention of this Act (and as set out in Schedule 5), either by—

(a) the Manager in accordance with section 90; or

(b) the Tribunal in accordance with section 44M of the Employment Act 2000;

“collective agreement” means any agreement or arrangement made (in whatever way and in whatever form) between—

(a) a trade union and an employer; or

(b) a trade union and a trade union;

“contract of employment” means any contract, whether express or implied, whether oral or in writing and whether or not in compliance with the requirements of this Act, which provides for a worker to perform specified services for an employer;

“employer” means a person in Bermuda who employs workers;

“employers’ organisation” means any organisation established by employers, the principal purposes of which are the representation and promotion of employers’ interests and the regulation of relations between employers and workers;

“Employment and Labour Code” has the meaning given in section 3A of the Employment Act 2000;

“essential industries” are, pursuant to section 75, the industries or businesses specified in Schedule 2;

“essential services” are, pursuant to section 75, the services specified in Schedule 3;

“hotel” has the meaning given in section 1 of the Hotels (Licensing and Control) Act 1969;

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“irregular industrial action short of a strike” means any concerted course of conduct (other than a strike) which, in contemplation or furtherance of a labour dispute—

- (a) is carried on by a group of workers with the intention of preventing, reducing or otherwise interfering with the production of goods or the provision of services; and
- (b) in the case of some or all of them, is carried on in breach of their contracts of employment or otherwise in breach of their terms and conditions of service;

“labour dispute” has the meaning given in section 66;

“lock-out” includes the closing of a place of employment, a suspension of work by an employer or a refusal by an employer to continue to employ a number of their workers, done to compel their workers, or to aid another employer to compel that other employer’s workers, to agree to terms or conditions of employment;

“Manager” means the person holding the public office of the Manager of Labour Relations;

“Minister” means the Minister responsible for labour;

“principal purposes”, in relation to a trade union, means the purposes as set out in the constitution of that trade union;

“Registrar” has the meaning given in section 11;

“statutory purposes” means any of the principal purposes mentioned in section 5(1) for which a trade union may be established;

“strike” means a concerted stoppage of work by a group of workers in contemplation or furtherance of a labour dispute, whether they are parties to the dispute or not, whether (in the case of all or any of those workers) the stoppage is or is not in breach of their terms and conditions of employment, and whether it is carried out during, or on the termination of their employment;

“terms and conditions of employment” means any terms and conditions under which one or more workers have worked, are working or will be working for their employers;

“trade union” has the meaning given in section 5(1);

“Tribunal” has the meaning given in section 3 of the Employment Act 2000;

“wages” means all sums payable to a worker under his contract of employment (by way of weekly wage, annual salary or otherwise) or otherwise directly in connection with his employment, including any commission, but not including—

- (a) any tips or bonuses;

- (b) any expenses; or
- (c) the monetary value of any benefits in kind;

“worker” includes, subject to section 3—

- (a) an employee within the meaning of section 4 of the Employment Act 2000;
- (b) a person falling within section 4(2) of the Employment Act 2000 (who is not an employee for the purposes of that Act) where such a person works or normally works wholly or mainly in Bermuda for an employer under a contract of employment;
- (c) an individual in employment under or for the purposes of the Crown where such employment does not fall within paragraph (a) or (b).

Exclusions

3 This Act shall not apply in relation to—

- (a) persons in the naval, military or air forces of Her Majesty or of the United States of America or in the Bermuda Police Service;
- (b) persons employed in civilian employment by or under the Government of the United Kingdom who have been engaged in a place outside Bermuda to take up employment in Bermuda; or
- (c) persons employed by or under the Government of the United States of America.

Crown application

4 This Act binds the Crown.

PART 2

TRADE UNIONS

Chapter 1 - Objects, purposes and registration

Meaning of “trade union”

5 (1) In this Act, “trade union” means any organisation the principal purposes of which are—

- (a) the representation and promotion of workers’ interests;
- (b) the regulation of the relations between workers and employers, or between workers and workers, or between employers and employers,

whether such combination would or would not, if this Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade and includes a federation of trade unions.

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- (2) Without prejudice to subsection (1), nothing in this Part shall—
- (a) affect any agreement—
 - (i) between partners as to their own business;
 - (ii) between an employer and those employed by him as to such employment; or
 - (iii) in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft;
 - (b) preclude any trade union—
 - (i) from providing benefits for its members;
 - (ii) from applying the funds of the trade union in furtherance of any charitable or educational purpose;
 - (iii) from affiliation with any other trade union, whether within or outside Bermuda; or
 - (iv) from defraying any initial payment or regular periodical subscription payable in connection with any such affiliation.

(3) For the purposes of this Part, unless the context otherwise requires, “trade union” shall be taken to include, with the necessary modifications, an “employers’ organisation”.

Objects and purposes of a trade union

6 Subject to this Part, any trade union that has under its constitution any purposes other than statutory purposes within the meaning of this Act shall not prevent it from being registered under this Act, and any such trade union which is so registered shall have power to apply its funds to any lawful objects for the time authorised under its constitution.

Status of trade unions

7 (1) A trade union shall not be treated as if it were a body corporate except to the extent authorised by the provisions of this Act.

(2) Notwithstanding subsection (1), the trustees of a trade union may sue or be sued as provided in section 27.

(3) The Friendly Societies Act 1868 shall not apply to any trade union, and the registration of any trade union thereunder shall be void.

Purposes of trade unions; restraint of trade in relation to criminal or civil law

8 The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as—

- (a) to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise; or
- (b) to render voidable any agreement or trust.

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No action in tort against trade union

9 (1) An action against a trade union or against any member or officer thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court.

(2) Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for in section 27 except in respect of any tortious act committed by or on behalf of the union in contemplation or furtherance of a labour dispute.

When trade union contracts unenforceable

10 (1) Subject to this Act, the courts shall not have power to entertain any legal proceedings instituted with the object of directly enforcing or recovering damages for, the breach of any of the following agreements, namely—

- (a) any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ, or be employed;
- (b) any agreement for the payment by any person of any subscription or penalty to a trade union;
- (c) any agreement for the application of the funds of a trade union—
 - (i) to provide benefits to members;
 - (ii) to furnish contributions to any employer or worker not a member of such trade union, in consideration of such employer or worker acting in conformity with the constitution or resolutions of such trade union; or
 - (iii) to discharge any fine imposed upon any person by sentence of a court of law;
- (d) any agreement made between one trade union and another;
- (e) any collective agreement between a trade union and an employer or group of employers; or
- (f) any bond to secure the performance of any of the above-mentioned agreements.

(2) Nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

Registrar of trade unions

11 (1) The Registrar-General (“the Registrar”) shall be the Registrar of trade unions within the meaning and for the purposes of this Act.

(2) The Registrar shall keep and maintain, in such form as may be prescribed, a register in which shall be entered the name and address (the “registered address”) of every

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trade union registered under this Act together with such other particulars as may be prescribed including any alteration or change which may from time to time be effected in such particulars.

- (3) The registered address of a registered trade union shall be—
- (a) a physical address (which shall not be a post office box) in Bermuda; and
 - (b) the address at which anything required under, or pursuant to, this Act may be served on the trade union,

and anything served on the trade union at its registered address shall be deemed to be received by the trade union at the time of such service.

(4) A register of trade unions shall be available for inspection at all reasonable hours.

Compulsory registration of trade unions

12 (1) Upon the establishment of a trade union, it shall be the duty of the committee of management or trustees appointed in that behalf or, in default of any such appointment, the directing authority (by whatever name it may be called) of the trade union, to make application in writing for registration within three months after the date of the establishment of the union.

(2) Any person who fails to comply with the requirements of this section commits an offence against this Act punishable on summary conviction, to a fine of \$1,000 and a further fine of \$500 for each week during which the offence continues after conviction.

(3) Where an offence against this section is committed jointly by a number of persons each of those persons shall be liable to the punishment provided by subsection (2).

(4) The Registrar may, if he thinks fit, from time to time grant an extension of the period specified in subsection (1), provided that such period shall not, in any particular case, be so extended as to exceed a period of one month in the aggregate.

- (5) For the purposes of this section—
- (a) a trade union is established on the first date on which any workers or employers agree to become or to create a trade union; and
 - (b) in the absence of proof of the date referred to in paragraph (a) and for the purposes of prosecuting any trade union which fails to apply for registration in accordance with subsection (1), the date of establishment of that trade union shall be deemed to be—
 - (i) the date on which any person is proved to have been accepted or admitted as a member of that trade union; or
 - (ii) the date on which any act is proved to have been done by that trade union in furtherance of any of the statutory purposes specified in the definition of trade union in section 5(1).

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Membership in unregistered trade union an offence

13 If an application for registration of a trade union has not been made as required by this Act, or if registration of a trade union has been refused, then every member of the trade union who continues as a member thereof, and every person who takes part in any meeting or proceedings thereof, knowing that such union is not registered under this Act, commits an offence against this Act punishable on summary conviction to a fine of \$1,000.

Registration procedure

14 The following provisions shall have effect with respect to the registration of a trade union and its constitution—

- (a) an application in writing to register the trade union and its constitution shall be sent to the Registrar in the prescribed form and shall be signed by not less than seven members of the union, any of whom may be officers thereof;
- (b) an application under paragraph (a) shall be accompanied by two copies of the constitution signed by the seven members signing the application, and a list of the titles and names of the officers of the trade union;
- (c) the Registrar may call for further information for the purposes of satisfying himself that any application complies with this Act or that the trade union is entitled to registration under this Act;
- (d) no trade union shall be registered under a name identical to any other existing trade union that has been registered or so nearly resembling such name as to be likely to deceive the members or the public;
- (e) the Registrar shall refuse to register any trade union unless he is satisfied—
 - (i) that all the purposes of the trade union are lawful;
 - (ii) that, having regard to the constitution of the trade union, the principal purposes of the trade union are in keeping with the statutory purposes; and
 - (iii) that this section and of any regulations made under this Act with respect to registration have been complied with;
- (f) where the Registrar refuses to register a trade union he shall immediately inform the applicants in writing of the grounds of his refusal.

Certificate of registration

15 (1) On application being made for the registration of a trade union, the Registrar, if he is satisfied as to the matters mentioned in section 14(e), shall register the trade union and its constitution, and shall issue a certificate of registration.

(2) A certificate of registration shall, unless proved to have been withdrawn or cancelled (as provided under section 16), be conclusive evidence that the regulations made

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under this Act relating to registration have been complied with in respect of the matters certified in the certificate.

Cancellation or withdrawal of registration

16 (1) The Registrar may withdraw or cancel the certificate of registration of a trade union in the following cases—

- (a) at the request of the trade union, to be evidenced in such manner as the Registrar may from time to time direct;
- (b) on proof to the satisfaction of the Registrar—
 - (i) that a certificate of registration has been obtained by fraud or mistake;
 - (ii) that the principal purposes of the trade union or any of them are not or are no longer in keeping with statutory purposes;
 - (iii) that any of the purposes of the trade union is unlawful;
 - (iv) that the trade union has wilfully and, after notice from the Registrar (given pursuant to subsection (2)), violated any of the provisions of this Act;
 - (v) that the trade union has ceased to exist;
- (c) as provided under section 17;
- (d) if the Registrar is satisfied—
 - (i) that the trade union is used for an unlawful purpose or a purpose inconsistent with the objects and the constitution of the trade union; or
 - (ii) that the funds of the trade union are expended in an unlawful manner or on an unlawful object or on an object not authorised by the constitution of the trade union.

(2) Subject to subsection (3), not less than two months' notice in writing specifying briefly the ground of any proposed withdrawal or cancellation of a certificate of registration, shall be given by the Registrar to a trade union before the certificate is withdrawn or cancelled.

(3) Where—

- (a) the withdrawal or cancellation of the certificate is at the request of the trade union, or where the trade union has ceased to exist, the Registrar shall not be required to give notice pursuant subsection (2);
- (b) any one of the purposes of a trade union is proved to be unlawful it shall be the duty of the Registrar to cancel the certificate immediately.

(4) A trade union whose certificate of registration has been withdrawn or cancelled shall, from the time of the withdrawal or cancellation, cease absolutely to enjoy as such the privileges of a registered trade union and, subject to subsection (5), shall be dissolved, but

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without prejudice to any liability actually incurred by such trade union, which may be enforced as if the withdrawal or cancellation had not taken place.

(5) Where an appeal has been made pursuant to section 19(1)(b), subsection (4) above shall not apply until such appeal has been disposed of.

(6) If after the withdrawal or cancellation of its certificate of registration a trade union continues in active operation, except for the purpose of winding up its affairs, every member of the committee of management, every trustee and every officer of the trade union who takes any part in the operation of the trade union, except for the purpose aforesaid, commits an offence against this Act punishable on summary conviction to a fine of \$500 for every day during which the trade union continues in active operation.

(7) Without prejudice to subsection (6), where any other person, knowing that the certificate of registration of a trade union has been withdrawn or cancelled, takes part in any meeting or proceedings of the trade union, except for the purpose set out in that subsection, that person commits an offence against this Act punishable on summary conviction to a fine of \$500.

Trade union may not be controlled from outside Bermuda

17 (1) No registered trade union shall be connected with or be a part of any trade union or other organisation in such a manner as to place the trade union which is established within Bermuda, or any of its members, under the control of a trade union or other organisation which is established outside Bermuda.

(2) The Registrar shall withdraw or cancel the certificate of registration of any trade union so connected.

Change in registered address of trade union

18 (1) Notice of any change in the registered address of any trade union shall be given to the Registrar within seven days of the change in address and recorded by him, and until such notice is given the trade union shall not be deemed to have complied with this Act.

(2) Where, pursuant to subsection (1), a trade union is required to give notice to the Registrar and no such notice is given, every officer of the trade union commits an offence against this Act punishable on summary conviction to a fine of \$500.

Appeals from decision of Registrar

19 (1) An appeal shall lie to the Supreme Court from a decision of the Registrar—

- (a) under section 14(e), to refuse to register a trade union;
- (b) under section 16, to withdraw or cancel the certificate of registration of a trade union; and
- (c) under section 20(3), to refuse to register an amendment or alteration to a constitution.

(2) On such appeal, the Supreme Court may make such order as it thinks fit, including any directions as to the costs of the appeal.

- (3) The Registrar shall be entitled to be heard on any appeal.

Chapter 2 - Administration and membership

Constitution of registered trade unions

20 (1) The following provisions shall have effect with respect to the constitution of a trade union registered under this Act—

- (a) the constitution shall contain provisions in respect of the matters mentioned in subsection (2);
 - (b) every amendment or alteration of the constitution shall be submitted to the Registrar for registration, and no such amendment or alteration shall have effect until the Registrar has issued a certificate of registration with respect to such amendment or alteration; and
 - (c) a copy of the constitution, as amended from time to time pursuant to this section, shall be made available to the public by the trade union upon request.
- (2) The matters referred to in subsection (1)(a) are—
- (a) the name and registered address of the trade union;
 - (b) the whole of the purposes for which the trade union is to be established, including—
 - (i) the purpose for which the funds thereof shall be applicable;
 - (ii) the conditions under which any member may become entitled to any benefit assured thereby;
 - (iii) the subscriptions and contributions, if any, to be paid by any member and the form of receipt to be given to members;
 - (iv) the fines, forfeitures and other penalties to be paid by or imposed on members of the trade union under this Act;
 - (c) the manner of making, altering, and rescinding the constitution;
 - (d) the appointment and removal of a committee of management, of a trustee or trustees, treasurer, and other officers;
 - (e) the investment of the funds, and for an annual or periodical audit of accounts;
 - (f) the inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union; and
 - (g) the taking of a secret ballot of members for all or any of the following purposes—
 - (i) the election or removal of officers or members of any executive committee or other governing body; or

(ii) strike or lock-out action.

(3) The Registrar shall refuse to register an amendment or alteration to a constitution submitted to him if it appears to him that by reason of the amendment or alteration—

- (a) the principal purposes of the trade union would no longer be in keeping with the statutory purposes;
- (b) any of the purposes of the trade union would be unlawful; or
- (c) the constitution would cease to contain provisions in respect of the matters set out in subsection (2).

Annual returns to be transmitted to Registrar

21 (1) A general audited statement of the receipts, funds, effects and expenditure of every trade union registered under this Act shall be submitted to the Registrar on or before the 31 May in every year.

(2) A general audited statement submitted under subsection (1) shall—

- (a) show fully the assets and liabilities at the date and the receipts and expenditure during the year preceding the date to which it is made out, of the trade union;
- (b) show separately the expenditure in respect of the several purposes of the trade union;
- (c) be prepared and made out up to such date, in such form, and comprising such particulars, as the Registrar may from time to time require; and
- (d) be audited by an auditor who is a current member in good standing registered under the Chartered Professional Accountants of Bermuda Act 1973.

(3) Any member of and depositor in such trade union shall be entitled to receive, on application to the treasurer or secretary of that trade union, a copy of such general audited statement without making any payment therefor.

(4) The account books of any trade union and all vouchers and other documents relating thereto shall, if the Registrar so requires, be produced to him for inspection and audit.

(5) Every trade union shall send to the Registrar, within three months of the date to which the books of the trade union are made up in every year—

- (a) a copy of all alterations to the constitution and changes of officers made by the trade union during the year preceding such date; and
- (b) a copy of the constitution of the trade union as it exists at that date.

(6) Every officer of a trade union who fails to comply with this section commits an offence against this Act punishable on summary conviction to a fine of \$500.

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(7) Any person who wilfully makes or orders to be made any false entry in or any omission from—

- (a) any general audited statement under this section, or
- (b) the return of such copies of or alterations to the constitution under this section,

commits an offence against this Act punishable on summary conviction to imprisonment for three months or a fine of \$1,000.

Circulating false copy of constitution an offence

22 Any person who, with intent to mislead or defraud—

- (a) gives to any member of a trade union registered under this Act, or to any person intending or applying to become a member of a trade union, a copy of the constitution or any alterations or amendments, other than those respectively which exist for the time being, on the pretence that they are or comprise the existing constitution of the trade union, or that there is no other constitution of such trade union; or
- (b) gives a copy of a constitution to any person on the false pretence that it is the constitution of a trade union registered under this Act,

commits an offence against this Act punishable on summary conviction to imprisonment for six months or a fine of \$1,000.

Falsification of accounts an offence

23 Any officer or member of a trade union or any person employed by a trade union who, with intent to defraud—

- (a) destroys, alters, mutilates or falsifies any book, document, account or valuable security which belongs to the trade union or has been received by him on account of the trade union, or any entry in any such book, document or account, or is privy to any such act; or
- (b) makes, or is privy to making, any false entry in any such book, document or account; or
- (c) omits, or is privy to omitting, any material particulars from any such book, document, or account,

commits an offence against this Act punishable on summary conviction to imprisonment for six months or on conviction on indictment to imprisonment for two years.

Registrar may institute proceedings

24 Subject to section 93, the Registrar may institute proceedings in court for an offence under any of the preceding sections to this Part and may conduct any such proceedings.

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Trade union may purchase land

25 (1) It shall be lawful for any trade union registered under this Act to purchase or take upon lease in the name of the trustees for the time being of the trade union any land not exceeding one acre, and to sell, exchange, mortgage or let any such land.

(2) No purchaser, assignee, mortgagee or tenant shall be bound to inquire whether the trustees referred to in subsection (1) have authority for the sale, exchange, mortgage or letting of any land referred to in that subsection, and the receipt of the trustees shall be a discharge for the money arising therefrom.

