**EMPLOYERS’ POSITION PAPER ON**

**THE EMPLOYMENT RELATIONS BILL (JUNE 2012)[[1]](#footnote-1)\***



**About this paper**

This paper is a concise statement of the position of employers’ as tripartite partners, on the Employment Relations Bill June 2012 (ERB). The paper begins by stating the employers’ broad policy position on employment law reforms. It then provides the employers’ position in respect of specific content issues in the ERB.

This position paper is a brief. Further material, containing more detail, is available from the Vanuatu Chamber of Commerce and Industry (VCCI).

This position paper is based on extensive consultation by the VCCI about the ERB with employers in Vanuatu. It is largely based on results of the Employers’ Survey conducted by the VCCI in 2014. Three hundred and seventy three (373) businesses, from every province in Vanuatu, responded to this survey, with 156 businesses answering a long form of the questionnaire that asked for opinions on employment laws. In this report where statements about the percentage of employers are made, this means the percentage of respondents to the survey, or employers who responded to the survey. Following this survey a series of consultations in Port Vila and Santo were conducted to refine positions.

**Employers’ policy position**

Employers agree with the intent of the ERB, as stated in paragraph A of the long title of the ERB:

An Act to provide for a legislative framework which promotes the well-being and prosperity of all people in the Republic of Vanuatu by –

(A) Creating a fair and optimum working environment through the maintenance of minimum and acceptable labour standards that are fair to both workers and employers, with the view to building productive and sustained employment relations;

Employers want a fair, workable situation that will lead to employment growth and private sector led development for the good of all of Vanuatu. More job opportunities and more job security for workers should be the main aim of any employment law reforms.

This intent reflects the principles of decent work, which employers are committed to. Employers are also conscious of that:

Three elements are essential to the achievement of decent work objectives: the need for jobs, the honouring of core labour standards, and the pursuit of further improvements in job quality…[but] beyond some point the achievement of one of these objectives may come at the expense of another.(Gary S Fields, ‘Decent work and development policies’ (2003) 142(2) *International Labour Review* 239, 240.)

Social partners acting to create employment laws and policies that further the decent work agenda have a responsibility to ensure that measures to promote the creation of jobs do not undermine job quality, but at the same time that measures to improve job quality do not come at the expense of job creation. The ERB needs to reflect this delicate balance in a manner which is appropriate for Vanuatu’s social and economic context.

Employers are concerned that the current law discourages growth of secure full time employment opportunities through setting high level of benefits (including annual leave, sick leave, maternity leave and severance). This is particularly bad for the large number of young school leavers and female workers seeking employment. Work with generous conditions and benefits for the small number of skilled workers, but no work or precarious work for the vast majority of low-skilled workers is not decent work and is not in the best interests of the well-being of all people in Vanuatu. Social partners should work together to ensure that the ERB avoids this outcome.

Employers maintain that both employers and workers need to engage in a process of “give and take” in order to arrive at a fair outcome that will promote the well-being of all people in Vanuatu and be realistic for the Vanuatu context.

Realistic employment law which promotes decent work should be based on the following principles:

* The law should comply with all ILO Conventions that Vanuatu is a party to (including the fundamental Conventions);
* The law needs to be easy to understand and use;
* The law should be flexible enough to fit a variety of employment situations;
* The law should minimise red tape for businesses;
* Benefits should be at a similar level to other Pacific countries;
* The law should reduce/remove politicisation of minimum wage reviews and other aspects of labour relations;
* The law should not stop small ni Vanuatu entrepreneurs from being able to grow and develop their businesses.

*The employers’ position is that the current draft of the ERB does not meet these principles and needs to be refined.*

**Preliminary issue: the structure of the ERB**

Considerable uncertainty remains about the ERB, with only 29% of employers supporting the introduction of a new ERB. In contrast 37% support keeping but amending the Employment Act.

One reason for this is a concern about the length of the ERB. Employers, and particularly small, primarily ni-Vanuatu, business operators are concerned about the length of the ERB. Employers who have seen the ERB are immediately put off by its size. Employers are used to having employment laws in separate Acts.

