

I assent,

Beretitenti
Assented: 15th May 2008

AN ACT TO AMEND THE INDUSTRIAL RELATIONS CODE

Commencement:
2008

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

Short title

1. This Act may be cited as the Industrial Relations Code (Amendment) Act, 2008.

2. Insertion of new section 12A

Section 12A is inserted immediately after section 12 of the Industrial Relations Code (No 2 of 1998) (hereinafter referred to as the principal Act) as follows:-

“12A The Registrar may only refer a trade dispute to an arbitration tribunal if-

- (a) all the parties to the dispute request the Registrar to refer the dispute to the arbitration tribunal; or
- (b) the dispute is in the public services involving public servants exercising authority in the name of the State; or
- (c) industrial action has been protracted or is tending to endanger, or has endangered the personal health, safety or welfare of the community or part of it; or
- (d) conciliation has failed and the parties are unlikely to resolve the dispute”.

3. Amendment of section 18

Section 18 of the principal Act is amended by repealing the words “\$5000 and to a term of imprisonment not exceeding 6 months” and substituting it with “\$1000”.

4. Amendment of Section 24

Section 24 of the principal Act is amended as follows:-

(a) in subsection (5) by repealing the words “ \$500 or to a term of imprisonment not exceeding 3 months and in any proceeding for an offence under this section the proof of reasonable excuse shall lie in the person charged “ and substituting it with “\$1000”.

(b) in subsection (6) by repealing the words “ and to a term of imprisonment not exceeding 2 years”.

5. Amendment of Section 26

Section 26 of the principal Act is amended as follows:-

(a) in subsection 2(b) by repealing the words “\$500 or to a term of imprisonment not exceeding 6 months “ and substituting it with “\$1000”; and

(b) in subsection (5) by repealing the words “ and to a term of imprisonment not exceeding 12 months”.

6. Amendment of Section 30

Section 30 of the principal Act is amended as follows:-

(a) in subsection (1) by repealing the words “\$100 and to a term of imprisonment not exceeding 3 months” and substituting it with “\$1000”; and

(b) in subsection (2) by repealing the words “and to a term of imprisonment not exceeding 1 year”.

7. Amendment of Section 34

Section 34 of the principal Act is amended as follows:-

(a) in subsection (1) (a) by repealing the words “\$500 and to a term of imprisonment not exceeding 18 months” and substituting it with “\$1000”; and

(b) in subsection 1 (b) by repealing the words “\$700 and to a term of imprisonment not exceeding 18 months” and substituting it with “\$1500”.

8. Amendment of section 37

Section 37 of the principal Act is amended as follow:-

(a) by repealing subsection (1) and substituting it as follows:-

“(1) Any employee in an essential service who wilfully breaks his contract of service knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life or public health or to cause serious bodily injury to any person shall be liable to a fine not exceeding \$1000 and to a term of imprisonment not exceeding 1 year”; and

(b) by repealing subsection (2) and substituting it as follows:-

“(2) Any person who causes, procures or counsels or in any way whatever encourages, persuades or influences or attempts to procure any employee in an essential service to break his contract of service knowing or having reasonable cause to believe that the probable consequences of that employee so doing, either alone or in combination with others, will be to endanger human life or public health or to cause serious bodily injury to any person shall be liable to a fine not exceeding \$2000 and to a term of imprisonment not exceeding 18 months.”

9. Amendment of Section 39

Section 39 of the principal Act is amended by repealing subsection (2) and substituting it as follows:-

“(2) A decision to strike taken under this section shall require the approval of a majority of employees who voted in the ballot”.

10. Amendment of Section 41

Section 41 of the principal Act is amended by repealing it and substituting it as follows:-

“Right to bargain collectively

41(1) Every trade union, or group of trade unions acting jointly for the purposes of collective bargaining shall be entitled to bargain collectively with the employer or employer's organization concerned on wages, terms and conditions of employment, relations between the parties and other matters of mutual interest.

(2) Public servants employed under the National Conditions of Service shall have the right to bargain collectively”.

11. Amendment of Section 44

Section 44 is amended by repealing subsection (1) and substituting it as follows:-

“44(1) Subject to sections 35(5), 36(1) and 39(5), the Beretenti acting in accordance with the advice of Cabinet may make regulations prescribing-

- (a) the procedure to be followed in any proceeding before a tribunal, board or Commission or otherwise under this code;
- (b) the effective exercise of the right to collective bargaining including but not limited to matters relating to good faith, bargaining, recognition of most representative organizations, and regulation of collective agreements;
- (c) matters which are required or permitted by this Code to be prescribed; or
- (d) matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Act”.

12. Insertion of Schedule

The principal Act is amended by inserting the following Schedule at the end thereof:-

“SCHEDULE
(Section 2)

Distribution of food services

Distribution of fuel services

Electricity services (including the generation and distribution of electricity and the maintenance of electricity supplies)

Fire Services

Health Services

Maintenance of internal and external air services

Movement of copra

Police services

Port services connected with the loading and unloading of vessels

Sanitary services

Search and rescue services

Shipping services

Telecommunication services

Water services.”

INDUSTRIAL RELATIONS CODE (AMENDMENT) ACT 2008

EXPLANATORY MEMORANDUM

The Act has the same objectives as that of the Trade Unions and Employer Organizations (Amendment) Act 2008 which is to give effect to the ILO core Conventions on the freedom of association and collective bargaining which Kiribati has ratified.

Section 2 inserts a new Section 12A. Under the current Industrial Relations Code (“the Code”) the Registrar has the power to refer a dispute to an arbitration tribunal for a final and binding decision. The new Section 12A outlines the prerequisites for such dispute to be referred to the arbitration tribunal which are – (1) that all the parties must agree, or (11) the dispute is in the public services in viewing public servants, or (111) dispute involves protracted action endangering life, personal safety which poses a danger to the whole or part of the population, or (iv) conciliation has failed and the parties are unlikely to resolve the dispute.

Sections 3, 4, 5, 6 and 7 which amend Section 18, 24, 26, 30 and 34 of the Code respectively remove the prison sentences from the sanctions for breach of the Code. Whilst sanctions are an important means of ensuring compliance with national conditions, the existence of disproportional penal sanctions does not favour the development of harmonious and stable industrial relations. The fines are retained for breach of these provisions but the amounts are amended to more adequately reflect the seriousness of the transgression.

Section 8 amends Section 37 of the Code and limits the prohibition of industrial action to the essential services. The phrase “to expose valuable property to the risk of destruction, loss of services injury” has been deleted. Actual damaging of property or causing loss to a property can be both addressed as a criminal offence and/or as redress in civil action.

Section 9 amends Section 39 of the Code reducing the requirement of two-third majority of all those eligible to vote for a decision to strike. Instead a simple majority of those present and actually vote is required.

Section 10 amends Section 41. The present Section 41 does not guarantee the right to engage in collective bargaining, although reference is made to the conclusion of the agreement. The amendment extends the right to collective bargaining to public servants.

Section 11 amends Section 44 to extend further the power to make regulations.

Section 12 inserts the Schedule.

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