(3) No member of a trade union shall be entitled to be registered as a freeholder in respect of any land held by the trade union so as to qualify him for election to any municipal, parochial or other public body or so as to confer upon him any parliamentary, municipal or parochial franchise.

(4) In this section “trade union” does not include an employers’ organisation.

Vesting of real and personal property in trustees of trade union

26 (1) All real and personal property whatsoever belonging to any trade union registered under this Act shall be vested in the trustees for the time being of the trade union appointed as provided by this Act, for the use and benefit of the trade union and its members, and shall be under the control of the trustees, their respective executors or administrators, according to their respective claims and interests.

(2) Upon the death or removal of any such trustees the property shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever, except in the case of stocks and securities in the public funds of Bermuda, which shall be transferred into the names of the new trustees.

(3) In all actions, or suits, or indictments, or summary proceedings before any court touching or concerning any such property, the property shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in their proper names, as trustees of the trade union, without any further description.

(4) In this section “trade union” does not include an employers’ organisation.

Trustees may bring and defend actions

27 (1) The trustees of any trade union registered under this Act, or any other officer of any such trade union so authorised by its constitution may bring or defend, or cause to be brought or defended, any action, suit, prosecution or complaint in any court touching or concerning the property or right or claim to property of the trade union.

(2) The trustees of any trade union registered under this Act, shall and may, in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any court in their proper names, without other description than the title of their office of such trade union.

(3) No action, suit, prosecution, or complaint mentioned in subsection (1) shall be discontinued or shall abate by death or removal from office of such persons or any of them,

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but shall and may be proceeded in by their successor or successors, as if such death, resignation or removal had not taken place, and such successors shall pay or receive the like costs as if the action, suit, prosecution, or complaint had been commenced in their names for the benefit of, or to be reimbursed from, the funds of the trade union.

(4) Any summons to be issued to the trustees or other officer may be served by leaving the same at the registered office of the trade union.

(5) In this section “trade union” does not include an employers’ organisation.

Limitation of liability of trustees

28 A trustee of any trade union registered under this Act shall not be liable to make good any deficiency which may arise or happen in the funds of the trade union, but shall be liable only for the moneys which are actually received by him on account of the trade union.

Duty of officers of trade unions to render accounts

29 (1) Every treasurer or other officer of a trade union registered under this Act at such time and in such manner as may be prescribed by the constitution of the trade union, or at any time upon being required to do so by the trustees or by the committee of management or by the members of the trade union, shall render to the trustees, or to the committee of management, or to the members assembled at a meeting of the trade union (as the case may be) a just and true account of—

- (a) all moneys received and paid by him since he last rendered the like account and the balance then remaining in his hands; and
- (b) all bonds or securities of the trade union.

(2) An account rendered for the purposes of subsection (1) shall be audited by an auditor who is a current member in good standing registered under the Chartered Professional Accountants of Bermuda Act 1973.

(3) The treasurer or other officer, if so required, upon the said account being audited, shall forthwith hand over to the trustees the balance which on such audit appears to be due from him, and shall also, if required, hand over to the trustees all securities and effects, books, papers and property of the trade union in his hands or custody.

(4) If the treasurer or other officer fails to do as required in subsection (3), the trustees of the trade union may sue him in any competent court for the balance appearing to have been due from him upon the account last rendered by him, and for all the moneys since received by him on account of the trade union, and for the securities and effects, books, papers and property, in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the trade union.

Penalty for withholding money, securities or other effects of trade union

30 (1) This section applies in respect of any officer, member, or other person being or representing himself to be a member of a trade union registered under this Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, who by false representation or imposition obtains possession of any moneys,

securities, books, papers or other effects of such trade union, or having the same in his possession, wilfully withholds or fraudulently misapplies the same or any part thereof for purposes other than those expressed or directed in the constitution of such trade union.

(2) A court of summary jurisdiction, upon a complaint made by any person on behalf of such trade union or by the Registrar, may order an officer, member or other person to which subsection (1) applies—

- (a) to deliver up all such moneys, securities, books, papers or other effects to the trade union; or
- (b) to repay the amount of the money applied improperly, and to pay, if the court thinks fit, a further sum of money not exceeding \$500, together with costs; and
- (c) in default of such delivery of effects or repayment of such amount of money or payment of such penalty and costs aforesaid, the court may order the offender to be imprisoned for a term not exceeding three months.

(3) Nothing in this section shall affect any liability of such person to be proceeded against by indictment, instead of summarily, in respect of any indictable offence.

Restriction on application of funds for certain political purposes

31 (1) The funds of a trade union shall not be applied, either directly or in conjunction with any other trade union, association, or body, or otherwise indirectly, in the furtherance of the political objects to which this section applies (without prejudice to the furtherance of any other political objects).

(2) The political objects to which this section applies are the expenditure of money—

- (a) on the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to the House of Assembly or to any public office, before, during, or after the election in connection with his candidature or election; or
- (b) on the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or
- (c) on the maintenance of any person, other than an officer of a trade union, who is a member of the House of Assembly or who holds a public office; or
- (d) in connection with the registration of electors or the selection of a candidate for the House of Assembly or any public office; or
- (e) on the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distribution of the literature or documents is the furtherance of statutory purposes within the meaning of this Act.

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(3) In this section “public office” means the office of a member of any municipal council, or parish council, or of any public body who have power to raise money, either directly or indirectly, by means of a rate, fee, charge or tax.

Persons barred from holding office

32 (1) No person who has been convicted of any offence involving fraud or dishonesty or who is an undischarged bankrupt shall within five years of the date of such conviction or until he is discharged, as the case may be, be an officer or a person employed in administering or collecting funds of a trade union.

(2) Where an officer or a person employed in administering or collecting funds of a trade union is so convicted or is an undischarged bankrupt, he shall immediately vacate his office or cease to be employed, as the case may be.

Change of name of trade union

33 (1) A trade union may, with the approval in writing of the Registrar, change its name by the consent of not less than two thirds of the total number of members.

(2) No change of name shall affect any rights or obligations of the trade union or of any member thereof and any pending legal proceedings may be continued by or against the trustees of the trade union or any other officer who may sue and be sued on behalf of the trade union notwithstanding its new name.

Amalgamation of trade unions

34 (1) Any two or more trade unions may become amalgamated together as one trade union if in the case of each or every such trade union on a ballot being taken—

- (a) the votes of at least 50% of the members entitled to vote are recorded; and
- (b) of the votes recorded, those in favour of the proposal exceed by 20% or more the votes against the proposal.

(2) An amalgamation may be effected with or without any dissolution or division of the funds of such trade unions, or either or any of them but no amalgamation shall prejudice any right of a creditor of either or any trade union party thereto.

Notice of change of name or amalgamation

35 (1) Notice in writing of every change of name or amalgamation shall be—

- (a) in the case of a change of name, signed by not less than seven members, countersigned by the secretary of the trade union changing its name, and accompanied by a certificate under the hand of the secretary certifying that the provisions of this Act in respect of changes of name have been complied with;
- (b) in the case of an amalgamation, signed by not less than seven members, countersigned by the secretary of each and every trade union party thereto, and accompanied by a certificate under the hand of each such secretary

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certifying that the provisions of this Act in respect of amalgamation have been complied with; and

(c) sent to the Registrar for registration.

(2) No such change of name or amalgamation shall take effect until it is so registered.

Notice of dissolution must be sent to Registrar

36 Notice of the dissolution of any trade union shall be sent under the hand of the secretary of the trade union and signed by not less than seven members of the trade union to the Registrar within 14 days of the dissolution and shall be registered by him.

Failure of trade union to give notice or send documents

37 (1) This section applies in respect of any trade union which fails to give any notice or send or produce any document which it is required by this Act, to give, send or produce.

(2) In a case to which subsection (1) refers, every officer of the trade union or other person bound by the constitution of that trade union to give send or produce the notice or document, or if there is no such officer or person, then every member of the committee of management of the union, unless proved to have been ignorant of, or have attempted to prevent the omission, shall be liable—

- (a) to forfeit a sum not exceeding \$100 recoverable before a court of summary jurisdiction in the manner provided by the Magistrates Act 1948 at the suit of the Registrar or of any person aggrieved; and
- (b) to an additional forfeiture of the like amount for each week during which the omission continues.

(3) Nothing in this section shall be construed so as to prejudice the effect of any of the provisions of this Part under which criminal proceedings may be taken against an officer of a trade union or other person for an omission to give any notice or send or produce any document.

(4) Notwithstanding subsection (2), no officer or other person to which this section applies shall be liable both to criminal proceedings and to proceedings under this section in respect of the same omission.

Person under 18 but over 16 may become member of trade union

38 (1) A person under the age of 18 years, but above the age of 16 years, may be a member of a trade union (unless provisions are made in the constitution to the contrary), and may, subject to the constitution of the trade union, enjoy all the rights of a member.

(2) But a person to whom subsection (1) refers shall not be a member of the committee of management, a trustee, or treasurer or hold any office of the trade union.

Rights of worker in respect of trade union membership

39 (1) As between himself and his employer, every worker shall have the following rights—

- (a) subject to section 38, the right to be a member of such trade union as he may choose;
 - (b) subject to section 62, the right not to be a member of any trade union or to refuse to be a member of a particular trade union; and
 - (c) where he is a member of a trade union, the right, at any appropriate time, to take part in the activities of the trade union (including any activities as, or with a view to becoming, an officer of the trade union) and, subject to section 38, the right to seek or accept appointment or election, and (if appointed or elected) to hold such office.
- (2) Any employer, or any person acting on behalf of an employer who—
- (a) prevents or deters a worker from exercising any of the rights conferred on him by subsection (1);
 - (b) dismisses, penalizes or otherwise discriminates against a worker by reason of his exercising any such right; or
 - (c) subject to section 62, refuses to engage a worker on the grounds that, at the time when he applied for engagement—
 - (i) he was a member of a trade union or of a particular trade union; or
 - (ii) he was not then a member of a trade union, or of a particular trade union, or of any of two or more particular trade unions,

commits an offence punishable on summary conviction to a fine of \$1,500.

(3) For the purposes of subsection (2)(a) an employer, or a person acting on behalf of an employer, shall not be regarded as preventing or deterring a worker from exercising the rights conferred on the worker by subsection (1)(a) by reason only that (without any suggestion or reward for compliance or penalty for non-compliance) he seeks to encourage the worker to join a trade union which the employer recognises as having negotiating rights in respect of him.

(4) Where an employer offers a benefit of any kind to any workers as an inducement to refrain from exercising a right conferred on them by subsection (1), and the employer—

- (a) confers that benefit on one or more of those workers who agree to refrain from exercising that right; and
- (b) withholds it from one or more of them who do not agree to do so,

the employer shall for the purposes of this section be regarded, in relation to any such worker as is mentioned in paragraph (b), as having thereby discriminated against him by reason of his exercising that right.

(5) In this section “appropriate time”, in relation to a worker taking part in any activities of a trade union, means time which either—

- (a) is outside his working hours; or

(b) is a time within his working hours at which, in accordance with arrangements agreed with, or consent given by or on behalf of, his employer, it is permissible for him to take part in those activities,

and in this subsection “working hours”, in relation to a worker, means any time when, in accordance with his contract with his employer, he is required to be at work.

PART 3

EXCLUSIVE BARGAINING RIGHTS FOR CERTAIN TRADE UNIONS

Chapter 1 - Certification

Interpretation and application of Part 3

40 (1) In this Part—

“appropriate contribution” shall be construed in accordance with section 63;

“ballot” means a secret ballot;

“bargaining agent” means a union that acts on behalf of workers;

“bargaining unit” means, except in section 46(3) and (4)(b), a group of two or more workers (all being non-management persons) in an undertaking, on behalf of whom collective bargaining may take place;

“to certify”, in relation to a union, means to certify that union under section 46 or 47, as the case may require, as the exclusive bargaining agent in respect of a bargaining unit; and “certification” and other cognates of “certify” have corresponding meanings;

“collective bargaining agreement” means an agreement in writing entered into between an employer or an employer’s trade union and a bargaining agent containing provisions respecting terms and conditions of employment and related matters;

“management person” means a person who, in the course of his employment in an undertaking, has authority in the interest of the employer—

(a) to employ, transfer, lay off, recall, promote or dismiss other workers; or

(b) in relation to the direction and management of the undertaking;

“non-management person” means a person who is not a management person;

“partial contribution” means 50% of an appropriate contribution;

“union” means a trade union registered under this Act whose statutory purposes are—

(a) the representation and promotion of workers’ interests; and

(b) the regulation of relations between workers and employers,

and includes a federation of trade unions but not an organisation or association that is dominated by an employer or an employers' organisation.

(2) This Part shall have effect for the purpose of regulating the recognition of collective bargaining rights.

Application for certification

41 (1) Where a union claims to have 35% or more of the workers in a proposed bargaining unit as members in good standing, that union may, subject to the provisions of this Chapter, make an application to the Manager to be certified in respect of that proposed bargaining unit.

(2) Where there is no union certified as mentioned in subsection (1), the application may be made at any time.

(3) Where there is a union certified as mentioned in subsection (1), the application shall not be made before the expiry of 24 months beginning on the date of that certification.

(4) Where a union has made an application under subsection (1) and has failed for whatever reason to gain certification in respect of a bargaining unit, that union may not make another application to be certified before the expiry of 12 months beginning on the date of the previous application.

Application procedure

42 (1) An application under section 41 shall be made in writing in such form as the Minister may prescribe and shall include—

- (a) a description of the proposed bargaining unit; and
- (b) a statement of the facts upon which the union relies as showing that 35% or more of the workers in that unit wish to have the union as their exclusive bargaining agent.

(2) Notice of the application shall be served on the employer by the applicant union.

(3) Nothing in this section requires the disclosure, to the employer, of the identity of any worker to which subsection (1)(b) refers.

The bargaining unit

43 (1) On receipt of an application under section 41, the Manager shall assist the union and the employer to determine the bargaining unit that is appropriate in the circumstances ("the appropriate bargaining unit"), having regard to the following factors—

- (a) the community of interest among the workers in the proposed bargaining unit;
- (b) the nature and scope of the duties of those workers;
- (c) the views of the employer and of the union as to the appropriateness of the proposed bargaining unit;

(d) the historical development, if any, of collective bargaining in the undertaking.

(2) If the union and the employer are not able to agree on the determination of the appropriate bargaining unit within such reasonable period as the Manager may allow, the Manager shall so advise the Minister and the Minister shall refer the issue to the Tribunal for determination.

(3) The date of an application under section 41 is the relevant date in respect of which the appropriateness of the bargaining unit shall be considered.

Response by the employer

44 (1) Within 10 days after receipt of service of a notice of application under section 42(2), the employer shall give in accordance with subsection (2) below notice in response either—

- (a) that he agrees to the application, in which event the Manager shall, subject to section 46, certify the union; or
- (b) that he opposes it, in which event the Manager shall conduct a ballot under section 47.

(2) A notice given under subsection (1) shall be in writing in such form as the Minister may prescribe and addressed to the Manager and, where it is given under paragraph (b) of that subsection, shall specify the employer's reasons.

(3) If an employer on whom notice of an application pursuant to section 42(2) has been served does not give notice in response under subsection (1) within the 10 days allowed by that subsection, he shall be deemed to have agreed to the application.

Duty of employer to designate person to act on his behalf

45 Without prejudice to section 44, an employer, who is served notice of an application pursuant to section 42(2), shall designate a person who may take such action as is required to be taken by the employer for the purposes of this Chapter, on the employer's behalf, in any case where the employer is absent or otherwise unavailable and the person so designated shall be named in the notice given under section 44(2).

Certification where there is agreement (automatic certification)

46 (1) This section applies where one union only has made application under section 41 and the employer has agreed to the application.

(2) If the Manager is satisfied that more than 60% of the workers in the bargaining unit wish to have the union as their exclusive bargaining agent, he shall certify that union as the exclusive bargaining agent in respect of that unit.

(3) A union party to an agreement to which subsection (4) applies shall be deemed to have been certified under this section, on the date of commencement of the Trade Union Amendment Act 1998, as the exclusive bargaining agent in respect of any bargaining unit of workers in respect of which the agreement designates that union as the exclusive agent for collective bargaining purposes.

- (4) This subsection applies to any agreement between a union and an employer—
- (a) which was in existence immediately before 1 May 2000 (the date of commencement of the Trade Union Amendment Act 1998);
 - (b) which designates a union for collective bargaining purposes as the exclusive agent of workers in a bargaining unit in that employer's undertaking, whether or not that bargaining unit includes management persons; and
 - (c) a copy of which immediately before that date was held by the Minister in a register of such agreements.

Certification in other cases (certification by ballot)

- 47 (1) This section applies where—
- (a) one union only has made application under section 41 and—
 - (i) the employer has opposed the application; or
 - (ii) the employer has agreed to the application but the Manager is not satisfied that the condition in section 46(2) has been met; or
 - (b) more than one union has made such an application.

(2) In a case to which subsection (1)(a) applies, the Manager shall conduct a ballot among the workers in the bargaining unit and, if the ballot shows that more than 50% of the workers voting in the ballot support that union as their exclusive bargaining agent, he shall certify the union as the exclusive bargaining agent in respect of that bargaining unit.

(3) In a case to which subsection (1)(b) applies, the Manager shall conduct a ballot among the workers in the bargaining unit and if the ballot shows that none of the unions in question are supported as the exclusive bargaining agent by more than 50% of the workers voting in the ballot, the Manager shall conduct a second ballot.

(4) If, in a case to which subsections (1)(b) and (3) apply, there are only two unions competing in the second ballot, the Manager shall certify as the exclusive bargaining agent in respect of the bargaining unit that union which is shown by that ballot as having the support of more than 50% of the workers voting in that ballot.

(5) If, in a case to which subsections (1)(b) and (3) apply, there are more than two unions competing in the second ballot and none of those unions is supported by more than 50% of the workers voting in the ballot, then the Manager shall conduct a third ballot, in which the only union in support of which votes may be cast shall be the union which obtained the highest number of votes in the second ballot; and in that third ballot that union shall be certified as the exclusive bargaining agent in respect of the bargaining unit if, but only if, that ballot shows that more than 50% of the workers voting in that ballot support that union.

Duties of employer in relation to conduct of ballot

- 48 In relation to the conduct of such a ballot, the employer—

- (a) shall take all necessary steps to ensure that every worker who is eligible to vote in the ballot has the opportunity to do so; and
- (b) shall permit every such worker to be absent from work, for a reasonable time and without deduction of pay, for the purpose of so voting.

Protection of voting in ballot

49 (1) In relation to the conduct of such a ballot, a person—

- (a) shall not offer or receive, or agree to offer or receive, any money, loan, reward, office or place of employment for voting, or agreeing to vote, or for refraining or agreeing to refrain from voting, for a union;
- (b) shall not offer to any person, or accept or take from any person, any food or drink or provision as an inducement to vote or refrain from voting, or as a reward for having voted or refrained from voting; or
- (c) shall not threaten, intimidate, restrain, or use any physical force upon, any person to induce or compel that person to vote or refrain from voting.

(2) A person who contravenes subsection (1) shall be liable to a civil penalty as may be imposed by the Tribunal.

(3) Without prejudice to subsection (2), where there is a contravention under this section, the Tribunal may with respect to the conduct of such ballot or the outcome of any ballot so conducted—

- (a) make such declaration as it thinks appropriate (including declaring the outcome null and void); and
- (b) give to the Manager such directions, in accordance with that declaration, as it thinks appropriate.

(4) A contravention under subsection (1) may be reported as a labour dispute and referred to the Tribunal in accordance with Part 4.