Irrespective of the content, the approach of combining the Employment Act, the Trade Disputes Act, the Trade Unions Act and the Minimum Wages Act into one single law makes the law intimidating and inaccessible.

Further, following Cyclone Pam, all businesses are facing a period of uncertainty. Revising existing laws to introduce some of the principles currently contained within the ERB helps to reduce uncertainty.

*The employers’ position is that if the ERB continues to be pursued, then the ERB should be divided into separate Acts. At the very least there should be a division into 2 parts:*

* *The Employment Act, which should regulate the content of individual employment contracts.*
* *The Labour Administration, Minimum Wages and Industrial Relations Act which should regulate labour administration, minimum wages and industrial relations.*

*It would also be possible to separate labour administration, minimum wages and trade disputes into separate Acts, as is the current drafting approach in Vanuatu law. Separation may be desirable if stage by stage reform of industrial relations is desired, or if tripartite parties can only agree on some aspects of law reform.*

**Moving forward?**

Whilst many employers would prefer that the current Employment Act is kept and revised to reflect some of the changes in the ERB, employers are also mindful of the work that has already gone into the ERB and would like to assist in moving matters forward.

There are many drafting issues in the ERB. These drafting issues were presented by employers in a technical appendix on the ERB at the December 2014 Tripartite Labour Advisory Council (TLAC) meeting.

Following discussions with workers in June, which indicated broad agreement to separating the ERB into an Employment Act and one or more other acts. Employers attempted to develop a draft Employment Contracts Bill. The Employment Contracts Bill was largely based on the ERB, and addressed some drafting issues in the ERB but did not modify it too greatly. When this was presented to VCCI members for validation in August it was, however, rejected as still being too complex.

*The employers’ position is that:*

* *Further detailed discussion of the content ERB, following the plan at the December 2014 TLAC is needed in order to determine consensus policy positions.*
* *TLAC should come to policy agreements and then new employment laws drafted, starting with a “clean slate” on the drafting.*
* *As the development of the ERB is likely to take some time,* ***in the interim*** *the Employment Act should be amended to introduce provisions that provide better job security for workers and increase job opportunities by removing existing barriers to employment. Particular areas are identified for amendment are:*
	+ *Formation of employment contracts*
	+ *Termination and payments on termination*
	+ *Leave benefits*

*Proposals are discussed in more detail below. A draft Employment Act, containing proposed amendments is also attached.*

**Position: formation of employment contracts**

The main differences between current law and the ERB in relation to formation of employment contracts are: (1) that more contracts need to be in writing; and (2) that new definitional categories of contract – full time, part time and casual – are created.

(1) Requirements for contracts to be in writing

The majority of employers (82%) agree that having more contracts in writing is a good proposal. However, given literacy rates, and also current practices regarding contracting, with 52% of businesses currently not using written contracts, a more gradual shift to written contracts is proposed.

*The employers’ position is that the current requirements for when contracts should be in writing should kept and expanded to include a requirement that contracts must be in writing if requested by the employee.*

Drafting proposal: The proposal is that section 9 be repealed and replaced with the following provision that clarifies the drafting of the existing section 9, expands the range of contracts that must be in writing and also creates a pro-forma.

(2) Categories of contract

The majority of employers (61%) agreed that clearly recognising casual workers is a good thing. The definition of casual workers, full time workers and part time workers was not, however, clear. These definitions were also used for the purposes of leave entitlements, but not for the purposes of termination, making it very difficult to determine obligations under the ERB. It is important to ensure these definitions are clear, as they affect rights to benefits and rights in respect of termination. Two particular areas to clarify, in order to ensure that workers are fairly protected are: the definition of casual workers, in order to ensure that people under contracts for an indefinite duration are not “mislabeled” casual in order to avoid the termination regime; and situations in which successive ongoing fixed term contracts can be used, in order to ensure that fixed term contracts are not misused in order to avoid the termination regime

*The employers’ position is that casual workers be defined using the Australian common law approach, of being in irregular employment on demand by the employer. To prevent potential abuse any casual worker who works systematically and continuously for 6 months should be deemed to no longer be a casual worker.*

Drafting proposal: It is proposed that a new section 9A be added to the Employment Act.