Duties of persons generally in relation to conduct of ballot

50 (1) In relation to the conduct of such a ballot, a person shall not—

- (a) in or at the premises on which the ballot is held, on the day of the ballot, seek to influence a worker affected by the ballot to vote, or refrain from voting, for a union; or
- (b) wilfully obstruct or hinder any person in the course of voting by that person or the carrying out by him of any other function that he has under this Chapter.

(2) A person who contravenes subsection (1) shall be liable to a civil penalty as may be imposed by the Tribunal.

(3) Without prejudice to subsection (2), where there is a contravention under this section, the Tribunal may, in respect of the conduct of a ballot or the outcome of any ballot so conducted—

- (a) make such declaration as it thinks appropriate (including declaring the outcome null and void); and
- (b) give to the Manager such directions, in accordance with that declaration, as it thinks appropriate.

(4) A contravention under subsection (1) may be reported as a labour dispute and referred to the Tribunal in accordance with Part 4.

Grant or refusal of certification

51 (1) Within a reasonable period (which however shall not exceed three months or such longer time as the union and the employer may agree) after receipt of an application under section 41 and after a ballot is conducted pursuant to section 47, the Manager shall determine either—

- (a) that he certifies the union as the exclusive bargaining agent in respect of the bargaining unit; or
- (b) that he refuses to do so.

(2) A refusal by the Manager under subsection (1)(b) shall be expressed to have been made on the ground that he is not satisfied that more than 50% of the workers in the bargaining unit support the certification of the union.

(3) A determination by the Manager under this section shall be made by order; and section 60 shall have effect as respects service and the time of taking effect of the order, any appeal from the order, and otherwise in relation to the order.

Compulsory recognition and duty to treat

52 Where a union has obtained certification in respect of a bargaining unit and the certification remains in force, the employer shall deal with that union accordingly; and the union and the employer shall, subject to this Chapter, in good faith treat and enter into negotiations with each other for the purposes of collective bargaining.

Closing, sale etc. of undertaking

53 (1) Where, in relation to an employer, a union either—

- (a) has made an application under section 41 which has not been determined; or
- (b) has been certified in respect of a bargaining unit in his undertaking and the certification remains in force,

the employer, if he decides to discontinue, sell or otherwise transfer the undertaking, shall give to the Manager and to the union notice in writing of—

- (i) the time when the undertaking is to be discontinued, sold or otherwise transferred (being at least two weeks after the giving of the notice);
- (ii) the reasons why the undertaking is being discontinued, sold or otherwise transferred; and
- (iii) the number and categories of workers that will be affected.

(2) An employer who contravenes subsection (1) shall be liable to a civil penalty as may be imposed by the Manager or the Tribunal.

(3) A contravention under subsection (1) may be reported as a labour dispute in accordance with Part 4.

Successor rights and obligations

54 (1) This section applies where, in relation to an employer, a union either—

- (a) has made an application for certification under section 41 which has not been determined; or
- (b) has been certified in respect of a bargaining unit in his undertaking and the certification remains in force.

(2) Where an employer to which this section applies sells or otherwise transfers an undertaking—

- (a) the union that is the bargaining agent for the workers employed in the undertaking continues to be their bargaining agent;
- (b) the union that made application for certification in respect of any workers employed in the undertaking before the date on which the undertaking is sold or otherwise transferred may, subject to this Chapter, be certified by the Manager as their bargaining agent;
- (c) the person to whom the undertaking is sold or otherwise transferred is bound by any collective bargaining agreement that is, on the date on which the undertaking is sold or otherwise transferred, applicable to the workers employed in the undertaking; and
- (d) the person to whom the undertaking is sold or otherwise transferred becomes a party to any proceedings taken under this Chapter that is pending on the date on which the undertaking was sold or otherwise transferred and that affects the workers employed in the undertaking or their bargaining agent.

(3) Where by reason of an amalgamation of unions, a union succeeds another union that at the time of the amalgamation is a bargaining agent, the successor union shall be deemed to have acquired the rights, privileges and duties of its predecessor under a collective bargaining agreement or otherwise.

(4) For the purposes of this section, the Manager may refer to the Tribunal any question—

- (a) by the employer or any union so affected by the sale or other transfer of an undertaking that arises under subsection (2) including—
 - (i) whether or not an undertaking has been sold or otherwise transferred, or as to the identity of the purchaser of the undertaking or the person to whom the undertaking has otherwise been transferred; and
 - (ii) whether the workers affected constitute one or more units appropriate for collective bargaining;
- (b) by a trade union so affected by an amalgamation of unions concerning the rights, privileges and duties of a union under a collective bargaining agreement applicable to a bargaining unit or to a worker therein, including what rights, privileges and duties have been acquired or are retained.

Effect of certification

- 55 (1) Where a union gains certification in respect of a bargaining unit—
- (a) that union shall provide full and fair representation of the interests of all workers in that unit with respect to their rights under a collective bargaining agreement;
 - (b) that union replaces any other union that had previously been so certified in respect of that unit, and has exclusive authority to bargain collectively on behalf of that unit;
 - (c) there shall be, subject to section 61, an agency shop in respect of that unit; and
 - (d) the certification of and the agency shop in respect of that other union is deemed, respectively, to be cancelled and terminated.
- (2) For the avoidance of doubt—
- (a) a union's certification remains in force unless cancelled under section 57 or by virtue of another union gaining certification in respect of the same bargaining unit;
 - (b) nothing in this section, upon the coming into operation of this Act, shall render void any existing collective bargaining agreement but where such agreement contains a provision which is contrary to subsection (1)(a), (c) or (d), that provision shall be void.

Access to employer's premises

- 56 (1) An employer shall not deny to an authorised representative of a union that is certified in respect of a bargaining unit in that employer's undertaking such access to the employer's premises as is reasonable and necessary for the purposes of the activities of the union, being lawful activities of the union arising out of its certification.
- (2) A grant of access complies with subsection (1) notwithstanding that it may be subjected to restrictions as to time or place which are necessary or reasonable in the interest of safety or of avoiding undue disruption of the employer's business.

(3) An employer may, by notice in writing addressed to a union that is certified in respect of a bargaining unit in that employer's undertaking, require that a representative of the union shall not engage in activities of the union which are to take place on the employer's premises except with the permission of the employer; and, where such a requirement has been made of a union, a representative of the union shall not engage in any such activities except in accordance with the requirement.

(4) If a person—

- (a) contravenes subsection (1); or
- (b) engages in activities on the employer's premises in contravention of a requirement under subsection (3) applying to him,

he shall be liable to a civil penalty as may be imposed by the Tribunal.

(5) A contravention under this section may be reported as a labour dispute and referred to the Tribunal in accordance with Part 4.

Cancellation of certification

57 (1) A worker in a bargaining unit ("the existing unit") may, at any time after the expiration of one year after a union has been certified in respect of that unit, make application in writing to the Manager for the cancellation of the certification on the ground that 35% or more of the workers in that unit no longer support the union as the exclusive bargaining agent for that unit.

(2) An application under subsection (1) shall be accompanied by evidence substantiating the ground mentioned in that subsection.

(3) On receipt of an application under subsection (1), the Manager shall enquire into the appropriateness of the existing unit in light of the following factors—

- (a) the community of interest among the workers in the existing unit;
- (b) the nature and scope of the duties of those workers;
- (c) the views of the employer and of the union as to any changes that ought to be made in the existing unit,

and shall assist the union and the employer to determine the bargaining unit that is appropriate in the circumstances.

(4) If the union and the employer are not able to agree on the determination of the appropriate bargaining unit within such reasonable period as the Manager may allow, the Manager shall so advise the Minister and the Minister shall refer the issue to the Tribunal for determination.

(5) Subject to subsection (8), within 30 days (or such longer period as may be agreed by the parties) after receiving notice of a determination of the appropriate bargaining unit, the Manager shall conduct a ballot of the workers in the bargaining unit as reconstituted (if the circumstances require) pursuant to subsections (3) and (4).

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(6) If on such a ballot it is shown that more than 50% of the workers voting in the ballot do not support the union as their exclusive bargaining agent, the Manager shall cancel the certification of the union; and, subject to section 58(1), the union shall cease to be the exclusive bargaining agent in respect of that unit.

(7) If on a ballot under subsection (5) it is shown that more than 50% of the workers voting in the ballot support the union, the Manager shall by order reject the application under subsection (1).

(8) Without prejudice to the foregoing provisions, where the Manager is satisfied, on an application made under subsection (1), that more than 60% of the workers in the bargaining unit do not or no longer wish to have the union as their exclusive bargaining agent, he shall cancel the certification of the union without conducting a ballot and, subject to section 58(1), the union shall cease to be the exclusive bargaining agent in respect of that unit.

Supplementary provisions for section 57

58 (1) Cancellation of the certification of a union by the Manager under section 57(6) and (8) shall be made by order; and section 60 shall have effect as respects service and the time of taking effect of the order, any appeal from the order, and otherwise in relation to the order.

(2) Where the certification of a union is cancelled—

- (a) that union may not make application under section 41 in respect of the bargaining unit in question until a period of 12 months has expired; and
- (b) the agency shop in respect of that union shall terminate.

(3) Where an application under section 57(1) is rejected under subsection (7) of that section—

- (a) section 60 shall have effect as respects service and the time of taking effect of the order, any appeal from the order, and otherwise in relation to the order; and
- (b) another such application shall not be made until a period of 12 months has expired.

Procedure on a ballot

59 Schedule 1 shall have effect as to the procedure to be followed in the conduct of a ballot pursuant to section 47 or section 57(5).

Orders of the Manager and appeals

60 (1) This section applies to an order made by the Manager under sections 51, 57(7), 58(1) and 61(4).

(2) The order shall be in writing, signed by the Manager and dated, and addressed to the union and the employer.

(3) A copy of the order shall be delivered to the union and the employer on the day of the date of the order and, subject to this section, the order shall take effect 14 days after the day of delivery or such later day, if any, as is specified in the order.

(4) The union or the employer may appeal to the Minister by notice in writing—

(a) addressed to the Minister and delivered to him before the day on which the order would take effect under subsection (3); and

(b) stating the appellant's grounds of appeal.

(5) Where the Minister receives a notice of appeal within the time allowed by subsection (4)—

(a) the Minister shall cause an appeal to be conducted pursuant to the provisions of subsection (7); and

(b) the order is suspended pending the determination of the appeal.

(6) If the Minister does not receive a notice of appeal within the time allowed by subsection (4), the order takes effect on the day provided for in subsection (3).

(7) The provisions referred to in subsection (5)(a) are as follows—

(a) the Minister shall in writing refer the issue or issues raised by the notice of appeal to the Tribunal;

(b) the Tribunal shall determine the issue or issues in question and by order either confirm or modify the order that is the subject of the appeal as the Tribunal sees fit;

(c) the order of the Tribunal shall have effect in substitution for the order that was the subject of the appeal.

(8) Section 6 of the Statutory Instruments Act 1977 shall not apply to any order to which subsection (1) refers.

Chapter 2 - Agency shop

Agency shop

61 (1) For the purposes of this Act and pursuant to section 55(1)(c), there shall be an agency shop where the terms and conditions of employment of any worker (in respect of whom collective bargaining may take place) include a condition that such worker must either—

(a) be a member of a union; or

(b) agree to pay appropriate contributions to that union in lieu of membership,

whether or not a right to elect to pay partial contributions to charity is mentioned or referred to in such terms and conditions of employment.

(2) It shall be the duty of an employer of any worker in respect of whom subsection (1) applies to take all such action as is required on his part under this Act for—

- (a) setting up an agency shop in accordance with a collective bargaining agreement in respect of the description of workers to whom such agreement applies; and
 - (b) continuing the agency shop in being for so long as it shall remain in force.
- (3) An employer who contravenes subsection (2) shall be liable to a civil penalty as may be imposed by the Manager or the Tribunal.
- (4) Without prejudice to subsection (3), where there is a contravention against subsection (2) the Tribunal or the Manager (as the case may be) may by order direct the employer to take such action in fulfilment of the duty to which that subsection relates which, in the opinion of the Tribunal or the Manager (as the case may be) it would be within the power of the employer to take and is action which in the circumstances he ought to be required to take.
- (5) Where an order is made under subsection (4) by the Manager, section 60 shall apply to such order.
- (6) A contravention under this section may be reported as a labour dispute in accordance with Part 4.

Modification of rights by agency shop

- 62 (1) Where an agency shop is for the time being in force, a worker in relation to whom the agency shop applies shall not have the right, as between himself and an employer in relation to whom the agency shop applies, to refuse to be a member of the union for whose benefit the agency shop exists unless he agrees to pay appropriate contributions to the union in lieu of membership of it.
- (2) Notwithstanding section 39, it shall be lawful for an employer who is required to set up and continue in being an agency shop under section 61, or for a person acting on behalf of such an employer—
- (a) to dismiss, penalize or otherwise discriminate against a worker in relation to whom such agency shop applies on the grounds that he is not a member of the union for whose benefit the agency shop exists and has not agreed, or has refused or failed, to pay appropriate contributions to the union or, as provided in section 64, partial contributions to a charity; or
 - (b) to refuse to engage a person who, if engaged by the employer, would be a worker in relation to whom the agency shop applies, on the grounds that he is not a member of the union for whose benefit the agency shop exists and refuses to become a member of it and also refuses to pay appropriate contributions to the union or, as provided in section 64, partial contributions to a charity.
- (3) Where a worker in relation to whom an agency shop applies has agreed to pay appropriate contributions to the union for whose benefit the agency shop exists, and requests his employer to deduct the contributions from his remuneration and pay them on his behalf, then so long as that request remains in force—

- (a) he shall not be regarded for the purposes of subsection (2)(a) as having refused to pay contributions to the union; and
- (b) any failure on the part of the employer to comply with the request shall not be regarded as a failure on the part of the worker to pay contributions.

(4) In relation to a person who, in accordance with section 64 elects to pay partial contributions to a charity instead of appropriate contributions to a union, subsections (1) to (3) shall have effect as if any reference to appropriate contributions to a union were a reference to partial contributions to that charity.

Appropriate contributions to union in lieu of membership

63 (1) Any reference in this Act to appropriate contributions to a union in lieu of membership of the union shall be construed in accordance with the following provisions of this section.

- (2) Appropriate contributions to a union in lieu of membership may be either—
 - (a) periodical payments only; or
 - (b) periodical payments and an initial payment,

as any particular collective bargaining agreement may provide; and, subject to the following provisions of this section, the amount of any such contribution payable by any person under an agency shop shall be such amount as may be determined in accordance with such agreement.

(3) In so far as they consist of periodical payments, appropriate contributions payable to a union by a worker in relation to whom an agency shop applies for any year in pursuance of a collective bargaining agreement shall not in the aggregate exceed the aggregate amount which he would be required to pay for that year by way of periodical contributions in respect of membership dues only if he were a member of the union.

(4) A collective bargaining agreement may provide that appropriate contributions payable to a union by a worker in relation to whom an agency shop applies may include an initial payment to a union where, under the constitution of the union, a new member of the union would be required, on joining the union, to pay an initial contribution in addition to any periodical contribution; but any initial payment in respect of the agency shop shall not exceed the initial contribution so required by such constitution.

(5) Where a worker, in accordance with section 62(3), agrees to pay appropriate contributions, his employer shall, in accordance with that section, pay to the union such contributions collected and with each payment the employer shall give to that union—

- (a) a schedule reflecting the names of workers from whom appropriate contributions to that union have been made; and
- (b) a full written account of the amounts collected and paid.

Contributions to charity

64 (1) Any worker who—

- (a) under an agency shop would, unless otherwise permitted under this section, be required to agree to pay appropriate contributions to a union in lieu of membership of it; but
- (b) objects both to being a member of a union and to paying appropriate contributions to a union in lieu of membership of it,

may inform his employer in writing that, instead of paying appropriate contributions, he elects to pay partial contributions to a charity selected by him, with the remainder amount going to the union.

(2) Where a worker, in accordance with subsection (1), elects to pay partial contributions to a charity, his employer after deducting the partial contribution shall within 14 days of the end of each month—

- (a) pay to the charity selected, the partial contribution; and
- (b) remit to the union, the remainder.

(3) With each payment or remittance made under subsection (2), the employer shall give—

- (a) in the case of a charity, a schedule to that charity reflecting the names of workers from whom partial contributions to that charity have been paid and a full written account of the amounts so collected and paid; or
- (b) in the case of a union, a schedule to that union reflecting the names of workers from whom the remaining contributions to that union have been made and a full written account of the amounts so collected and remitted.

Duration of agency shop

65 (1) Without prejudice to section 55(1)(d) or section 58(2)(b), an agency shop shall remain in force for the duration of the period during which there is a union certified in respect of the bargaining unit to which the agency shop exists.

(2) For the avoidance of doubt, nothing in this Chapter shall render void any existing agreement or scheme in respect of an agency shop which was entered into before the coming into operation of this Act, but where any such agreement or scheme contains a provision that is contrary to this section, section 63 or 64, that provision shall be void.

PART 4

LABOUR DISPUTES

Chapter 1- Reporting, inquiry into and settlement of labour disputes

Meaning of “labour dispute”

66 (1) In this Act, unless the context otherwise requires, “labour dispute” means a dispute relating wholly or mainly to the matters set out in subsection (2) between—

- (a) an employer, or trade union on his behalf, and one or more workers, or trade union on his or their behalf; or
 - (b) workers, or a trade union on their behalf, and workers, or a trade union on their behalf.
- (2) The matters referred to in subsection (1) are—
- (a) terms and conditions of employment, or the conditions (whether physical or otherwise) in which workers are required to work;
 - (b) engagement or non-engagement of one or more persons, or termination or suspension of employment of one or more workers;
 - (c) allocation of work as between workers or groups of workers;
 - (d) a collective agreement;
 - (e) a contravention under this Part or Part 3 for which a civil penalty may be imposed (whether or not subparagraphs (a) to (d) apply); or
 - (f) such other matter as the Minister may declare by order published in the Gazette,

but shall not include any matter which was the subject of a complaint which has been settled by an inspector or otherwise determined under Part V of the Employment Act 2000.

(3) An order made under subsection (2)(f) shall be subject to the negative resolution procedure.

(4) In this section—

“inspector” has the meaning given in section 3 of the Employment Act 2000;

“trade union” means a trade union registered under this Act.

Labour disputes may be reported to the Manager

67 (1) Any labour dispute, whether existing or apprehended, may be reported in writing to the Manager by any party to the dispute or a person authorised by any of the parties to the dispute.

(2) A report under subsection (1) shall specify—

- (a) the parties to the dispute;
- (b) the person or persons on behalf of whom the report is made;
- (c) the issues relevant to the dispute including, where appropriate, the issues in dispute and for which the dispute is reported as may be agreed by the parties to the dispute; and
- (d) where there is a collective agreement in being, what action has been taken for dealing with the dispute under that agreement.

Manager to make inquiries

68 (1) Where the Manager—

- (a) receives a report of a labour dispute pursuant to section 67; or
- (b) has reasonable grounds to believe that there has been a contravention for which a civil penalty may be imposed under this Part or Part 3, whether or not such contravention constitutes or is reported as a labour dispute,

the Manager, or any public officer authorised by him to do so, shall as soon as practicable inquire into the causes and circumstances of the matter.

(2) If, for the purposes of an inquiry under this section, the Manager requires information which any person is likely to be able to supply, the Manager may, by notice in writing, require that person to, on such date or within such period of time as may be specified in the notice—

- (a) supply that information; and
- (b) produce such documents as may be specified and permit the Manager to take copies.