**Content: termination and payments on termination**

1. Termination of employment

The ERB radically departs from current law in respect of termination in that it only allows termination of contracts for an indefinite period and early termination of fixed term or fixed task contracts for cause. The intended trade-off for greater job security when the ERB was proposed is that payments on termination are also modernised, with payments only becoming available for redundancy.

The majority of employers (64%) agreed with this shift in approach.

*The employers’ position is that the ERB approach of moving to termination for cause should be accepted, with drafting clarified and administrative processes simplified as far as possible.*

Drafting proposal: Provisions on termination of employment are found in Part 10 and section 67 of the Employment Act. It is suggested that they are substantially changes, based on the provisions in the ERB.

 Section 49 which allows for termination without cause by giving notice should be repealed and replaced with a new section 49 and 49A that only allow termination for cause.

Section 50, which deals with summary dismissal for serious misconduct should be amended to clarify what serious misconduct is.

Section 50A, containing provisions to provide for termination in the event of less serious wrongdoing or incompetence by a staff member should be added.

Existing provisions relating to termination because of redumdancy contained in section 67 should be repealed and replaced with section 50B.

Section 50C, containing provision on termination by the employee by notice and termination by the employer because of retirement should be added.

Section 50D, containing provisions on length of notice should be added.

2. Payments on termination

The ERB provides that the amount of payment on redundancy is 4 week’s salary for the first year of service, and 2 week’s salary for subsequent years of service, capped at 6 months. Employers are concerned about this level of payment, as redundancy can be difficult for businesses as they are being asked to pay when they are struggling and there is a real risk that they do not have money to pay. Reducing the amount of payment in this situation helps to keep struggling businesses going. Benchmarking against other recent Pacific employment law, Fiji’s Employment Relations Promulgation provides 1 week’s redundancy per year of service.

It should be noted that employers are not averse to paying severance allowance in some form, with 62% agreeing that, in the absence of other social security, employers contributing to severance allowance is a good thing. However, problems exist with the amount of severance and clarity of severance provisions. 55% of employers reported changes to hiring practices or staffing levels due to severance allowance changes in 2008/2009. There are also practical problems in relation to businesses that have to terminate staff due to poor performance either being unable to pay severance allowance or “going under” due to a combination of poor performance and the cost of severance. Employers were asked to consider whether a regular payment into VNPF, with early draw down of a portion of VNPF being possible on termination of employment was preferable to severance allowance. 54% of respondents agreed this was a preferable approach, although many employers were also hesitant due to concerns about management issues within VNPF.

Consultations also indicated that an unemployment insurance benefit paid for from a pooled contributory scheme may provide workers with better benefits and be less costly for employers. Once sufficient data to properly cost and design such a scheme is available the feasibility of this option should be explored further.

A longer paper explaining the position on severance is available separately.

*The employers’ position is that in the short term:*

*The direct employer’s redundancy payment at the time of termination should be 1 week’s salary per year of service, capped at 3 months; and*

*VNPF should increase by 4%, to be shared equally by employers and workers, with the VNPF Act being amended to allow for early withdrawals of this component of VNPF in the event of unemployment and also provide for better oversight and management of the VNPF; and*

*the current severance allowance regime should be removed, with worker’s existing entitlements to severance being frozen at the date of the change to the new unemployment benefits regime.*

*Further, the Vanuatu government should explore the feasibility of a pooled unemployment insurance scheme to replace the redundancy and VNPF savings approach as a matter of urgency.*

Drafting proposals: Part 11 should be renamed to payments on termination. Sections 54, 55 and 56 should be repealed.

A new section 54, taken from the ERB and modified that details redundancy pay should be added.

A new section 55, addressing transition provisions in respect of severance allowance should be included.

Section 57 should be amended to clarify deductions from severance that can be taken.

Section 25 and Part 8 of the Vanuatu National Provident Fund Act will need to be amended. Specific drafting proposals are not presented but can be prepared on request.

**Content: leave benefits**

Introduction

The leave provisions in the ERB are similar to current law. The ERB simplifies annual leave by setting a flat rate. It also provides sick leave and maternity leave. Major changes in the ERB are that: it provides annual leave and sick leave on a pro rata basis to part time employees; it provides compassionate leave; and it creates a statutory obligation to pay people double time for public holidays that they work and their normal rate of pay for public holidays that they do not work.

Employers are concerned about current leave levels in Vanuatu, which increased in 2009. Current sick leave and annual leave rates are the highest in the Pacific region. More than one third of businesses that were in operation in 2009 reported changing hiring practices or reducing staff in 2009 due to annual leave and maternity leave changes. A further 20% had already structured employment to minimise these costs or were not aware of changes, so were not affected. This suggests current employment laws hinder the government policy of promoting secure job opportunities through private sector led development. Setting benefits at a fair level that promotes secure employment growth must therefore be kept in mind.

The ERB increases eligibility for annual leave and sick leave by extending it to part time employees, and decreases eligibility for maternity leave by removing it from casual workers. The ERB does not, however, clearly define part time or full time employees and, despite lots of discussion employers could not identify definitions that would be easy to apply. Further, 44% of employers were concerned that pro rata leave entitlements would be difficult to manage and 59% preferred keeping the current law on eligibility for leave. Whilst the current law is not clear (entitlements for leave strictly apply if someone has worked for 22 days or more per month) the most usual practice is that employers provide leave if a worker works 4 or more days per week (the definition used for severance allowance entitlements). Using this definition effectively and consistently extends leave entitlements to some part time workers. Further, employers should be advised through the Employer’s Guidebook to consider providing leave to part time workers by contract.

*The employers’ position is that entitlement to leave should remain as it is in the current law, with current law being clarified to reflect current usual practice.*

Drafting proposal: Sections 29, 32 and 34 be amended to clearly define continuous service.

1. Annual leave

The ERB sets annual leave at 20 days a year and also provides compassionate leave of 3 days per year. Survey results on the length of leave indicated that 42% did not agree with the length of annual leave and 48% did not agree with compassionate leave. During discussions it became clearer that 20 days leave, plus 3 days compassionate leave (which currently is absorbed into annual leave) is considered too long. Benchmarking against Samoa and Fiji, both of which have revised employment laws in the past 10 years, 10 days annual leave is standard. Employers in Vanuatu recognise that Vanuatu has historically provided more generous leave. 15 days was therefore proposed as a medium position between the ERB proposal and regional benchmarks. Employers noted that Vanuatu provides a generous amount of public holidays, and that these should be reviewed as they also provide employees with paid leave days. The drafting of leave provisions was found to be overly complex. Employers were also concerned about the lack of clarity in eligibility for compassionate leave and also felt that over-regulation reduces the development of personal relationships between the employer and employee. Instead, employers should be advised through the Employer’s Guidebook to consider providing compassionate leave.

*The employers’ position is that the amount of annual leave should be set at 15 days per year and that provisions for taking annual leave should largely be based on current law.*

*The employers’ position is that compassionate leave should not be a statutory entitlement.*

*The employers’ position is that the amount of public holidays should be reviewed.*

Drafting proposal: Section 29 should be amended.

2. Sick leave

The sick leave provisions were supported, with 60% of employers agreeing with the length of sick leave in the ERB. Accumulation of sick leave was, however, not supported by 50% of employers, with concerns that it would be difficult to manage, particularly for less formal businesses. In consultations employers thought that accumulation of sick leave is something that should, instead, be promoted through the VCCI Employer’s Guidebook as one way of structuring contracts to discourage abuse of sick leave by employees.

*The employers’ position is that whilst the sick leave provisions are broadly agreeable accumulation of sick leave for up to 3 years will be difficult to manage and should not be a statutory requirement.*

Drafting proposal: Section 34 should be repealed and replaced with the simpler drafting of the ERB.

3. Maternity leave

The ERB is more flexible for women as to when maternity leave is taken, and also provides greater protections from termination because of pregnancy. The broader protections for women in respect of termination due to pregnancy were supported. However, employers did not support increasing the length of maternity leave, with 55% saying it should remain at 12 weeks. Employers were also very hesitant about supporting the payment on maternity leave being 66%. As part of a separate social protection policy paper employers were also interested in pursuing a national maternity insurance scheme, which would increase security of maternity benefits.