(3) A person who—

- (a) fails, without reasonable cause, to comply with a requirement under subsection (2); or
- (b) in purported compliance with a requirement under subsection (2), supplies information which he knows is false in a material particular,

shall be guilty of an offence punishable on summary conviction to a fine of \$10,000.

(4) A trade union may be prosecuted for an offence under this section as though it were a body corporate and section 92 shall apply with the necessary modifications.

Manager to effect settlement or refer to Minister

69 (1) Except as provided in subsections (2) and (3), the Manager or any public officer authorised by him, after making such inquiries as he considers necessary in the circumstances, shall—

- (a) endeavour to conciliate the parties to effect a settlement by all means at his disposal; or
- (b) where he is unable to effect a settlement or is of the opinion that the dispute is not amenable to resolution by conciliation, report the dispute to the Minister.

(2) Without prejudice to subsection (1), in any case to which—

- (a) section 68(1)(a) applies to a labour dispute involving a matter set out in section 66(2)(e); or
- (b) section 68(1)(b) applies,

and where after making such inquiries as he considers necessary in the circumstances the Manager has reasonable grounds to believe that there has been a contravention under this Part or Part 3 for which a civil penalty may be imposed, he may, subject to section 90, impose a civil penalty or report the matter to Minister.

(3) If there is in the relevant trade or industry any collective agreement for the settlement by negotiation, conciliation or arbitration of a labour dispute, the Manager shall not, except with the consent of all the parties to the dispute, endeavour to conciliate the parties unless and until there has been a failure to obtain a settlement by means of those arrangements.

(4) Without prejudice to this section or any other provision of law, if the Manager after making inquiries under section 68 is of the opinion that there is evidence of a contravention of, or breach of duty under, this Act or any other Act for which another authority is responsible, he shall, notify the appropriate authority and refer the matter for further consideration.

Minister to refer to Tribunal

70 (1) Where the Minister receives a report from the Manager pursuant to section 69(1)(b), he shall, after taking any steps which seem to him to promote a settlement, refer the matter subject to subsection (3) to the Tribunal for a determination or settlement by any means at its disposal under the Employment and Labour Code.

(2) Where the Minister receives a report from the Manager pursuant to section 69(2) he shall, without taking any steps to promote settlement, refer the matter subject to subsection (3) to the Tribunal for a determination or settlement by any means at its disposal under the Employment and Labour Code.

(3) In the case of a labour dispute involving an essential service, the Minister shall refer the dispute to the Tribunal for determination or settlement by any means at its disposal under the Employment and Labour Code before the expiration of any notice of lock-out, strike or irregular industrial action short of a strike given to the Manager in accordance with section 80(2)(b).

Duty to keep notes confidential

71 Notwithstanding Part 3 of the Public Access to Information Act 2010, no person who is authorised under this Part to conciliate or mediate the parties to a labour dispute shall be required to disclose to any person any notes or minutes of any proceedings pertaining to such conciliation or mediation.

Notice of labour dispute may be published

72 (1) Without prejudice to section 70, where the Minister receives a report from the Manager pursuant to section 69, the Minister may by notice published in the Gazette declare that a labour dispute exists or is apprehended.

(2) Section 6 of the Statutory Instruments Act 1977 shall not apply to a notice under subsection (1).

Difference arising in negotiations of new collective agreement

73 (1) Without prejudice to any of the preceding sections to this Part, if, in negotiations respecting a new collective agreement, a difference arises between the parties and they fail to conclude a new agreement, the collective agreement that was in force prior to the date when the negotiations commenced, notwithstanding its termination, shall be deemed to be in force and shall continue in force until replaced by the new agreement.

(2) For the avoidance of doubt, where there is a difference under subsection (1) that difference, if not otherwise determined, may be reported to the Manager in accordance with section 67 and the provisions under this Act shall apply to a report of a difference under subsection (1) as they do to a labour dispute.

Referral to Tribunal for advice

74 The Minister may refer to the Tribunal, for advice, any matter relating to or arising out of a labour dispute which, in his opinion, ought to be so referred.

Chapter 2 - Essential industries and services - unfair industrial practices

Interpretation and application of Chapter

75 (1) This Chapter shall apply in relation to a labour dispute, difference or other conflict in any essential industry or service.

(2) In this Chapter—

“difference” means a difference to which section 73 applies;

“essential industry” means an industry or business specified in Schedule 2;

“essential service” means an essential service specified in Schedule 3.

(3) The Minister may by order subject to the affirmative resolution procedure amend Schedules 2 and 3.

Unfair industrial practice

76 For the purposes of this Chapter the following shall be unfair industrial practices—

- (a) the failure of a person or trade union to comply with the grievance procedure set out in a collective agreement for the essential industry or service;
- (b) a lock-out, strike or irregular industrial action short of a strike at the place of employment in relation to which a labour dispute or difference exists, any time after the labour dispute or difference is referred to the Tribunal and is not otherwise determined.

Complaint in relation to unfair industrial practice

77 (1) An aggrieved person in respect of an unfair industrial practice under section 76(a), may present a complaint to the Manager in accordance with section 67 and the Manager shall consider the complaint as he would a labour dispute.

(2) Where—

- (a) an employer in an essential industry takes part in any lock-out;
- (b) a worker employed in an essential industry takes part in any strike or irregular industrial action short of a strike; or
- (c) a trade union incites or in any way encourages, supports, assists or influences any worker employed in an essential industry to take part in any strike or irregular industrial action short of a strike,

which is an unfair industrial practice under section 76(b), then an aggrieved person may present a complaint to the Manager in accordance with section 67 and the Manager shall consider the complaint as he would a labour dispute.

(3) In this section an “aggrieved person” means an employer, a worker, or a trade union directly concerned in or affected by the unfair industrial practice.

Remedies for unfair industrial practice

78 (1) This section applies without prejudice to any other powers conferred on the Tribunal under the Employment and Labour Code.

(2) If on a complaint mentioned in section 77 (which has been referred by the Manager to the Tribunal pursuant to section 70) the Tribunal finds that the complaint is wholly or partly well-founded, it may grant one or more of the following remedies—

- (a) an award determining the rights of the employer or the worker in the essential industry or service and of the trade union in relation to the matter to which the complaint relates;
- (b) an award directing the employer or worker or the trade union to take such action in fulfilment of the duty in question which in the opinion of the Tribunal it would be within the power of the employer, the worker, or the trade union to take and is action which in the circumstances either the employer, the worker, or the trade union ought to be required to take;
- (c) an award of compensation calculated in accordance with subsections (3) and (4) to be paid to the employer, the worker or the trade union;
- (d) a general award of such sum to be paid to the employer, the worker or the trade union as the Tribunal thinks fit.

(3) The amount of the compensation awarded under this section shall be such amount as the Tribunal considers just and equitable but the award—

- (a) against the employer in the essential industry or service shall not exceed \$5,000 and in respect of each day during which the unfair industrial practice continues, shall not exceed \$500 per day;

- (b) against the worker of the essential industry or service shall not exceed two weeks' wages and in respect of each day during which the unfair industrial practice continues, shall not exceed one day's wage per day; or
- (c) against a trade union shall not exceed \$5,000 and in respect of each day during which the unfair industrial practice continues, shall not exceed \$500 per day.

(4) Where the Tribunal finds that the unfair industrial practice complained of was to any extent caused or contributed to by any action of the aggrieved person or the complainant it may not award any compensation or it may reduce the amount of compensation by such proportion as it considers just and equitable having regard to that finding.

Enforcement and recovery of an award under section 78

79 An award under—

- (a) section 78(2)(b) may be enforced in the Supreme Court by the person or party directly concerned in or affected by the non-fulfilment of the duty;
- (b) section 78(2)(c) or (d) may be recovered as a civil debt in the Supreme Court or in a court of summary jurisdiction by the person or party to whom the compensation or sum is awarded.

Essential services- restriction on lock-outs, strikes etc.

80 (1) This section and sections 81 and 82 shall apply to the essential services only.

(2) Without prejudice to section 87, a lock-out, strike or any irregular industrial action short of a strike in an essential service shall be unlawful unless—

- (a) there is a labour dispute within that essential service and a report has been made to the Manager in accordance with section 67; and
- (b) thereafter valid notice of the intended lock-out, strike or irregular industrial action short of a strike has been given to the Manager by the employer, or trade union on his behalf, or workers, or trade union on their behalf at least 21 days prior to the day upon which the lock-out, strike or irregular industrial action short of a strike is to commence; and
- (c) the lock-out, strike or irregular industrial action short of a strike is the lock-out, strike or irregular industrial action specified in the notice (both as respects its nature and the persons participating) and, subject to subsection (5), commences on the day specified in the notice, or within 24 hours thereafter; and
- (d) the dispute has not been referred for settlement to the Tribunal under section 70.

(3) No notice of an intended lock-out, strike or irregular industrial action short of a strike shall be valid for the purposes of subsection (2)(b) unless it specifies—

- (a) the industrial action to be taken, whether this be a lock-out, strike or irregular industrial action short of a strike, and if it be irregular industrial action short of a strike, the nature of such action;
- (b) the persons or category of persons who are to participate in the lock-out, strike or irregular industrial action short of a strike, being persons who are employers or workers in the essential service in which the lock-out, strike or irregular industrial action short of a strike is to take place;
- (c) the day upon which the lock-out, strike or irregular industrial action short of a strike is to commence.

(4) Where notice has been given in accordance with subsection (2)(b), a subsequent notice given by the same party shall not be valid for the purposes of that subsection (to the extent that it specifies any persons or category of persons who are to participate in a lock-out, strike or irregular industrial action short of a strike who have already been so specified in the previous notice), if such subsequent notice is given before the day specified in the previous notice as the day upon which a lock-out, strike or irregular industrial action short of a strike is to commence or such day as varied by agreement under subsection (5).

(5) The day upon which any lock-out, strike or irregular industrial action short of a strike is to commence as specified in the notice given in accordance with subsection (2) (b) may be varied prior to the expiration of that notice (or of that notice as extended under this subsection) by extending the period of the notice by not more than seven days at a time by agreement between the parties to the dispute, but only (except where the Government is such a party) if the Minister authorizes the extension.

(6) Any person who—

- (a) being an employer in an essential service, takes part in any lock-out which is declared unlawful by subsection (2); or
- (b) being a worker employed in an essential service, takes part in any strike or irregular industrial action short of a strike, which is declared unlawful by subsection (2); or
- (c) incites or in any way encourages, persuades or influences any worker employed in any essential service to take part in any strike or irregular industrial action short of a strike, which is declared unlawful by subsection (2),

knowing or having reasonable cause to believe that the probable consequences of that employer or worker so doing, either alone or in combination with others, would be to deprive the public, wholly or to a great extent, of that service, shall be liable to a civil penalty as may be imposed by the Tribunal.

(7) A contravention under subsection (6) may be reported as a labour dispute and referred to the Tribunal in accordance with Chapter 1 of this Part.

(8) For the purposes of this section a labour dispute shall not be regarded as being within an essential service unless it is a dispute between employers and workers, or between workers and workers engaged in the provision of that service.

Duty of employers to comply with rules as to notice

81 (1) Every employer who fails to comply with any rules made under section 97(1) (a), that require workers and persons to be employed in an essential service to be given notice that such workers or persons are employed or are to be employed in an essential service shall be liable to a civil penalty as may be imposed by the Tribunal.

(2) A contravention under subsection (1) may be reported as a labour dispute and referred to the Tribunal in accordance with Chapter 1 of this Part.

Certificates by Manager

82 In any proceedings arising out of or in connection with a contravention of section 80, a certificate purporting to be under the hand of the Manager setting out—

- (a) whether a labour dispute in an essential service has been reported in accordance with section 67 and, if it has been reported, the date and the terms of such report;
- (b) whether the Minister has, or has not, referred a labour dispute to the Tribunal under section 70(3) and, if the Minister has, the date thereof and any terms of reference;
- (c) whether notice of an intended lock-out, strike or irregular industrial action short of a strike has been given under section 80, and if it has been given, the date and terms thereof;
- (d) the terms of any authority given by the Minister under section 80(5),

shall be admissible without further proof as evidence of the matters stated therein.

Chapter 3 - Rights and restrictions

Victimisation

83 (1) It shall be an offence for any employer, acting on the grounds set out in subsection (2), in respect of any worker employed by him—

- (a) to dismiss the worker;
- (b) to reduce the rate of remuneration of the worker;
- (c) to alter the terms or conditions of employment of the worker to terms or conditions less favourable to that worker;
- (d) to alter the position of the worker relatively to other workers employed by him to that worker's disadvantage.

(2) The grounds referred to in subsection (1) are that the worker has—

- (a) given information which by or under any of the provisions of this Act he is required to give or which relates to the terms or conditions of his employment, or of the employment of other workers employed by his employer—

- (i) to the Manager or any conciliator or the Tribunal acting in relation to any labour dispute;
- (ii) to any registered trade union of which he is a member or to any officer of any such trade union; or

(b) given evidence before any court of law.

(3) An employer who commits an offence under this section is liable on summary conviction to a fine not exceeding \$10,000.

(4) The court which tries any such offence may, in addition to imposing a penalty, order that the worker concerned, unless reinstated, where appropriate with payment of unpaid wages, be awarded such damages as the court considers appropriate and, failing payment of such damages, may sentence the employer to imprisonment for a term of one month in addition to any other penalty which the court has imposed upon him.

(5) For the purposes of this section “employer” includes any servant or agent of an employer who is authorised by that employer to engage or dismiss workers on his behalf.

Restriction on liability for interfering with another person’s business

84 (1) An act done by a person in contemplation or furtherance of a labour dispute shall not be actionable on the ground only—

- (a) that it induces some other person to break a contract of employment;
- (b) that it is in interference with the trade, business or employment of some other person; or
- (c) that it is in interference with the right of some other person to dispose of his capital or his labour as he wills.

(2) Nothing in subsection (1) shall confer any immunity in respect of—

- (a) any act done in contravention of section 86; or
- (b) any other act done in contemplation or furtherance of any thing which by this Act is unlawful.

Peaceful picketing

85 (1) Subject to section 86 it shall be lawful for one or more persons, acting on behalf of a trade union in contemplation or furtherance of a labour dispute, to attend at or near a place where a person works or carries on business if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working, and, in doing so, comply with the picketing rules set out in Schedule 4.

(2) Nothing in this section—

- (a) shall confer any immunity in respect of any act done in contemplation or furtherance of a lock-out, strike or irregular industrial action short of a strike which this Act declares to be unlawful; or

(b) shall, save as provided in section 9, confer any immunity from criminal or civil proceedings in respect of trespass.

(3) Any person who while picketing fails to comply with any of the picketing rules shall be liable to a civil penalty as imposed by the Tribunal.

(4) A contravention under subsection (3) may be reported as a labour dispute and referred to the Tribunal in accordance with Chapter 1 of this Part.

Prevention of intimidation

86 (1) It shall be unlawful for one or more persons to attend at or near a place of work for the purpose of obtaining or communicating information or persuading or inducing any person to work or to abstain from working where such person or persons attend in such manner or number so as to—

- (a) intimidate any person in that place;
- (b) obstruct the approach to or egress from that place; or
- (c) lead to a breach of the peace.

(2) Subsection (1) shall apply whether such person or persons act on their own behalf or on behalf of a trade union or employer and notwithstanding that they may act in contemplation or furtherance of a labour dispute).

(3) Any person so attending at or near any place in such numbers or in such manner as is by subsection (1) declared to be unlawful commits an offence punishable on summary conviction by imprisonment for 12 months.

(4) Any person who, with a view to compelling any other person to abstain from doing or to do any act which such person has a legal right to do or abstain from doing, wrongfully and without legal authority—

- (a) injures or intimidates such other person;
- (b) persistently follows such other person about from place to place;
- (c) watches the place where such person works or carries on a business, or happens to be, or the approach to such place;
- (d) follows such other person with two or more other persons in a disorderly manner in or through any street or road;
- (e) injures or intimidates the spouse or child of such other person; or
- (f) injures any property,

commits an offence punishable on summary conviction by imprisonment for 12 months.

(5) In this section—

“injury” includes injury to a person in respect of his person, business, occupation, employment or other source of income, and includes any actionable wrong; and

“intimidate” means to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependants or of violence or damage to any person or property.

Unlawful lock-outs, strikes etc.

87 (1) Subject to this section, a work to rule, lock-out, strike or irregular industrial action short of a strike shall be lawful.

(2) The following actions shall be unlawful—

(a) any lock-out, strike or irregular industrial action short of a strike if—

(i) it takes place any time after the notice mentioned in section 72 is published or at any time after a labour dispute is referred to the Tribunal and the dispute in either case is not otherwise determined;

(ii) it has any object other than or in addition to the furtherance of a labour dispute within the trade or industry in which the strikers, persons taking irregular industrial action short of a strike or employers locking-out, as the case may be, are engaged; or

(iii) it is designed or calculated to coerce the Government either directly or by inflicting severe hardship upon the community;

(b) the commencement, continuation or the application of any money in furtherance or support of any such illegal lock-out, strike, or irregular industrial action short of a strike.

(3) A lock-out, strike or irregular industrial action short of a strike shall not be deemed to be designed or calculated to coerce the Government—

(a) if the purpose of such lock-out, strike or irregular industrial action short of a strike is merely to alter or maintain the terms and conditions of employment of strikers or workers locked out, as the case may be; and

(b) if such coercion ought not reasonably be expected as a consequence thereof.

(4) For the purposes of subsection (2)(a)(ii) and (iii), a labour dispute shall not be deemed to be within a trade or industry unless it is a dispute between employers and workers, or between workers, in that trade or industry, which is connected with the employment or non-employment or the terms of employment, or with the conditions of work, of persons in that trade or industry.

(5) Any person who takes part in, incites or in any way encourages, persuades or influences any person to take part in, or otherwise act in furtherance of, a lock-out, strike or irregular industrial action short of a strike declared by this section to be unlawful shall be liable to a civil penalty as may be imposed by the Tribunal.

(6) A contravention under subsection (5) may be reported as a labour dispute and referred to the Tribunal in accordance with Chapter 1 of this Part.

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(7) No person shall be deemed to have contravened this section by reason only of his having ceased work or refused to continue to work or to accept employment.

Protection of persons refusing to take part in illegal lock-outs or strikes

88 (1) Notwithstanding anything in the constitution of a trade union to the contrary, no person refusing to take part, or to continue to take part, in any lock-out, strike or irregular industrial action short of a strike which is pursuant to this Act unlawful shall, by reason of such refusal or by reason of any action taken by him under this section—

- (a) be subject to expulsion from any trade union;
- (b) be subject to any fine or penalty;
- (c) be subject to deprivation of any right or benefit to which he or his legal personal representative would otherwise be entitled;
- (d) be liable to be placed in any respect either directly or indirectly under any disability or at any disadvantage as compared with other members of the trade union.

(2) None of the provisions of this Act, and nothing in the constitution of a trade union requiring the settlement of disputes in any manner, shall prevent or restrict any proceedings for enforcing any right or exemption secured by this section, and in any such proceedings the court may, in lieu of ordering a person who has been expelled from membership of a trade union to be restored to membership, order that he be paid out of the funds of the trade union such sum by way of compensation or damages as the court thinks fit.

Breach of contract of service endangering life or property

89 Any person who wilfully breaks or terminates a 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 cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury, although he may be acting in furtherance of a lawful labour dispute commits an offence punishable on summary conviction by imprisonment for three months or a fine of \$5,000 or both such imprisonment and fine.