*The employers’ position is that whilst provisions about maternity leave are broadly agreeable the maternity leave benefits should be paid for a period of 12 weeks, at a rate of 50% of usual remuneration.*

*The employers’ position is that the Vanuatu government should continue to explore the feasibility of a national maternity insurance scheme for workers.*

Drafting proposal: Section 36 and 37 should be repealed and replaced wit h a new section 36 and 37 that follows the drafting of the ERB.

**Other issues**

1. Rights provisions

Employers acknowledge the Vanuatu is a party to the main International Labour Organisation Conventions in this area, the Equal Remuneration Convention 1957 (Convention 105), the Discrimination (Employment and Occupation) Convention 1958 (Convention 111) and the Worst Forms of Child Labour Convention 1999 (Convention 182). Employers also acknowledge Vanuatu’s commitments under other Conventions, including the Convention on the Elimination of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child.

There is concern, particularly amongst ni-Vanuatu employers operating smaller less formal businesses, as to how the child labour provisions of the ERB will fit with the realities of work provided as part of usual family practices or customary practices. For instance, children may accompany parents to work, particularly in agriculture.

*The employers’ position is to accept in principle the rights provisions of the ERB, with simplified/clarified drafting in some areas, and an express acknowledgement that the child labour provisions do not prevent children from accompanying parents or guardians to work.*

2. Labour administration, dispute resolution and collective industrial relations

There were considerable concerns about the workability of proposed ERB changes in respect of establishing a mediation service, employment tribunal and employment court, with only one third of employers thinking it sounded workable. It also was thought that the current reconciliation service, arbitration tribunal and Supreme Court can work quite well, and more attention should be given to how to make current structures work better. Most employers do not have direct experience of collective industrial relations. A consultation just with employers that have collective agreements was held. These employers thought the current law can work quite well and found the ERB provisions to be complex and unworkable. There were also concerns that the ERB forced employers into collective bargaining, in violation of the constitutional right to freedom of association. Whilst the ERB was not rejected outright, further consideration of these parts of the ERB are needed.

*The employers’ position is that whilst current provisions around the Tripartite Labour Advisory Council are acceptable, they may be refined following tripartite discussion.*

*The employers’ position is the approach to dispute resolution outlined in the ERB will be costly and difficult to implement in Vanuatu, and must be considered further by tripartite partners.*

*The employers’ position is the approach to collective bargaining outlined in the ERB interferes with freedom of association of employers, and must be considered further by tripartite partners.*

3. Minimum wage setting

Minimum wage setting provisions were considered in consultations and as part of analysis of drafting. There are concerns that the drafting is very unclear and allows for greater politicisation of minimum wage setting, which is not a desirable outcome.

*The employers’ position is that the content of the ERB allows for politicisation of the minimum wage setting process and that the current law should be retained until further consideration is given to these provisions.*

4. Vanuatu National Provident Fund

An issue that frequently arose during consultations was the payment of Vanuatu National Provident Fund contributions for casual workers, who may only be working for 2 or 3 days in a month and want the full benefit of their wages. A number of small ni Vanuatu businesses also noted that they were not yet paying VNPF because the business is not strong enough.

When the VNPF Act was introduced the minimum wage was 7,000 vatu per month. The obligation to contribute to minimum wage once an employee earned 3000 vatu per month, was 43% of minimum wage.

Raising the threshold will mean developing businesses will not have to break law but can be transitioned in when their employment situation is more regular. Casual workers who need all the money they earn will not be encouraging employers to break law.

*The employers’ position is that the threshold for compulsory contribution to VNPF to be earnings of 40% of minimum wage for a continuous period of 3 months.*

**DRAFT AMENDMENTS TO THE EMPLOYMENT ACT [CAP 160]**

**TO ACCOMPANY THE EMPLOYERS’ POSITION PAPER ON**

**THE EMPLOYMENT RELATIONS BILL (JUNE 2012)[[2]](#footnote-2)\***



IMPORTANT NOTE: This is an unofficial consolidation of the Employment Act, using the officially consolidated Employment Act [Cap 160] (2006) and official amendment Acts from 2008, 2009 and 2010. This version is for employer’s reference only.