PART 5

ENFORCEMENT

Manager may impose civil penalties; procedure and appeals

90 (1) This section applies where a person who, without reasonable excuse, contravenes any provision of this Act for which a civil penalty is liable to be imposed by the Manager.

(2) Schedule 5 shall have effect for the purposes of subsection (1) in determining whether a civil penalty may be imposed by the Manager (or by the Tribunal only) in respect of a contravention.

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(3) The Manager may, subject to this section, impose a civil penalty of such amount not exceeding \$5,000, which in his discretion he thinks is appropriate.

(4) For the purposes of subsection (3) “appropriate” means effective, proportionate and dissuasive.

(5) Where the Manager proposes to impose a civil penalty on a person he shall give the person notice (a “warning notice”) of—

- (a) the amount of the penalty;
- (b) the reasons for imposing the penalty; and
- (c) the right to make representations to the Manager within seven days of the date of such notice.

(6) If after considering any representations, the Manager decides to impose a civil penalty on a person, he must give the person notice (a “decision notice”) of—

- (a) his decision to impose the penalty;
- (b) the amount of the penalty;
- (c) the reasons for his decision; and
- (d) the right to appeal pursuant to subsection (7) within 21 days of such notice.

(7) A person may appeal a civil penalty imposed under this section by giving notice in writing to the Manager stating the grounds of appeal and the Manager, upon receiving such notice within the time allowed by subsection (6)(d), shall in writing refer the matter to the Tribunal.

(8) The Tribunal shall determine an appeal referred to it under subsection (7) by confirming, revoking or modifying the civil penalty as the Tribunal sees fit.

(9) A person upon whom a penalty is imposed under subsection (6) who does not appeal in accordance with subsection (7) shall either—

- (a) pay the penalty; or
- (b) pay a portion of the penalty and agree, with the Manager, to a payment schedule for the remainder.

(10) A civil penalty appealed against under subsection (7) shall not have effect—

- (a) until the end of the period within which the appeal can be brought; and
- (b) if such an appeal is brought, until it is determined or withdrawn.

(11) Any civil penalties imposed under this section—

- (a) shall be paid into the Consolidated Fund; or
- (b) if unpaid may be recovered as a debt owing in any court of competent jurisdiction.

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 2020

Trade unions may be prosecuted for offences against Part 4

91 (1) A trade union may be prosecuted for an offence under Part 4 as though it were a body corporate.

(2) Where a trade union is guilty of an offence under this Part and that offence is proved to have been committed with the consent, knowledge or connivance of, the chairman, secretary or other similar officer of the trade union, or any person who is purporting to act in such capacity, he, as well as the trade union, shall be liable to be proceeded against and punished accordingly.

(3) Any fine payable by a trade union convicted of an offence under Part 4 shall unless otherwise paid be payable out of the funds of the trade union.

(4) This clause shall apply, with the necessary modifications, to a contravention under this Act for which a civil penalty may be imposed as it applies to an offence.

Offences by corporations

92 (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent, knowledge or connivance of a director, manager, secretary or other similar officer of the body corporate, or any person who is purporting to act in any such capacity, he, as well as the body corporate commits that offence and shall be liable to be proceeded against and punished accordingly.

(2) This clause shall apply, with the necessary modifications, to a contravention under this Act for which a civil penalty may be imposed as it applies to an offence.

Consent to prosecution

93 A prosecution in Bermuda for an offence under this Act may only be brought by, or with the consent of, the Director of Public Prosecutions.

Relief by way of injunction against contravention of this Act

94 (1) Notwithstanding any other provision of this Act, and without prejudice to any remedy or relief to which any person may be entitled apart from this section, any person having a sufficient interest in the relief sought shall be entitled, upon making application to the Supreme Court and upon satisfying the court that there are reasonable grounds for apprehending a contravention of this Act by any person or by any trade union, to an injunction restraining that person or union from so contravening this Act.

(2) For the purposes of this section—

(a) “person having a sufficient interest in the relief sought” includes—

(i) any person whose person, property or business or any right or interest of whom has been or is being or is likely to be injured or damaged by any act which is, or the continuation or repetition of which, is threatened or reasonably apprehended; and

(ii) any person whose house or place of residence, work or business has been unlawfully watched or picketed;

- (b) "injunction" includes an interlocutory, permanent or mandatory injunction, and any permanent or temporary relief by way of injunction;
- (c) a member or officer of a trade union shall be presumed to be acting on behalf of that trade union if he takes any step or action in contemplation or in furtherance of a labour dispute in combination or in company with any other member or officer of that trade union, unless the contrary is proved.

(3) If the court is satisfied upon an ex-parte application that it is probable that the plaintiff is entitled to relief by way of injunction and that it is probable that unless an interlocutory order is made the plaintiff will suffer substantial injury or damage, the court shall make such an order subject to such terms and conditions as the court thinks just; and the court may at any time on reasonable cause shown discharge or vary such order.

(4) Proceedings for an injunction against a trade union may be brought against that trade union in its registered name, and an injunction granted under this section against a trade union shall be enforceable by attachment or committal of each officer, and of each member of the executive committee or other governing body, of the trade union, and by sequestration against the funds of the trade union.

(5) Subject to subsection (4), an injunction granted under this section against any person shall be enforceable by attachment or committal or otherwise as the court thinks just.

(6) Relief by way of injunction shall be granted under this section notwithstanding that no compensation or other relief is claimed or granted therewith.

(7) The power to make rules of the Supreme Court provided by section 62 of the Supreme Court Act 1905, shall include power to make rules for regulating, subject to and for the purpose of giving effect to this section, the practice and procedure in all matters relating to the granting of relief under this section.

Enforcement of judgement, order or award against trade union

95 (1) Notwithstanding any other provision in this Act, for the purposes of this Part a trade union shall be capable of suing or being sued in its own name whether in proceedings relating to property or to proceedings pursuant to Part 4.

(2) Any judgment, order or award made in proceedings of the description mentioned in subsection (1) brought against the trade union shall be enforceable by way of execution, punishment for contempt or otherwise against any property held in trust for the trade union to the like extent and in the like manner as if the trade union were a body corporate.

PART 6
FINAL PROVISIONS

Minister may make regulations

96 (1) The Minister may make such regulations as he considers necessary or expedient to give effect to this Act, and regulations may make different provisions for different cases.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations with respect to all or any of the following matters—

- (a) the registration of a trade union under this Act and the documents and information to be furnished by any applicant for such registration;
- (b) the seal (if any) to be used for such registration;
- (c) the forms to be used for such registration;
- (d) the inspection of documents kept by the Registrar under this Act;
- (e) the fees to be paid (not exceeding the fees specified in Schedule 6)—
 - (i) on registration of a trade union; and
 - (ii) in respect of any service, matter or thing falling to be performed by the Registrar for the purposes of this Act or any regulations made thereunder;
- (f) the certification of a trade union under this Act including the form of application and the documents and information to be furnished in respect of such application;
- (g) the form and manner of reporting a labour dispute;
- (h) the reports to be prepared and submitted by the Manager; and
- (i) any other matters which are required or permitted to be prescribed under this Act.

(3) The negative resolution procedure shall apply to regulations made under this section.

Minister may make rules

97 (1) The Minister may make rules for the better carrying into effect of this Act and without derogation from the generality of the foregoing such rules may provide for—

- (a) the giving to workers and persons to be employed in the essential services of notice that they are employed or to be employed in an essential service;
- (b) any other matters which are required or permitted to be prescribed by rules under this Act.

(2) The negative resolution procedure shall apply to rules made under this section.

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 2020

Notices, etc.

98 (1) Any notice, summons or other document (“document”) required by or authorised under this Act to be given or sent to any person (whether by service or otherwise) shall be set out in a document in writing which may be served either—

- (a) by delivering it to the person;
- (b) by delivering it by registered mail to his proper address;
- (c) by leaving it at his proper address;
- (d) by sending it to him by facsimile or electronic mail or other similar means which are capable of producing a document containing the text of the communication, in which case the document shall be regarded as sent when it is received by him in a legible form; or
- (e) by any other method that provides proof of delivery or service.

(2) Where the person to whom subsection (1) refers is a trade union or body corporate, the document may be delivered, by any of those means, to the secretary or other appropriate person in respect of that trade union or body corporate.

(3) For the purposes of this section the “proper address” of any person shall be—

- (a) in the case of a trade union, the registered address of that trade union;
- (b) in the case of a body corporate, the registered or principal office of that body corporate; and
- (c) in any other case, the last known address of the person.

(4) No document required by this Act to be given or sent to the Registrar or the Manager or any other person shall be regarded as given or sent until it is received.

(5) For the purposes of this Act, a document shall be taken to have been received by the person in relation to whom it was sent—

- (a) where it was delivered to him personally, on the day of delivery;
- (b) where it was sent to him by registered mail at his address on the day on which it he acknowledges receipt or, if no such acknowledgement was received from him, it shall, unless it is shown to the contrary, be deemed to have been received by him 14 days after it was sent;
- (c) by sending it to him by facsimile or electronic mail or similar means which are capable of producing a document containing the text of the communication, on the second day after the day on which it was transmitted.

Amendments to the Employment Act 2000

99 The amendments to the Employment Act 2000 set out in Schedule 7 shall have effect.

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 2020

Consequential amendments and repeals

100 (1) The statutory provisions set out in Column 1 of Schedule 8 are amended as set out in Column 2 thereof.

(2) The following enactments are repealed—

- (a) the Trade Union Act 1965;
- (b) the Labour Relations Act 1975; and
- (c) the Labour Disputes Act 1992.

(3) The Minister may, by regulations subject to the negative resolution procedure, make such further amendments to this Act or any other enactment (including by way of repeal) as may be necessary or expedient as a consequence of this Act.

Savings

101 The following statutory instruments made, respectively, under the Trade Union Act 1965 and the Labour Relations Act 1975, shall remain in effect in accordance with section 17 of the Interpretation Act 1951, and shall be deemed to have been made under this Act—

- (a) the Trade Union Regulations 1965; and
- (b) the Labour Relations (Notice in Essential Services) Rules 1975.

Transitional provisions

102 (1) Upon the coming into operation of this Act—

- (a) any registered trade union which was so registered or deemed to have been registered under section 9(2) of the Trade Union Act 1965, provided its registration was not cancelled or withdrawn, shall be deemed to be registered under this Act;
- (b) any certified trade union which was so certified or deemed to have been certified under section 30F(3) of the Trade Union Act 1965, provided its certification was not cancelled, shall be deemed to be certified under this Act;
- (c) any actions or proceedings which commenced under the Trade Union Act 1965, Labour Relations Act 1975 or Labour Disputes Act 1992 but have not concluded, shall be deemed to have commenced under this Act;
- (d) any actions or proceedings which commenced before the Employment Tribunal under the Employment Act 2000 shall continue before the Employment Tribunal as constituted before the commencement of this Act.

(2) The Minister may, by regulations subject to the negative resolution procedure, make such further transitional provisions as he considers necessary or expedient as a consequence of this Act.

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 2020

Commencement

103 This Act shall come into operation on 1 June 2021.

SCHEDULE 1

(Section 59)

CONDUCT OF A BALLOT

1 (1) The Manager shall be in charge of the ballot and have responsibility for its orderly conduct.

(2) Where any matter occurs in relation to the ballot which is not regulated by this Schedule, the Manager shall deal with the matter in his discretion.

2 Prior to conducting a ballot, the Manager shall—

- (a) meet with the workers eligible to vote in the ballot to explain the certification or cancellation process; and
- (b) chair any meetings at which presentations relating to certification or cancellation are to be made to such workers by the employer or by a union.

3 The ballot shall be conducted at a convenient place on the premises where a majority of workers are employed at such time as the Manager, after consultation with the employer and the union, may determine.

4 The Manager shall—

- (a) formulate the question to be decided on the ballot;
- (b) prepare ballot papers, which shall state that question and make provision for answering it; and
- (c) where necessary provide for the translation of ballot papers.

5 Before any person votes, the Manager shall explain to him in simple language the purpose of the ballot and the procedures to be followed and where necessary shall provide for the translation of such explanation.

6 The Manager shall, subject to his responsibility under paragraph 1(1) for the orderly conduct of the ballot, allow such representatives of the union or unions concerned and the employer as the Manager sees fit to be present in the voting-place to observe the ballot.

7 The Manager may use such persons as he sees fit to assist him in the conduct of the ballot.

8 As soon as all persons entitled to vote in the ballot and who wish to do so have voted, the Manager shall count the votes and record the result on a standard certification form.

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9 The decision of the Manager as to the result of a ballot shall be final and not be subject to any appeal.

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SCHEDULE 2

(Section 75)

ESSENTIAL INDUSTRIES

- 1 Business of a hotel

SCHEDULE 3

(Section 75)

ESSENTIAL SERVICES

- 1 Electricity.
- 2 The extraction, distillation or purification, pumping, storage and distribution of water and the prevention of its waste, misuse or contamination.
- 3 Services provided for the protection of the public health and the prevention of disease including the collection, transportation, processing and disposal of trade and domestic refuse and sewage.
- 4 Hospital and nursing.
- 5 Domestic and industrial gas.
- 6 Port and dock services including pilotage, tug and line boat operation (not connected with cruise ships).
- 7 Fire.
- 8 Lighthouses.
- 9 Air and Marine Traffic Control.
- 10 The refuelling and maintenance of aircraft to the extent that this is necessary to maintain the essential services.
- 11 The loading and unloading of mail, medical supplies, foodstuffs, cattle and chicken feed and all supplies needed to maintain any essential service specified herein and the transport of such goods to their proper destination.
- 12 Transport necessary for the maintenance of any essential service specified herein and the maintenance of such transport.
- 13 Telecommunications and internet services.
- 14 Meteorological services.
- 15 Airport security services (other than police service).
- 16 Ground electronic maintenance services connected with the safety of the Bermuda Airport and aircraft.

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 2020

17 The following services performed in relation to the Bermuda Airport pursuant to the Civil Airports Act 1949, that is to say—

- (a) airport infrastructure support services;
- (b) crash, fire and rescue services; and
- (c) air navigation services.

18 Prisons and corrections.

SCHEDULE 4

(Section 85)

PICKETING RULES

A person shall be deemed to be complying with the picketing rules if and so long as all the following rules are satisfied, namely that—

- 1 He is picketing in furtherance of a labour dispute in respect of which a lock-out or strike has been lawfully declared.
- 2 He is ordinarily engaged in the trade or industry in which the labour dispute occurs.
- 3 He is picketing at or adjacent to the premises in relation to which the labour dispute exists.
- 4 He is a member of a trade union which is a party to the labour dispute and is carrying on his person a written authorization signed by an officer of the trade union concerned, on behalf of that trade union, which states his name and address and that he is authorised to picket on behalf of that trade union.
- 5 He produces that written authorization for inspection when requested to do so by any police officer.
- 6 (a) He is picketing alone or with not more than nine other individuals at the premises concerned, provided that, if more than one union is lawfully engaged in the lock-out or strike, each such union shall be entitled to be represented in the proportion to the number of unions so engaged.
(b) But the total number of picketers at the premises concerned shall not exceed 10, or one representative of each union for each entrance from a public place to those premises, whichever is the greater.
- 7 He is picketing peacefully and without causing any obstruction.

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 2020

SCHEDULE 5

(Section 90)

CONTRAVENTIONS SUBJECT TO CIVIL PENALTY

1 In this Schedule—

- (a) Column 1 lists the contraventions for which a civil penalty may be imposed and the corresponding provisions under this Act in respect of each such contravention; and
- (b) Column 2 provides, in respect of each contravention listed in column 1, whether a civil penalty may be imposed by the Manager or the Tribunal and the amount that such civil penalty must not exceed.

| PROVISION OF ACT | Column 1 CONTRAVENTION | Column 2 | |
|------------------|---|---------------------------------|------------------------------------|
| | | CIVIL PENALTY MAY BE IMPOSED BY | CIVIL PENALTY AMOUNT NOT EXCEEDING |
| s.49(2) | Contravention in relation to protection of voting in a ballot | Tribunal only | \$10,000 |
| s.50(2) | Contravention in relation to the conduct of a ballot | Tribunal only | \$10,000 |
| s.53(2) | Failure of employer to give Manager notice of closing, sale, etc. of undertaking | Manager | \$5,000 |
| | | Tribunal | \$10,000 |
| s.56(4)(a) | Failure of employer to allow union representatives reasonable access to premises | Tribunal only | \$10,000 |
| s.56(4)(b) | Engaging in union activities on the premises of an employer without permission | Tribunal only | \$10,000 |
| s.61(3) | Failure of employer to comply with duty to set up agency shop | Manager | \$5,000 |
| | | Tribunal | \$10,000 |
| s.80(6)(a) | Employer in an essential service taking part in any lock-out which is declared unlawful | Tribunal only | \$10,000 |
| s.80(6)(b) | Worker in an essential service taking part in any strike or irregular industrial action short of a strike, which is declared unlawful | Tribunal only | \$10,000 |

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| | | | |
|------------|--|---------------|----------|
| s.80(6)(c) | Inciting or in any way encouraging, persuading or influencing a worker employed in an essential service to take part in any strike or irregular industrial action short of a strike, which is declared unlawful | Tribunal only | \$10,000 |
| s.81 | Failure of employer to comply with rules | Tribunal only | \$10,000 |
| s.85(3) | Failure to comply with rules in relation to peaceful picketing | Tribunal only | \$10,000 |
| s.87(5) | Taking part in, inciting, encouraging, persuading or influencing any person to take part in, or otherwise acting in furtherance of, a lock-out, strike or irregular industrial action short of a strike which is declared unlawful | Tribunal only | \$10,000 |

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 2020

SCHEDULE 6

(Section 97)

MAXIMUM FEES WHICH MAY BE REQUIRED TO BE PAID UNDER REGULATIONS

| | |
|---|------|
| For registering trade unions | \$50 |
| For registering alterations to the constitution | \$25 |
| For inspection of documents | \$10 |

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 2020

SCHEDULE 7

(Section 99)

AMENDMENTS TO THE EMPLOYMENT ACT 2000

The Employment Act 2000 is amended as follows.

Amends section 3

1 In section 3—

(a) insert in the correct alphabetical positions—

“civil penalty” means a civil penalty imposed in respect of a contravention of this Act either by—

(a) the Manager in accordance with section 37A; or

(b) the Tribunal in accordance with section 44M;

“Employment and Labour Code” has the meaning given in section 3A;”;

(b) repeal and substitute the following definitions—

“collective agreement” means any agreement or arrangement made (in whatever way and in whatever form) between—

(a) a trade union and an employer; or

(b) a trade union and a trade union;

“Tribunal” means the Employment and Labour Relations Tribunal established by section 44B;”;

(c) in the definition of “lock-out”, delete “the Labour Relations Act 1975” and substitute “section 2 of the Trade Union and Labour Relations (Consolidation) Act 2020”;

(d) in the definition of “strike” and “irregular industrial action short of a strike”, delete “the Labour Relations Act 1975” and substitute “section 2 of the Trade Union and Labour Relations (Consolidation) Act 2020”.

Inserts section 3A

2 After section 3, insert—

“Employment and Labour Code

3A The provisions of this Act together with those of the Trade Union and Labour Relations (Consolidation) Act 2020 (including any subordinate legislation made thereunder), shall constitute the Employment and Labour Code of Bermuda.”.

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 2020

Amends section 6

3 After section 6(5), insert—

“(6) This section applies, with the necessary modifications, to—

- (a) persons falling within section 4(2) (students, casual, part-time and temporary employees, voluntary workers, etc); and
- (b) such other persons as may be prescribed by regulations,

who are not employees for the purposes of this Act; but nothing in this subsection shall be taken to entitle such persons to any of the matters listed in subsection (2) or to any entitlements under this Act which are not applicable to persons who are not employees.