**Proposed deletions are marked in red and proposed additions are in bold.**

*Commencement: 30 May 1983*

**CHAPTER 160**

**EMPLOYMENT**

*Act 1 of 1983*

*Act 20 of 1986*

*Act 33 of 1989*

*Act 8 of 1995*

*Act 3 of 1997*

*Act 16 of 2001*

*Act 31 of 2008*

*Act 33 of 2009*

*Act 25 of 2010*

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**SCHEDULE 1**

**EMPLOYMENT**

**To provide for the general principles relating to contracts of employment and matters incidental thereto.**

**PART 1 –TRIPARTITE LABOUR ADVISORY COUNCIL**

**1. Definition**

In this Act, unless the contrary intention appears:

**Council** means the Tripartite Labour Advisory Council established under section 1A;

**Port-Vila Statement on Decent Work** means the Port-Vila Statement on Decent Work made by the Government, Employers and Workers from the International Labour Organization’s Pacific Island Member States on 9th February 2010.

**1A. Tripartite Labour Advisory Council**

The Tripartite Labour Advisory Council is established.

**1B. Objectives of the Council**

The objectives of the Council are to:

(a) make recommendations for the resolution of social, economic and labour issues; and

(b) promote employment and industrial relations practices in accordance with the Port Vila Statement on Decent Work; and

(c) ensure active consultation with tripartite constituents on the development, adoption, implementation and regulation of International Labour Standards.

**1C. Composition of the Council**

(1) The Council consists of the following members appointed in writing by the Minister:

(a) the Commissioner of Labour, who is the chairperson of the Council; and

(b) three Government representatives nominated by the Minister of Internal affairs upon the advice of the Director General of Internal Affairs; and

(c) three members nominated by the Vanuatu Council of Trade Unions;

(d) three members nominated by the Vanuatu Chamber of Commerce and Industry.

(2) The Minister must appoint the members nominated under subsection (1) within 30 days of receiving the nomination.

(3) The members appointed under paragraphs (1)(c) and (1)(d) are to nominate respectively from amongst themselves two members to be the vice-chairpersons of the Council.

(4) The appointment of the members must be published in the Gazette.

**1D. Remuneration**

Members of the Council are entitled to a sitting allowance as may be determined from time to time by the Minister.

**1E. Functions of the Council**

(1) The functions of the Council are to consider and make recommendations or proposals to the Government on:

(a) any legislation or legislative amendment on any of the following areas before it is introduced in Parliament:

(i) labour; or

(ii) employment; or

(iii) industrial relations; or

(iv) working conditions ; or

(v) wages ; or

(b) any policy measures or programmes that affect:

(i) labour; or

(ii) employment; or

(iii) industrial relations; or

(iv) working conditions ; or

(v) wages ; or

(c) the establishment and functioning of national bodies responsible for:

(i) vocational training; or

(ii) occupational safety and health ; or

(iii) productivity; or

(d) the ratification, implementation and denunciation of:

(i) any Conventions and recommendations of the International Labour Organization; or

(ii) any other international labour standards; or

(e) the reports to the International Labour Office regarding ratified conventions; or

(f) the ratification of newly adopted Conventions and recommendations of the International Labour Organization; or

(g) proposals or matters to be discussed at the International Labour Conference of the International Labour Organization or resolutions or conclusions adopted by the International Labour Conference, or issues addressed by other tripartite regional or international conferences; or

(h) the implementation and evaluation of technical cooperation activities of the International Labour Office; or

(i) the promotion of a better understanding in the community of Decent Work and the activities of the International Labour Organization; or

(j) other matters connected with the employment of workers or industrial relations referred to it by the Commissioner of Labour.

(2) In addition to subsection (1), the Council may also carry out studies on issues related to:

(a) labour; or

(b) economic and social affairs.

*Amended by Act 25 of 2010.*

**PART 2 – APPOINTMENT, POWERS AND DUTIES OF OFFICERS**

**2. Commissioner of Labour**

There shall be a Commissioner of Labour (hereinafter referred to as "the Commissioner"), a deputy commissioner of labour and such other officers (to be known as "labour officers") as shall be necessary or expedient for the purposes of this Act who shall be public servants.