(7) An employer who contravenes this section shall be liable to a civil penalty as may be imposed by the Manager or the Tribunal.”.

Amends section 10B

4 After section 10B(5), insert—

“(6) Any employer who contravenes this section shall be liable to a civil penalty as may be imposed by the Manager or the Tribunal.”.

Amends section 28

5 In section 28(1)(h), delete “Labour Relations Act 1975” and substitute “Trade Union and Labour Relations (Consolidation) Act 2020”.

Amends section 36

6 After section 36(3), insert—

“(4) For the purposes of this section, a complaint shall not include any matter which was the subject of a labour dispute as defined in the Trade Union and Labour Relations (Consolidation) Act 2020, which has been settled by the Manager or otherwise determined under the Trade Union and Labour Relations (Consolidation) Act 2020.”.

Amends section 37

7 In section 37—

- (a) in subsection (3) after “the inspector shall”, insert “, subject to subsection (5),”;
- (b) after subsection (4)(b), delete the continuing words and insert, “he shall report the matter to the Manager who may refer the complaint to the Tribunal or, in the case of a contravention for which a civil penalty may be imposed by the Manager, either impose a civil penalty subject to section 37A or refer the matter to the Tribunal.”;

(c) repeal subsection (5) and substitute—

“(5) Where, in relation to an employer, any relevant grievance procedure is established (whether under a contract of employment, collective agreement or otherwise) to deal with employees’ complaints, then unless and until there has been a failure to obtain a settlement by means of that procedure—

(a) the inspector shall not attempt to settle the complaint under this section; and

(b) the Manager shall not refer the complaint to the Tribunal, except with the consent of all the parties.”;

(d) after subsection (5) insert—

“(6) Without prejudice to this section or any other provision of law, where the inspector, in making inquiries under this section, is of the opinion that there is evidence of a contravention of, or breach of duty under, this Act or any other Act for which another authority is responsible, he shall notify the appropriate authority and refer the matter for further consideration.”.

Inserts section 37A

8 After section 37 insert—

“Manager may impose civil penalties; procedure and appeals

37A (1) The Manager may subject to this section, impose a civil penalty on any person who without reasonable excuse contravenes a provision under Part II and for which a civil penalty is liable to be imposed.

(2) A civil penalty imposed by the Manager shall be of such amount as the Manager, in his discretion, thinks appropriate but shall not exceed \$5,000.

(3) For the purposes of subsection (2) “appropriate” means effective, proportionate and dissuasive.

(4) Where the Manager proposes to impose a civil penalty on a person he shall give the person notice (a “warning notice”) of—

(a) the amount of the penalty;

(b) the reasons for imposing the penalty; and

(c) the right to make representations to the Manager within seven days of the date of such notice.

(5) If after considering any representations, the Manager decides to impose a civil penalty on a person, he must give the person notice (a “decision notice”) of—

(a) his decision to impose the penalty;

- (b) the amount of the penalty;
- (c) the reasons for his decision; and
- (d) the right to appeal pursuant to subsection (6) within 21 days of such notice.

(6) A person may appeal a civil penalty imposed under this section by giving notice in writing to the Manager stating the grounds of appeal and the Manager, upon receiving such notice within the time allowed by subsection (5)(d), shall in writing refer the matter to the Tribunal.

(7) The Tribunal shall determine an appeal referred to it under subsection (6) by confirming, revoking or modifying the civil penalty as the Tribunal sees fit.

(8) A person upon whom a penalty is imposed under subsection (5) who does not appeal in accordance with subsection (6) shall either—

- (a) pay the penalty; or
- (b) pay a portion of the penalty and agree, with the Manager, to a payment schedule for the remainder.

(9) A civil penalty appealed against under subsection (6) shall not have effect—

- (a) until the end of the period within which the appeal can be brought; and
- (b) if such an appeal is brought, until it is determined or withdrawn.

(10) Any civil penalty imposed under this section—

- (a) shall be paid into the Consolidated Fund; or
- (b) if unpaid may be recovered as a debt owing in any court of competent jurisdiction. ”.

Inserts Part VA

9 After section 44 insert—

“PART VA

EMPLOYMENT AND LABOUR RELATIONS TRIBUNAL

Application, establishment and powers

Interpretation and application of Part

44A (1) In this Part, unless the context otherwise requires—

“award” means any determination, order, declaration or other decision made by the Tribunal in respect of the hearing of any matter before it;

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“chairman” and “deputy chairman” mean the chairman and deputy chairman of the Tribunal as selected under paragraph 10(1)(a) and (b) of Schedule 2;

“difference” means a difference to which section 73 of the Trade Union and Labour Relations (Consolidation) Act 2020 applies;

“employee” includes a worker within the meaning of section 2 of the Trade Union and Labour Relations (Consolidation) Act 2020; and

“oath” includes an affirmation and declaration.

(2) This Part applies in relation to complaints, labour disputes, differences, conflicts or such other matters referred to the Tribunal under the Employment and Labour Code.

Employment and Labour Relations Tribunal

44B (1) The Employment and Labour Relations Tribunal is hereby established.

(2) The Tribunal shall have jurisdiction to hear and determine (including by way of arbitration) complaints, labour disputes, differences, conflicts and other matters referred to it under the Employment and Labour Code.

(3) Schedule 2 shall have effect with respect to the appointment of the panel of members to serve on the Tribunal, and the constitution of and proceedings before the Tribunal.

General powers

44C (1) Without prejudice to any other powers conferred upon it under the Employment and Labour Code, the Tribunal may—

- (a) proceed to hear and determine any matter in the absence of any party who has been duly summoned to appear before the Tribunal and has failed to do so;
- (b) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of a matter before the Tribunal.

(2) Without prejudice to the generality of its powers under subsection (1), the Tribunal may award the payment of compensation to an employee where the employee cannot be re-instated or re-employed in his former position; and the compensation may be sued for and be recoverable by the employee as a civil debt in the Supreme Court or in a court of summary jurisdiction.

Power to obtain information

44D (1) For the purpose of dealing with any matter referred to it under the Employment and Labour Code, the Tribunal may, by writing under the hand of the chairman—

- (a) require any person to furnish, in writing or otherwise, such particulars in relation to the matter as the Tribunal may specify; and
- (b) require a person to attend before the Tribunal and give evidence on oath or otherwise, or produce documents,

and, subject to this Act, shall not be bound by any rule of evidence in civil or criminal proceedings.

(2) Any person who—

- (a) fails without reasonable excuse to furnish particulars in compliance with a requirement under subsection (1);
- (b) fails without reasonable excuse to attend before the Tribunal in compliance with such a requirement; or
- (c) when in attendance before the Tribunal, refuses to take an oath, or to produce a document or give evidence, in compliance with such a requirement,

shall be liable to a civil penalty as may be imposed by the Tribunal.

(3) But a person shall not be liable to a civil penalty for refusing to answer any question or to produce any document which he could not be required to answer or produce in proceedings before a court of law in Bermuda, or for failing or refusing to answer any question or produce any document which is not relevant to the matters in issue.

(4) Any person who—

- (a) threatens, intimidates or restrains;
- (b) uses violence to or inflicts injury on;
- (c) causes or procures violence, damage, loss or disadvantage to;
- (d) causes or procures the punishment of or the loss of employment of; or
- (e) penalizes or otherwise discriminates against,

a person for or on account of his having appeared or being about to appear before the Tribunal, commits an offence punishable on summary conviction to a fine of \$5,000 or to imprisonment for six months or both.

(5) For the avoidance of doubt the powers conferred on the Tribunal by this section can be exercised either on its own volition or on the application of a party.

(6) In this section—

“injury” includes injury to a person in respect of his person, business, occupation, employment or other source of income, and includes any actionable wrong; and

“intimidate” means to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependants or of violence or damage to any person or property.

Power to exclude public

44E (1) Proceedings of the Tribunal shall be open to the public but the Tribunal may with the consent of both parties exclude the public or any representative of the press where it considers it necessary or desirable to protect the privacy of parties to a hearing.

(2) Subject to subsection (3), whenever any representatives of the press are present at any such proceedings, and not otherwise, a fair and accurate report or summary of the proceedings including the evidence adduced at such proceedings may be published.

(3) But no comment shall be published in respect of the proceedings or of any evidence adduced at such proceedings until the decision of the Tribunal has been made public in accordance with section 44F.

(4) Any person who publishes any report on, or comment in respect of any proceedings before the Tribunal other than as authorised by this section shall be liable to a civil penalty.

Decisions and Awards

Notification and publication of award

44F (1) With respect to the hearing of any matter before the Tribunal, the parties to such hearing shall be notified by the chairman of the award made by the Tribunal within 30 days of the conclusion of the hearing but—

- (a) where the chairman fails to notify the parties, the deputy chairman shall, within 10 days thereafter notify the parties; or
- (b) where the deputy chairman fails to comply with paragraph (a), the remaining member of the Tribunal (as selected under paragraph 10(1)(c) of Schedule 2) shall, within five days thereafter, notify the parties.

(2) Without prejudice to subsection (1), the Tribunal shall notify the Minister of the award and the Minister shall, not later than 90 days after the conclusion of the hearing before it and subject to this section, cause the award to be made public.

(3) If any party to the proceedings reasonably wishes to conceal any matter, including the fact that he was such a party, the Tribunal shall—

- (a) give directions as to the action that shall be taken to conceal that matter in the publication of such award; or
- (b) if it considers that an award published in accordance with directions given under paragraph (a) would be likely to reveal that matter, direct that no such award be published until after the end of a period not exceeding one year, as it considers appropriate.

(4) There shall not be included in any publication so authorised by the Minister any information obtained by the Tribunal in the course of the hearing of any matter as to any trade union or to any individual business (whether carried on by an individual, firm or company) which is not available otherwise than through evidence given at the hearing, except with the consent of the secretary of the trade union or of the individual, firm or company in question.

Award to require concurrence

44G Without prejudice to section 44F, an award made by the Tribunal shall be made by all the members of such Tribunal, if they are in agreement or, if such members are not in agreement, then by the majority.

Award of Tribunal not to conflict with any Act

44H Where any matter referred to the Tribunal involves questions as to wages, or as to hours of work, or otherwise as to terms or conditions of or affecting employment which are regulated by any Act under the Employment and Labour Code or by any other Act, the Tribunal shall not make any award which is inconsistent with that Act.

Tribunal award binding

44I (1) An award made by the Tribunal shall be binding on the parties to the matter before it—

- (a) as from the date of the award; or
- (b) subject to section 44J, from such date as may be specified in the award (not being earlier than the date on which the matter to which the award relates first arose).

(2) It shall be an implied term of the contract of employment between the employer and employee, to whom an award under subsection (1) relates, that the terms and conditions of employment to be observed under the contract shall be in accordance with such award until the same are varied—

- (a) by a subsequent binding award; or
- (b) by agreement between the employer and employee or employee representative.

(3) For the avoidance of doubt, no award which specifies a period during which it is to be binding, whether made by the Tribunal to have prospective or retrospective effect, shall be binding for a period in excess of the period specified.

- (4) For the purposes of this section—
- (a) the reference to “parties” under subsection (1) includes the employer or any person succeeding (whether by virtue of a sale or other disposition or by operation of law) to the ownership or control of the business, the trade union, the employee and any other person to whom the award relates;
 - (b) the reference to “contract of employment” under subsection (2) includes a collective agreement or such other agreement between the parties respecting the terms and conditions of employment.

Award may be retrospective

44J (1) Any award made by the Tribunal, may be made so as to have retrospective effect, but, subject to subsection (2), such effect shall not be prior to the date upon which the matter to which the award relates was first reported to the Manager or inspector (as the case may be).

(2) An award made by the Tribunal may be made so as to have retrospective effect prior to the date referred to in subsection (1) but not earlier than the date on which the matter to which the award relates first arose—

- (a) where both parties to the dispute consent thereto; or
- (b) where the matter relates solely to the retrospective effect of a contract of employment or collective agreement.

Question as to interpretation of an award

44K (1) If any question arises as to the interpretation of any award of the Tribunal or any alleged error therein, the Minister or any party to the award may apply to the Tribunal for a decision on such question and the Tribunal shall decide the matter after hearing the parties, or without such hearing, provided the consent of the parties has first been obtained.

(2) The decision of the Tribunal shall be notified to the parties and shall thereafter be deemed to form part of and shall have the same effect in all respects as the original award.

Non-compliance with award

44L (1) Where any person fails to comply with an award of the Tribunal or any part thereof, a person that is directly concerned in or affected by the non-compliance (hereafter referred to as an “aggrieved person”) may, and without prejudice to any remedy or relief to which any person may be entitled apart from this section, make a complaint to the Tribunal.

(2) If on a complaint made under this section the Tribunal finds that the complaint is wholly or partly well-founded, it may grant one or both of the following—

- (a) an award of compensation to be paid to the aggrieved person;

(b) a general award of such sum to be paid to the aggrieved person as the Tribunal thinks fit.

(3) The amount of the compensation awarded under this section shall be such amount as the Tribunal considers just and equitable.

(4) Where the Tribunal finds that the non-compliance was to any extent caused or contributed to by any action of the aggrieved person it may not award any compensation or sum or it may reduce the amount of compensation or sum by such proportion as it considers just and equitable having regard to that finding.

(5) An award under this section may within a period of 30 days after the award has been made be recovered as a civil debt in the Supreme Court or in a court of summary jurisdiction by the person or party to whom the compensation or sum is awarded.

(6) Without prejudice to any other provision relating to the Tribunal's power to grant an award under the Employment and Labour Code, no costs shall be payable in respect of proceedings before the Tribunal under this section.

(7) In subsections (1) to (5) of this section "person" includes a trade union.

Other functions of the Tribunal and appeals

Power of Tribunal to impose civil penalties

44M (1) Where a person contravenes a provision of the Employment and Labour Code for which a civil penalty is liable to be imposed, the Tribunal may subject to this section impose a civil penalty not exceeding \$10,000 as the Tribunal considers appropriate for each such contravention.

(2) For the purposes of subsection (1) "appropriate" means effective, proportionate and dissuasive.

(3) Where the Tribunal proposes to impose a civil penalty on a person, it must give the person notice of—

- (a) the amount of the penalty;
- (b) the reasons for imposing the penalty; and
- (c) the right to make representations to the Tribunal within seven days of the date of such notice.

(4) If after considering any representations, the Tribunal decides to impose a civil penalty on a person, it must give the person notice of—

- (a) its decision to impose the penalty;
- (b) the amount of the penalty;
- (c) the reasons for the decision; and
- (d) the right to appeal in accordance with section 44O of this Act.

(5) A person upon whom a penalty is imposed under subsection (3) who does not appeal shall within 21 days either—

- (a) pay the penalty; or
- (b) pay a portion of the penalty and apply to the Manager for a payment schedule for the remainder.

(6) A civil penalty appealed against in accordance with section 44O shall not have effect—

- (a) until the end of the period within which the appeal can be brought; and
- (b) if such an appeal is brought, until it is determined or withdrawn.

(7) Any civil penalty imposed under this section—

- (a) shall be paid into the Consolidated Fund; or
- (b) if unpaid may be recovered as a debt owing in any court of competent jurisdiction.

(8) Where a civil penalty has been imposed on a person under any other provision of the Employment and Labour Code for a contravention, the person shall not also receive a civil penalty imposed under this section in relation to the same contravention.

Tribunal to submit reports

44N The panel chairman (as appointed under paragraph 3 of Schedule 2) shall, from time to time and at least once in each calendar year, submit to the Minister a report setting out awards made by the Tribunal under this Part; but any such report shall not reveal the names of any of the parties affected.

Appeals

44O (1) A party aggrieved by a determination, order, declaration or other decision of the Tribunal may appeal to the Supreme Court on a point of law.

(2) An appeal under subsection (1) shall be lodged in the Registry within 21 days after receipt of notification of the determination, order, declaration or other decision of the Tribunal or such longer period as the Supreme Court may allow.

(3) On any such appeal, the Supreme Court may make such order, including an order as to costs, as it thinks fit.

(4) Section 62 of the Supreme Court Act 1905 shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on an appeal under this section.

(5) The lodging of an appeal under this section shall act as a stay of any order of the Tribunal.”.

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Repeals

10 Repeal sections 35, 38(1), 41, 42, 43 and 47 which are superseded by this Act.

Repeals and replaces Schedule 2

11 Repeal and replace Schedule 2 as follows—

“SCHEDULE 2

(Section 44B)

THE EMPLOYMENT AND LABOUR RELATIONS TRIBUNAL

APPOINTMENT OF PANEL

1 The Minister shall, by notice published in the Gazette, appoint a panel of not less than 20 and not more than 30 persons as follows to serve as members of the Tribunal—

- (a) not more than 10 barristers and attorneys of not less than eight years' standing who possess Bermudian status;
- (b) not more than 10 persons with such experience or expertise as the Minister deems necessary to represent the interests of employers; and
- (c) not more than 10 persons with such experience or expertise as the Minister deems necessary to represent the interests of employees.

2 Before exercising his powers under paragraph 1, the Minister shall consult such trade unions and other organisations as appear to him to be representative of the views of employers and employees.

3 The Minister shall appoint from the panel a chairman (“panel chairman”) and a deputy chairman (“panel deputy chairman”) who shall hold office for a period of three years, and may be reappointed from time to time for a like period.

4 No person shall be qualified to be the panel chairman or panel deputy chairman appointed under paragraph 3 unless—

- (a) he is a barrister and attorney of at least eight years' standing; or
- (b) he has considerable experience in labour relations.

5 The members of the panel shall hold office for a period of three years, and may be reappointed from time to time for a like period.

6 The Minister may at any time, by notice published in the Gazette, appoint a person to act in the place of any member of the panel who is absent from Bermuda or who is for any reason incapacitated, but shall not appoint a person to act as

panel chairman or panel deputy chairman unless that person is himself qualified under paragraph 4.

7 The panel chairman, panel deputy chairman or any panel member may at any time, except during the course of proceedings before them under this Act, resign his appointment by notice in writing addressed to the Minister.

8 The panel chairman, panel deputy chairman and any members of the Tribunal constituted under paragraph 10 shall be entitled to receive out of the funds appropriated by the Legislature for the purpose such fees and allowances as the Minister may determine.

CONSTITUTION OF TRIBUNAL

9 For the purpose of determining any complaint, labour dispute or other matter referred to the Tribunal under the Employment and Labour Code, the Tribunal shall be constituted as follows.

10 (1) The panel chairman (or in his absence the panel deputy chairman) shall, subject to paragraph 11, select from the panel members appointed under paragraph 1—

- (a) a chairman;
- (b) a deputy chairman; and
- (c) one member.

(2) In respect of a deputy chairman and member selected under subparagraph (1)(b) and (c), one shall represent the interests of employers and the other shall represent the interests of employees.

11 No person shall be qualified to be the chairman or deputy chairman of the Tribunal unless—

- (a) he is a barrister and attorney of at least eight years' standing; or
- (b) he has considerable experience in labour relations.

CONFLICT OF INTEREST

12 (1) Where a member of the Tribunal, constituted under paragraph 10, has any direct or indirect interest in any matter before it, he shall—

- (a) prior to the hearing of the matter, or otherwise at the earliest opportunity, disclose his interest to the Tribunal and to the panel chairman (or in his absence the panel deputy chairman);
- (b) not take part in any, or any further, discussion of the matter, and have no vote in relation to the matter, unless the Tribunal and the

panel chairman (or in his absence the panel deputy chairman) has resolved that the interest does not give rise to a conflict of interest.