**3. Powers of Commissioner and labour officers**

(1) For the purpose of satisfying himself that the provisions of this Act are being duly observed the Commissioner or any labour officer may at all reasonable times –

(a) enter, inspect and examine any land, building, camp, wharf, vessel or vehicle, or any place whatsoever where or about which any employee is housed or employed or where he has reason to believe that any employee is housed or employed;

(b) enter, inspect and examine any hospital or dispensary, or any sanitary arrangements used or intended to be used by employees or any water supply available for the use of employees, and take samples from the said water supply, and inquire and ascertain whether in any such hospital, dispensary or place of employment suitable medicines and remedies are provided for the use of employees;

(c) inspect kitchens and places in which food provided for the use of employees is stored, prepared or eaten, and inspect, and take samples of, such food;

(d) require any employer to produce any employee employed by him and any documents or records relating to the employment of such employee;

(e) take or remove for the purposes of analysis samples of material and substances used or handled:

Provided that the employer or any person acting on his behalf is notified of any samples or substances so taken or removed;

(f) interrogate, alone or in the presence of witnesses, the employer or any employee on any matter connected with the carrying out of the provisions of this Act, and may request information of any other person whose evidence he considers to be necessary;

(g) inquire from any employer or any person acting on his behalf regarding any matter connected with the carrying out of any of the provisions of this Act;

(h) require every employer to post and keep posted at some conspicuous place easily accessible to the employees, any notice served on him by the Commissioner:

Provided that the Commissioner or a labour officer –

(i) shall not enter or inspect a private dwelling-house without the consent of the occupier thereof;

(ii) on the occasion of a visit or inspection, shall notify the employer or his representative of his presence, unless he has reason to believe that such notification may be prejudicial to the performance of his duties;

(iii) if so required by the employer, shall be accompanied during any inspection or examination by the employer or his representative.

(2) The Commissioner or a labour officer may at all reasonable times inspect and take samples of and require any additions or replacements to be made to any drugs or dressings provided for the use of employees under any law or contract of service.

(3) The Commissioner or a labour officer may copy or make extracts from any document or records in the possession of an employer which relate to any employee.

**4. Dangerous and insanitary premises**

(1) If, in the opinion of the Commissioner or a labour officer, any land, building, camp or vessel where or about which any employee is living or where any employee is employed and which is provided for the use of any such employee is insanitary or is in such condition as to be dangerous to health or unfit for occupation or use by the employee, the Commissioner or labour officer may in writing direct the person for the time being responsible for the management of the same to discontinue such occupation or use until such repair or reconstruction or other work as may be specified in the direction has been carried out and certified by the Commissioner or labour officer to be fit for occupation or use.

(2) Where the Commissioner or labour officer gives any direction under subsection (1) the person to whom the direction is addressed, if he is of the opinion that the terms of such direction are harsh or unreasonable or that the requirements of the direction cannot be carried out within the period required, may, after giving notice thereof to the Commissioner, appeal to the Magistrates’ Court nearest to the place where such land, building, camp or vessel is situated.

(3) Every such appeal shall be made within 30 days from the date on which the said direction was communicated to such person.

**5. Commissioner and labour officers to carry identity documents**

The Commissioner or any labour officer, while exercising any powers or duties under this Act, shall carry on his person an identity document in a prescribed form and shall produce such document on request to any person to whom any inquiry or demand is addressed by him, and it shall be lawful for any person to refuse anything required of him by the Commissioner or labour officer until such identity document has been produced.

**PART 3 – GENERAL**

**6. Effects of custom, agreement etc.**

Nothing in this Act shall affect the operation of any law, custom, award or agreement which ensures more favourable conditions in any respect to the employees concerned than those provided for in this Act.

**7. Forced or compulsory labour**

(1) No person shall exact, procure, or employ forced or compulsory labour.