(2) Where subparagraph (1) applies, the member may recuse himself and where so recused shall be replaced by another member selected in accordance with paragraph 10.

VACANCIES

13 Where, during any proceedings, a vacancy occurs in the membership of the Tribunal it may, with the consent of all parties, continue to act notwithstanding the vacancy; and no act, proceeding or determination of a Tribunal shall be called in question or invalidated by reason of the vacancy.

ASSESSORS

14 In any proceedings the chairman or deputy chairman of the Tribunal may, if he thinks fit, summon to the assistance of the Tribunal any person of skill and experience in the matter to which the proceedings relate who is willing to assist the Tribunal as an assessor.

TRIBUNAL AUTONOMOUS

15 In the exercise of the powers conferred on it by this Act, the Tribunal shall not be subject to the direction or control of any other person or authority.

PROCEEDINGS

16 As soon as practicable after a matter is referred to the Tribunal, it shall hold a hearing and give all parties, or their representatives, full opportunity to present evidence on oath and make submissions.

17 Parties to any proceedings before the Tribunal may appear personally or be represented, by counsel or otherwise.

18 Notwithstanding section 44E, the Tribunal may impose reporting restrictions where it considers it necessary or desirable to protect the privacy of parties to a hearing.

19 The Arbitration Act 1986 shall not apply to any proceedings of the Tribunal or to any award made by it.

20 Save as otherwise provided by any provision of this Act or in regulations made by the Minister regulating the procedure to be followed by the Tribunal, the Tribunal shall regulate its own proceedings as it thinks fit.”

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SCHEDULE 8

(Section 100)

CONSEQUENTIAL AMENDMENTS

PART A- STATUTES

| | COLUMN 1 Legislation | COLUMN 2 Amendment |
|---|--|--|
| 1 | Education Act 1996 | In section 19(3), delete “section 1 of Trade Union Act 1965” and substitute “section 2 of the Trade Union and Labour Relations (Consolidation) Act 2020”. |
| 2 | Insurance Act 1978 | In section 57(1)(a), delete “Trade Union Act 1965” and substitute “Trade Union and Labour Relations (Consolidation) Act 2020”. |
| 3 | National Pension Scheme (Occupational Pensions) Act 1998 | In section 2, in the definition of “trade union” delete “Trade Union Act 1965” and substitute “Trade Union and Labour Relations (Consolidation) Act 2020”. |

PART B- STATUTORY INSTRUMENTS

| | COLUMN 1 Legislation | COLUMN 2 Amendment |
|----|--|--|
| 1. | Employment Act (Appeal) Rules 2014 | (1) In Rule 2 in the definition of “Tribunal”, delete “section 35” substitute “section 44B”. (2) In the Rules, wherever it appears— (a) delete “section 41” and substitute “section 44O”; and (b) delete “Employment Tribunal” and substitute “Employment and Labour Relations Tribunal”. |
| 2 | Investment Business (Alternative Investment Fund Managers) Rules 2016. | In rule 2(1) in the definition of “employees’ representatives”, delete “Trade Union Act 1965” and substitute “Trade Union and Labour Relations (Consolidation) Act 2020”. |
| 3 | Labour Relations (Notice in Essential Services) Rules 1975 | (1) In the Rules, wherever it appears— (a) delete “workmen” and substitute “workers”; and |

(b) delete “workman” and substitute “worker”.

(2) In the Schedule—

(a) in Form 1—

- (i) in the introductory heading, delete “Labour Relations Act 1975” and substitute “Trade Union and Labour Relations (Consolidation) Act 2020”;
- (ii) in the first paragraph—
delete “section 10” and substitute “section 80”; and
delete “First Schedule” and substitute “Schedule 3”;
- (iii) in the second paragraph—
in subparagraph (a) delete “subsection (1) of section 3 as read with section 7” and substitute “section 67”;
in subparagraph (c), delete “subsection (4) of section 9” and substitute “section 79(5)”; and
in subparagraph (d), delete “Permanent Arbitration Tribunal under section 8” and substitute “Employment and Labour Relations Tribunal under section 70”; and
- (iii) in the third paragraph, delete “subsection (1) of section 9” and substitute “section 79(2)”;

(b) in Form 2—

- (i) in the introductory heading, delete “Labour Relations Act 1975” and substitute “Trade Union and Labour Relations (Consolidation) Act 2020”;
- (ii) in the first paragraph delete “section 10” and substitute “section 80”;
- (iii) in the second paragraph, delete “First Schedule” and substitute “Schedule 3”;
- (iv) in the third paragraph—
in subparagraph (a), delete “subsection (1) of section 3 as read with section 7” and substitute “section 67”;

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- in subparagraph (c), delete “subsection (4) of section 9” and substitute “section 79(5)”; and
- in subparagraph (d), delete “Permanent Arbitration Tribunal under section 8” and substitute “Employment and Labour Relations Tribunal under section 70”;
- (v) in the fourth paragraph, delete “subsection (1) of section 9” and substitute “section 79(2)”;
- 4 National Pension Scheme (General) Regulations 1999 In regulation 2- in the definition “collective agreement”, delete “section 1 of the Trade Union Act 1965” and substitute “section 2 of the Trade Union and Labour Relations (Consolidation) Act 2020”.
- 5 Trade Union Regulations 1965 (1) In regulation 2—
- (a) in paragraph (a) in the definition “the Act”, delete “Trade Union Act 1965” and substitute “Trade Union and Labour Relations (Consolidation) Act 2020”;
- (b) after paragraph (a) insert—
- “ (aa) “constitution” means the constitution of a trade union;”;
- (c) revoke paragraph (c) and substitute—
- “ (c) “Rule” means the rule or article of the constitution;”.
- (2) In Regulation 3, in paragraph (1), delete “rules” and substitute “constitution”.
- (3) In Regulation 5—
- (a) In the heading, delete “rules” and substitute “constitution”;
- (b) In paragraph (1)—
- (i) delete “rules” wherever it appears and substitute “constitution”;
- (ii) revoke subparagraph (a) and substitute—

- “
 - (a) if the alteration consists of the addition or substitution of a new part of the constitution, two copies of such part, each copy being marked X and signed by each of the applicants;”;
 - and
 - (iii) in subparagraph (b), delete “any of the rules” and substitute “any part of the constitution”.
 - (c) Revoke paragraph (2) and substitute—
 - “(2) The certificate of registration of a partial alteration of the constitution shall be in Form D in the First Schedule and shall be delivered to the applicants, attached to one of the copies of the new part of the constitution, or when the alteration consists of rescission merely, attached to the old part.
- (4) In Regulation 6—
- (a) In the heading, delete “rules” and substitute “constitution”
 - (b) In paragraph (1)—
 - (i) delete “rules” where it appears in the first instance and substitute “the constitution”; and
 - (ii) delete “rule” wherever else it appears and substitute “constitution”.
 - (c) In paragraph (2)—
 - (i) delete “rules” where it appears in the first instance and substitute “the constitution”; and
 - (ii) delete “rules” wherever else it appears and substitute “constitution”.
- (5) In the First Schedule—
- (a) In Form A—
 - (i) in paragraph (9) delete “rules” and substitute “the constitution or any part thereof”;
 - (ii) in paragraph (15)(i) delete “rules” and substitute “constitution”;

- (b) in Form B, delete “Trade Union Act 1965” and substitute “Trade Union and Labour Relations (Consolidation) Act 2020”;
- (c) in Form C—
 - (i) in the heading, delete “Rules” and substitute “Constitution”;
 - (ii) in paragraph 1—
 - delete “rules” wherever it appears and substitute “constitution”;
 - in subparagraph (i) delete “they are” and substitute “it is”;
 - (iii) In paragraph 3—
 - delete “rules” where it appears in the first instance and substitute “the constitution”; and
 - delete “rules” where it appears in the second instance and substitute “constitution”.
- (d) in Form D—
 - (i) in the heading delete “Rules” and substitute “Constitution”;
 - (ii) delete “rules” and substitute “the constitution”; and
 - (iii) delete “Trade Union Act 1965” and substitute “Trade Union and Labour Relations (Consolidation) Act 2020”;
- (e) in Form E—
 - (i) in the heading delete “Rules” and substitute “Constitution”.
 - (ii) in paragraph (1), delete “rules” and substitute “the constitution”.
 - (iii) in paragraph (2), delete “set of rules” wherever it appears and substitute “constitution”;
 - (iv) in paragraph (10), delete “rules’ and substitute “the constitution”;
 - (v) in paragraph (17)—
 - delete “of rules” and substitute “to the constitution”; and

- delete “the rules” and substitute “the constitution”;
- (f) in Form F—
 - (a) in the heading delete “Rules” and substitute “Constitution”;
 - (b) delete “set of rules” wherever it appears and substitute “constitution”; and
 - (c) delete “Trade Union Act 1965” and substitute “Trade Union and Labour Relations (Consolidation) Act 2020”;
 - (g) in Form G, delete “Trade Union Act 1965” and substitute “Trade Union and Labour Relations (Consolidation) Act 2020”;
 - (h) in Form L, delete “Trade Union Act 1965” and substitute “Trade Union and Labour Relations (Consolidation) Act 2020”;
 - (i) in Form M delete “rules” and substitute “constitution”; and
 - (j) in Form O, delete “Trade Union Act 1965” and substitute “Trade Union and Labour Relations (Consolidation) Act 2020”.
- (6) In the Second Schedule—
- (a) delete “rules” and substitute “the constitution”; and
 - (b) in the form headed “Fees”—
 - (i) delete “12.00” and substitute “\$50.00”;
 - delete “1.20” and substitute “\$25.00”;
 - delete “2.40” where ever it appears and substitute “\$25.00”;
 - delete “0.60” where it appears in the first instance and substitute “\$10.00”;
 - delete “0.60” where it appears in the second instance and substitute “\$25.00”; and
 - delete “0.30” and substitute “10.00”

TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) BILL 2020

EXPLANATORY MEMORANDUM

This Bill seeks to consolidate the Trade Union Act 1965 (TUA), the Labour Relations Act 1975 (LRA), and the Labour Disputes Act 1992 (LDA) into a single Act; to establish an Employment and Labour Relations Code in respect of trade union, labour relations and employment related matters and to provide for general reforms in respect of such matters; to provide for civil penalties to be imposed under the Employment and Labour Code; to provide for a single Tribunal called the Employment and Labour Relations Tribunal; and to provide for related matters.

Clause 1 is self-explanatory.

Clause 2 provides for definitions of terms used in the Bill. These definitions are largely modelled after the definitions provided under TUA, LRA and LDA. New terms provided under clause 2 include; “civil penalty”, which is a penalty imposed by either the Labour Relations Manager or the Tribunal in respect of a contravention (not constituting a criminal offence); “employers’ organisation”, which is an organisation established by employers, the principal purposes of which are the representation and promotion of employers’ interests and the regulation of relations between employers and workers; and “Tribunal” which means the Tribunal established under the Employment Act 2000 (as amended by this Bill). This clause also clarifies the definition of “worker” to include subject to that provision an “employee” under section 4(1) of the Employment Act 2000 and a person listed under section 4(2) of that Act who is not an employee for the purposes of that Act.

Clause 3 provides for those persons to whom the Bill shall not apply. This provision is largely adopted from the TUA and LRA but removes the reference to prison officers for the purposes of the Prisons Act 1979, with the effect that prison officers are not excluded from the application of this Bill.

Clause 4 provides that the Bill binds the Crown.

Clause 5 is the first provision under Part 2 (trade unions) Chapter 1 of the Bill. Part 2 adopts largely the provisions of the TUA with some modifications and Chapter 1 provides for the objects, purposes and registration of trade unions. Clause 5 provides for the definition of “trade union” which is the same as that provided under the TUA but includes reference to the representation and promotion of workers’ interests. This clause also provides that for the purposes of Part 2, an employers’ organisation shall, unless the context otherwise requires, constitute a trade union.

Clause 6 provides for the objects and purposes of a trade union and enables a trade union to be registered even if, under its constitution, it has purposes other than statutory purposes.

Clause 7 provides that a trade union shall not be treated as a body corporate except to the extent authorised under the Bill but that the trustees may still sue or be sued to the extent provided under the Bill. This clause also provides that the Friendly Societies Act 1868 shall not apply to any trade union.

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Clause 8 provides that the purposes of any trade union shall not be deemed unlawful so as to render any member of the trade union liable to criminal prosecution or to render any agreement or trust void merely because such purposes are in restraint of trade.

Clause 9 prohibits a court from entertaining any action against a trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union.

Clause 10 provides for trade union related agreements in respect of which the courts have no power to entertain any legal proceedings instituted for the purposes of directly enforcing or recovering damages for the breach of such agreements.

Clause 11 establishes the Registrar-General as the Registrar of trade unions and requires the Registrar to keep and maintain a register of every trade union registered under the Bill and to make such register available for public inspection at all reasonable hours.

Clause 12 requires the registration of a trade union upon its establishment and makes it a summary offence for anyone, on whom the duty falls to make an application for registration, who fails to comply with such duty.

Clause 13 makes it a summary offence to be a member of an unregistered trade union.

Clause 14 sets out the procedure for the registration of a trade union and its constitution.

Clause 15 provides for the registration of a trade union and for the issuance by the Registrar to that trade union of a certificate of registration.

Clause 16 provides for the cases in which the Registrar may withdraw or cancel a trade union's certificate of registration; sets out the procedure for such withdrawal or cancellation; and makes the continued operation of a trade union, after the withdrawal or cancellation of its certificate of registration, a summary offence.

Clause 17 prohibits a trade union registered in Bermuda from being connected to any trade union or organisation if, as a result of such connection, that trade union or any of its members is placed under the control of a trade union or other organisation which is established outside Bermuda.

Clause 18 requires notice to be given to the Registrar where there is a change in a trade union's registered address and makes failing to give such notice as required a summary offence.

Clause 19 provides for an appeal to the Supreme Court from a decision of the Registrar in relation to a refusal to register a trade union, a withdrawal or cancellation of a certificate of registration of a trade union, or a refusal to register an amendment or alteration to a constitution.

Clause 20 is the first provision under Chapter 2 of Part 2 of the Bill, which provides for the administration and membership of trade unions. Clause 20 sets out the requirements in relation to the constitution of a registered trade union and provides for the registration of an amendment or alteration to a constitution, for the refusal by the Registrar to register an amendment or alteration to a constitution, and requires a registered trade union to make its constitution available to the public upon request.

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Clause 21 provides for the information that is to be submitted annually by a registered trade union to the Registrar and provides for summary offences for any failure to comply.

Clause 22 makes it a summary offence for any person to circulate a false copy of a constitution of a registered trade union.

Clause 23 provides for offences in relation to the falsification of accounts in respect of a trade union by any officer or member of, or person employed by a trade union.

Clause 24 enables the Registrar, with the consent of the Director of Public Prosecutions, to institute proceedings for any offence under the preceding sections of Part 2 and to conduct such proceedings.

Clause 25 enables a registered trade union (not including an employers' organisation) to purchase or lease land not exceeding one acre and to sell, exchange, mortgage or let any such land.

Clause 26 provides for the vesting and control of any property belonging to a registered trade union (not including an employers' organisation) in the trustees of the trade union for the use and benefit of the trade union and its members.

Clause 27 provides for the trustees of a registered trade union (not including an employer's organisation) to bring and defend actions concerning the property or right or claim to property of the trade union and to sue and be sued in cases relating to the property of the trade union.

Clause 28 limits the liability of a trustee of a registered trade union for any deficiency in the funds of that trade union but provides for the liability of a trustee for moneys which are actually received by him on account of the trade union.

Clause 29 requires every treasurer or other officer of a registered trade union to render to its members audited accounts in keeping with this clause and with the trade union's constitution and to hand over, if so required, to the trustees any balance or other property of the trade union in his custody.

Clause 30 provides for a penalty to be given to any person by a court of summary jurisdiction in respect of any false representation to obtain any money or other effects of a trade union or the withholding or fraudulent misapplication of any money or other effects of a trade union.

Clause 31 restricts the application of the funds of a trade union in furtherance of certain political objects.

Clause 32 prohibits certain persons from being an officer of a trade union or from being employed in the administration or collection of funds of a trade union.

Clause 33 provides for the process by which a trade union may change its name.

Clause 34 provides for the process by which two or more trade unions may be amalgamated and provides that such an amalgamation may be effected with or without any dissolution or division of the funds of the trade unions.

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Clause 35 requires written notice of every name change or amalgamation of a trade union to be given to the Registrar to register such change or amalgamation and provides that no such change of name or amalgamation shall take effect until it is so registered.

Clause 36 requires notice to be given to the Registrar in respect of the dissolution of a trade union and provides for the Registrar to register such notice of dissolution.

Clause 37 provides for the forfeiture of money where any officer or other person bound by the constitution of a trade union to give notice or send or produce any document, which under this Bill is required to be given, sent or produced, fails to do so.

Clause 38 makes provision, subject to a trade union's constitution, for a person under 18 but over 16 years of age to become a member of a trade union but restricts the holding of any office of a trade union to members who are 18 years of age or older.

Clause 39 sets out the rights of a worker in respect of his trade union membership and provides for the associated obligations of an employer arising in relation to such worker's rights.

Clause 40 is the first provision under Part 3 (exclusive bargaining rights for certain trade unions) Chapter 1 of the Bill. Chapter 1 provides for the certification of a union, meeting the definition provided in clause 40, as the exclusive bargaining agent for a bargaining unit. This clause sets out the terms specific to Part 3 as adopted from the TUA save for the term "partial contribution", which means 50% of an appropriate contribution.

Clause 41 enables a registered union, claiming to have 35% or more of the workers in a proposed bargaining unit as members in good standing of that union, to apply to the Labour Relations Manager to be certified as the exclusive bargaining agent in respect of that proposed bargaining unit.

Clause 42 provides for the form and procedure pursuant to which a registered trade union may make an application to be certified as the exclusive bargaining agent of a proposed bargaining unit. This clause also provides for notice of such application to be served by the applicant union on the employer and protects the identity of any worker wishing to have the union as his exclusive bargaining agent from being disclosed.

Clause 43 enables the Labour Relations Manager, in the case of an application for certification having been made, to assist the union and the employer in determining the appropriate bargaining unit. This clause also requires the Labour Relations Manager, where the union and the employer are not able to agree on the determination of the appropriate bargaining unit, to advise the Minister who will then refer the issue to the Tribunal for determination.

Clause 44 requires an employer, after receiving notice of a union's application for certification, to give notice in response, to the Labour Relations Manager, that he either agrees to or opposes the application. Where an employer agrees to the application, the Labour Relations Manager shall certify the union in accordance with section 46 and where the employer opposes the application the Labour Relations Manager shall conduct a ballot pursuant to section 47.

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Clause 45 places a duty on an employer, who has received notice of an application for certification, to designate a person who may take on his behalf any action as may be required to be taken by the employer for the purposes of Part 3 Chapter 1 (Certification).

Clause 46 enables the Labour Relations Manager to automatically certify a union as the exclusive bargaining agent in respect of a proposed bargaining unit in any case where only one application for certification is made, the employer has agreed to such application, and the Labour Relations Manager is satisfied that more than 60% of the workers in that unit wish to have the union as their exclusive bargaining agent. This clause also adopts the deeming provision set out in section 30F of the Trade Union Act 1965 to enable the deemed certification in respect of certain union parties under that Act to continue under this Bill.

Clause 47 provides for the certification of a union by way of ballot conducted by the Labour Relations Manager.

Clause 48 places a duty on employers, in relation to the conduct of a ballot, to take all necessary steps to ensure workers who are eligible to vote in a ballot have the opportunity to do so and to permit workers to be absent from work to vote without a deduction in pay.

Clause 49 provides for the protection of persons voting in a ballot, for a civil penalty to be imposed by the Tribunal for any contravention, and for the Tribunal in the case of a contravention to declare the outcome of a ballot null and void.

Clause 50 provides for the conduct of persons generally in relation to a ballot, for a civil penalty to be imposed by the Tribunal for any contravention, and for the Tribunal in the case of a contravention to declare the outcome of a ballot null and void.

Clause 51 provides for the grant or refusal of certification by order by the Labour Relations Manager and, in the case of a refusal, such refusal shall be on the grounds that the Labour Relations Manager is not satisfied that more than 50% of the workers in the bargaining unit support the certification of the union.

Clause 52 requires an employer to deal accordingly with a union that has been certified as the exclusive bargaining agent in respect of a bargaining unit, and requires both the employer and the union to negotiate with each other in good faith for the purposes of collective bargaining.

Clause 53 provides that where an employer decides to close, sell or otherwise transfer his undertaking and where a union has either made an application for certification or is certified in respect of a bargaining unit in that employer's undertaking, the employer must give notice to the Labour Relations Manager and to the union of the time of, the reasons for, and the number and category of persons who will be affected by such closure, sale, or other such transfer of the undertaking. This clause also makes an employer who fails to comply with this provision liable to a civil penalty as may be imposed by the Labour Relations Manager or by the Tribunal.

Clause 54 provides for successor obligations where an employer sells or otherwise transfers his undertaking in any case where a union has either made an application for certification or is certified in respect of a bargaining unit in that undertaking. This clause also provides for successor obligations to enable, in the case of an amalgamation of unions,

the successor union to be deemed to have acquired the rights, privileges and duties of its predecessor under a collective bargaining agreement or otherwise.

Clause 55 provides that the effects of certification of a union include; (a) a requirement that the union provide full and fair representation of the interests of all workers in the bargaining unit in respect of their rights under a collective bargaining agreement; (b) the replacement of any other union previously certified and the exclusive authority of the certified union to bargain collectively on behalf of the bargaining unit; (c) the establishment of an agency shop in respect of that bargaining unit; and (d) the cancellation and termination of the replaced union's certification and agency shop, respectively. This clause also makes void any provision in an existing collective bargaining agreement, made before the coming into operation of this Bill, which is contrary to the requirement to provide full and fair representation and an agency shop.

Clause 56 prohibits an employer from denying an authorised representative of a union which is certified in respect of a bargaining unit in that employer's undertaking, reasonable access to the employer's premises for the purposes of the activities of the union. This clause also provides for permission to be given by the employer before such activities may be engaged in and makes an employer who fails to provide reasonable access or a union that engages in such activities without the employer's permission, liable to receive a civil penalty as may be imposed by the Tribunal.

Clause 57 provides for the cancellation of a union's certification by way of application to the Labour Relations Manager. This clause enables such application to be made by any worker in a bargaining unit on the grounds that 35% or more of the workers in the unit no longer support the union as their exclusive bargaining agent. Where, on such application, the Labour Relations Manager is satisfied that more than 60% of the workers in the unit no longer wish to have the union as their exclusive bargaining agent, he may cancel the certification in the absence of a ballot. This clause also provides for the cancellation of a union's certification on the conduct of a ballot where more than 50% of the workers voting in the ballot do not or no longer support the union as their exclusive bargaining agent. Finally, this clause provides for the reconstitution of the bargaining unit by agreement between the union and the employer or, where agreement cannot be reached, by determination by the Tribunal.

Clause 58 requires cancellation of a union's certification to be made by order by the Labour Relations Manager. This clause also provides that where a union's certification is cancelled, the agency shop in respect of that union shall terminate, and that union shall not be permitted to apply for certification in respect of that bargaining unit until the expiration of a period of 12 months.

Clause 59 gives effect to Schedule 1 which sets out the procedure to be followed in the conduct of a ballot.

Clause 60 provides for the form and delivery of an order made by the Labour Relations Manager in respect of the grant or refusal of certification, the cancellation of certification, or the rejection of an application for the cancellation of certification. This clause also enables the union or the employer to appeal to the Tribunal (via the Minister) such an order.

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Clause 61 is the first provision under Part 3 Chapter 2 (agency shop). This clause provides that, pursuant to certification, there shall be an agency shop where the terms and conditions of employment of any worker (for whom collective bargaining may take place) include a condition that such worker must either be a member of a union or agree to pay appropriate contributions to that union in lieu of membership. This clause also requires an employer of a worker, for whom collective bargaining may take place, to set up the agency shop in accordance with the collective bargaining agreement and in respect of the description of workers to whom such agreement applies. Finally, this clause provides that any employer who fails to comply shall be liable to a civil penalty as may be imposed by the Labour Relations Manager or by the Tribunal.

Clause 62 provides that a worker, in respect of whom an agency shop applies, may only refuse to be a member of the union, for whose benefit the agency shop exists, if he pays appropriate contributions to the union or a partial contribution to charity in lieu of membership.

Clause 63 provides for what may, under a collective bargaining agreement, constitute an appropriate contribution in lieu of membership to a union. This provision is largely adopted from the TUA and requires the employer to pay to the union the appropriate contributions collected and to give to the union an account of the total amounts collected and a schedule of the names of the workers from whom appropriate contributions were made.

Clause 64 provides for partial contributions to be made to a charity in lieu of membership to a union in a case where a worker, in respect of whom an agency shop applies, objects to being a member of the union for whose benefit the agency shop exists and objects to paying appropriate contributions in lieu. In such a case, a partial contribution (50% of the appropriate contribution) is paid to the charity selected by him whilst the remainder is remitted to the union. This clause requires the employer to pay to the charity and to the union such contributions collected and to give to such charity and union a written account of the total amounts paid and remitted and the names of the workers from whom contributions were made.

Clause 65 provides for the duration of an agency shop which shall be the period during which there is a union certified. This clause also provides, for the avoidance of doubt, that nothing in Part 3 Chapter 2 (Agency Shop) shall render void any existing agreement or scheme under which an agency shop was entered into before the coming into operation of this Bill but that where such agreement or scheme includes a provision contrary to this clause, clause 63 (appropriate contributions to union in lieu of membership) or clause 64 (partial contributions to charity) then that provision of the agreement or scheme shall be void.

Clause 66 is the first provision under Part 4 (labour disputes) Chapter 1 of the Bill, which provides for the reporting, conciliation and settlement of labour disputes. Clause 66 defines a “labour dispute” as a dispute between an employer and worker(s) or between workers and workers (or trade unions on their behalf) in relation to the matters set out in that clause. This definition is largely modelled after that provided in the LRA but includes, as a matter constituting a labour dispute, any contravention under Part 3 or 4 of the Bill for which a civil penalty may be imposed. Clause 66 also provides that any matter which

was the subject of a complaint under the Employment Act 2000 and which was settled or determined under that Act shall not constitute a labour dispute.

Clause 67 provides for the reporting of a labour dispute to the Labour Relations Manager and requires such a report to specify the issues relevant to the dispute including any that may be agreed by the parties to the dispute.

Clause 68 requires the Labour Relations Manager (or any public officer authorised by the Labour Relations Manager) to make inquiries after (a) receiving a report of a labour dispute or (b) where he has reasonable grounds to believe that there has been a contravention for which a civil penalty may be imposed (whether or not such contravention constitutes or is reported as a labour dispute). This clause also enables the Labour Relations Manager, for the purposes of such an inquiry, to require a person to supply information or provide documentation and makes any failure to comply a summary offence.

Clause 69 requires the Labour Relations Manager, after making inquiries in relation to a report of a labour dispute, to endeavour to effect settlement and, if unable to do so, to refer the matter to the Minister. However, in the case of a report of a labour dispute in relation to a contravention (for which a civil penalty may be imposed) or, where he has reasonable grounds to believe that there has been such a contravention, the Labour Relations Manager may, after making inquiries, impose a civil penalty (subject to section 90) or report the matter to the Minister. This clause also enables the Labour Relations Manager, where there is evidence of a contravention or breach of duty for which another authority is responsible, to notify and refer the matter to that authority.

Clause 70 provides for the referral of a labour dispute or other matter from the Minister to the Tribunal. This clause requires the Minister, after receiving a report from the Labour Relations Manager under section 69, to refer the matter to the Tribunal for determination or settlement by any means at its disposal under the Employment and Labour Code. This clause also provides in certain cases for the Minister, before referring a labour dispute to the Tribunal, to take any steps which seem to him to promote settlement of the dispute.

Clause 71 prohibits persons authorised to conciliate or mediate the parties to a labour dispute from disclosing any notes or minutes of proceedings pertaining to such conciliation or mediation.

Clause 72 enables the Minister to declare, by notice published in the Gazette, that a labour dispute exists or is apprehended.

Clause 73 makes provision for where there is a difference arising between the parties in negotiations in respect of a new collective agreement. This clause provides, expressly, for such difference to be reported as a labour dispute and where the parties fail to conclude a new agreement, provides for the continuation of the previous collective agreement until replaced by the new agreement.

Clause 74 enables the Minister to refer to the Tribunal for advice, any matter relating to or arising out of a labour dispute which in his opinion ought to be referred.

Clause 75 is the first provision under Part 4 Chapter 2, which deals with the essential industries and services. Clause 75 provides for defined terms specific to this chapter (largely adopted from the LRA) and gives effect to Schedules 2 and 3 which list, respectively, the

essential industries and essential services. This clause also enables the Minister to amend those Schedules by order subject to the affirmative resolution procedure and provides for the application of this chapter to any labour dispute, difference or other conflict in any essential industry or service.

Clause 76 sets out what constitutes an unfair industrial practice for the purposes of Chapter 2.

Clause 77 provides that, in respect of an unfair industrial, an aggrieved person may make a complaint to the Labour Relations Manager and that such a complaint shall be considered a labour dispute.

Clause 78 provides for the remedies that may be granted by the Tribunal where a complaint of an unfair industrial practice under clause 77 is wholly or partly well-founded.

Clause 79 provides for the enforcement or recovery of an award made in respect of a complaint of an unfair industrial practice under clause 78.

Clause 80 provides for restrictions on lock-outs, strikes, and industrial action short of a strike in the essential services. This clause provides for what constitutes a lawful lock-out, strike and irregular industrial action short of a strike within an essential service and provides, in the case of a contravention, for a civil penalty to be imposed by the Tribunal.

Clause 81 places a duty on employers, in respect of workers employed in an essential service, to comply with any requirement to give notice pursuant to rules made under section 97, and provides for a civil penalty to be imposed by the Tribunal on an employer who fails to comply.

Clause 82 provides for the matters set out in that clause to be certified by the Labour Relations Manager and for such certificate to be admissible as evidence.

Clause 83 is the first provision under Part 4 Chapter 3 of the Bill, which adopts largely the LRA and LDA to provide for various rights and restrictions that may arise in relation to a labour dispute. Clause 83 prohibits an employer from taking certain actions against a worker and makes any contravention a summary offence.

Clause 84 provides for the restriction on liability where the interference of another person's business is in contemplation or furtherance of a labour dispute.

Clause 85 provides, subject to rules set out in Schedule 4, for peaceful picketing and for a civil penalty to be imposed by the Tribunal for any failure to comply with such rules.

Clause 86 prohibits a person, with respect to the contemplation or furtherance of a labour dispute, from engaging in any acts of intimidation, and provides that engaging in any such act constitutes a summary offence.

Clause 87 sets out the actions that would constitute an unlawful lock-out, strike or irregular industrial action short of a strike, and provides that where a person contravenes this provision that person shall be liable to a civil penalty as may be imposed by the Tribunal.

Clause 88 provides for the protection of persons refusing to take part in an unlawful lock-out, strike or irregular industrial action short of a strike.

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Clause 89 makes it a summary offence for a person, although acting in furtherance of a lawful labour dispute, to wilfully break or terminate a contract of service knowing or having reasonable cause to believe that doing so will endanger human life, cause serious bodily injury, or cause injury to property.

Clause 90 is the first provision under Part 5 (enforcement) of the Bill. This provision empowers the Labour Relations Manager to impose a civil penalty not exceeding \$5,000 on a person who without reasonable excuse contravenes a provision for which a civil penalty is liable to be imposed by the Labour Relations Manager and provides for an appeal to the Tribunal. This clause also gives effect to Schedule 5 which sets out the contraventions for which a civil penalty may be imposed and the amounts that such civil penalty shall not exceed.

Clause 91 provides that a trade union may be prosecuted for an offence under Part 4 of the Bill as though it were a body corporate and where an offence is committed with the consent, knowledge or connivance of an officer of the trade union that person and the trade union shall be liable to be proceeded against and punished accordingly. Provision is also made for this clause to apply, with the necessary modifications, where a trade union contravenes a provision for which a civil penalty may be imposed.

Clause 92 provides that where an offence is committed under this Bill by a body corporate with the consent, knowledge or connivance of an officer of the body corporate that person and the body corporate commits an offence and shall be liable to be proceeded against and punished accordingly. Provision is also made for this clause to apply, with the necessary modifications, where a trade union contravenes a provision for which a civil penalty may be imposed.

Clause 93 provides that a prosecution for an offence under this Bill may only be brought by or with the consent of the consent of the Director of Public Prosecutions.

Clause 94 provides for a relief by way of injunction to be granted to a person with sufficient interest in the relief, where there are reasonable grounds for apprehending a contravention of the Bill, for the purposes of restraining any person or trade union from contravening the Bill. This provision largely adopts the provision relating to such under the LRA.

Clause 95 provides that for the purposes of Part 4, and notwithstanding any other provision of the Bill, a trade union may sue or be sued in its own name and that any judgment, order or award made in respect of such proceedings shall be enforceable against the trade union as if it were a body corporate.

Clause 96 is the first provision under Part 6 (final provisions). This clause provides for the regulation-making power of the Minister in respect of the matters set out therein. This clause also gives effect to Schedule 6, which provides for the maximum fees that may be charged under the Bill.

Clause 97 enables the Minister to make rules for the better carrying into effect of the Bill and such rules may provide for, in particular, the giving of notice in relation to the essential services.

Clause 98 provides for the service of notices or other documents under the Bill.

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Clause 99 gives effect to Schedule 7, which amends the Employment Act 2000.

Clause 100 provides for the consequential amendments and repeals as set out in Schedule 8 of the Bill and provides for the repeal of the TUA, LRA and the LDA.

Clause 101 makes savings provisions.

Clause 102 makes transitional provisions.

Clause 103 provides for the commencement of the Bill which shall be on 1 June 2021.

Schedule 1 sets out the procedure for the conduct of a ballot under clauses 47 and 57 (certification and cancellation of certification).

Schedule 2 lists the essential industries for the purposes of Part 4. Currently there is only one- the business of a hotel, as per the Fourth Schedule to the LRA.

Schedule 3 lists the essential services for the purposes of Part 4. The list has been imported from the First Schedule to the LRA, with the addition of internet services and prisons and corrections.

Schedule 4 sets out the picketing rules for the purposes of clause 85 (peaceful picking).

Schedule 5 lists the contraventions for which a civil penalty, up to a maximum of \$5,000, may be imposed by the Labour Relations Manager or up to \$10,000 by the Tribunal.

Schedule 6 sets out maximum fees which may be imposed under regulations for registering a trade union, altering its constitution and inspecting documents.

Schedule 7 makes amendments to the Employment Act 2000 as follows:

(1) Section 3 (interpretation) is amended to insert and amend a number of definitions.

(2) New section 3A is inserted to provide that the Employment Act 2000 and the Trade Union and Labour Relations (Consolidation) Act 2020, together with subordinate legislation made thereunder constitute the "Employment and Labour Code".

(3) Section 6 is amended to apply, with the necessary modifications, the entitlement to a statement of employment to certain persons falling within section 4(2) who are not employees for the purposes of the Act, but provides that no other entitlements under the Employment Act 2000 shall apply to such persons.

(4) Section 10B is amended to include a civil penalty for non-compliance.

(5) Section 28 is amended to delete the reference to the "Labour Relations Act 1975" and substitute "Trade Union and Labour Relations (Consolidation) Act 2020".

(6) Section 36 is amended to provide that a complaint to an inspector under that section shall not include any matter which was the subject of a labour dispute as defined under this Bill, which was settled by the Labour Relations Manager or otherwise determined under this Bill.

(7) Section 37 is amended to enable an inspector to report a matter to the Manager for the purposes of imposing a civil penalty or referring the matter to the Tribunal. Provision is also made to enable the inspector, where there is evidence of a contravention or breach of duty for which another authority is responsible, to notify and refer the matter to that authority.

(8) New section 37A is inserted empower the Labour Relations Manager to impose civil penalties not exceeding \$5,000 for a contraventions under Part II (conditions of employment) for which a civil penalty is liable to be imposed by the Labour Relations Manger. This provision sets out the procedure to be followed and provides for an appeal to the Tribunal.

(9) New Part VA is inserted which provides for the Employment and Labour Relations Tribunal, a single tribunal which will replace the Employment Tribunal, the Labour Disputes Tribunal, the Permanent Arbitration Tribunal, the Boards of Inquiry and the Essential Industries Disputes Settlement Board which were established under the legislation being consolidated under this Bill. New Part VA consists of sections 44A to 44O which provide as follows—

section 44A provides for the definition of terms used under Part VA and for the application of this Part;

section 44B establishes the Employment and Labour Relations Tribunal with jurisdiction to hear and determine (including by way of arbitration) complaints, labour disputes, differences, conflicts and other matters referred to it under the Employment and Labour Code;

section 44C sets out the general powers of the Tribunal, including power to order compensation when a worker cannot be reinstated in his former position;

section 44D gives the Tribunal power to require a person to furnish information or give evidence under oath and provides for civil penalties to be imposed for non-compliance;

section 44E provides that Tribunal proceedings shall be open to the public, but gives the Tribunal power to exclude the public in certain circumstances. Provision is also made for fair and accurate reporting of proceedings;

section 44F deals with notification and publication of Tribunal decisions and awards;

section 44G requires Tribunal decisions to be unanimous or by majority;

section 44H prohibits Tribunal decisions from being in conflict with any statute;

sections 44I and 44J provide for awards to be binding on parties as from the date of the award (and may be binding prospectively), but awards may in certain cases also be retrospective to the date the matter was reported to the inspector or Labour Relations Manager;

section 44K provides that questions of interpretation of awards can be referred back to the Tribunal;

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section 44L sets out the penalties for non-compliance with a Tribunal award;

section 44M empowers the Tribunal to impose civil penalties not exceeding \$10,000;

section 44N requires the Tribunal to send annual reports of its awards to the Minister;

section 44O provides a right of appeal to the Supreme Court from the Tribunal's decision on a point of law.

(10) Sections 35, 38(1), 41, 42, 43 and 47 are repealed because they are superseded by these amendments.

(11) A new Schedule 2 is inserted which sets out administrative matters relating to the appointment of the panel from which Tribunal members are drawn, their qualifications, and period of appointment. Provision is also made for the constitution of the Tribunal, how conflicts of interest and vacancies are to be dealt with, etc., for the Tribunal to be autonomous and to regulate its own proceedings, subject to the Act, and for it to be able to summon assessors with the necessary skills and experience for assistance where necessary.

Schedule 8 sets out the consequential amendments.