(2) The expression "forced or compulsory labour" in subsection (1) means all work or service which is exacted from any person under the threat of any penalty and for which that person has not offered himself voluntarily except –

(a) any work or service exacted in the course of compulsory military service for work of purely military character;

(b) any work or service which forms part of the normal civic obligations of citizens;

(c) any work or service exacted from any person as a consequence of a conviction by a court:

Provided that such work or service shall be carried out under the supervision and control of a public authority and that no person shall be hired to, or placed at the disposal of, private individuals, companies or associations;

(d) any work or service exacted in cases of emergency, that is to say, in the event of war, or of a calamity or threatened calamity such as fire, flood, famine, earthquake, violent epidemic or animal disease, invasion by animal or vegetable pests, and, in general any circumstances that would endanger the existence or the well-being of the whole or part of the community;

(e) any minor communal services of a kind performed by members of a community in the direct interest of such community and which is therefore a normal civic obligation incumbent upon members of such community:

Provided that before exaction of such minor services consultation shall have been had with the members of the community or their representatives in regard to the need for such services.

**8. Prohibition of sex discrimination in employment**

(1) Where a woman is employed on like work with a man in the same employment she shall be entitled to remuneration at the same rate as that man.

(2) A woman is to be regarded as employed on like work with men if her work and theirs is of the same or a broadly similar nature, and the differences, if any, between the things she does and the things they do are not of practical importance in relation to terms and conditions of employment.

(3) Subsection (1) shall not apply in relation to a variation between the woman's contract and the man's contract if the employer proves that the variation is genuinely due to a material difference (other than the difference of sex) between her case and his.

**PART 4 – CONTRACT OF EMPLOYMENT**

**9. Form of contract**

**(1) Subject to subsection (2) a contract of employment may be made in any form, whether written or oral**

**(2) The following contracts must be made in writing:**

**(a) a contract of employment for a fixed term exceeding 6 months; and**

**(b) a contract of employment making it necessary for the worker to reside away from his ordinary place of residence shall be in writing and**

**(c) a contract of employment that the worker has requested to be in writing.**

**(3) Contracts that are made in writing pursuant to section 9(2) shall state the names of the parties, the nature of employment, the amount and the mode of payment of wages, and, where appropriate, any other terms and conditions of employment including housing, rations, transport and repatriation.**

**(4) The Department of Labour shall make available a pro-forma contract according to the First Schedule to this Act exemplifying the manner in which a written contract of service may be drafted.**

***9A. Presumption as to indefinite duration***

**(1) All employees, regardless of whether they work on a full time or part time basis, must be employed under one of the following types of contracts:**

 **(a) a contract for an indefinite duration, which has no specified end date; or**

**(b) a contract for a fixed period, which terminates at the end of that fixed period unless otherwise renewed; or**

**(c) a contract for a fixed task, which terminates upon completion of the fixed task unless otherwise renewed; or**

**(d) a casual contract, which terminates at the end of each working shift unless otherwise renewed.**

**(2) Unless otherwise specified, each party to a contract is conclusively presumed to have entered into a contract for an indefinite duration.**

**(3) Any employee engaged under a casual contract who works on a regular and systematic basis for a continuous period of more than 6 months is presumed to have entered into a contract for an indefinite duration.**

**(4) Any employee engaged on a fixed period or a fixed task contract whose contract expires and who continues working and being paid without the negotiation of a further contract is presumed to have entered into a contract for an indefinite duration.**

**(5) Any employee engaged on a fixed period or a fixed task contract whose contract is renewed more than 3 times is deemed to have entered into a contract for an indefinite duration.**

**Provided that, if the employer can prove that the fixed term or fixed task contract terms are being used due to legitimate operational needs of the business, rather than to avoid obligations arising out of employing a worker on contract for an indefinite duration, then this presumption shall not apply.**

**10. Contracts exempt from stamp duty etc.**

Contracts of employment shall be exempt from stamp duty and any other taxes or levies.

**11. Transfer of contract**

The transfer of any contract of employment from one employer to another shall not be binding upon the employee except with the employee's consent which in the case of a written contract must be in writing:

Provided that if a change occurs in the ownership of an undertaking as a result of a sale thereof as a going concern, inheritance, formation of a company or similar cause every contract of employment valid at the time of the change taking place shall remain in force between the employee and the new employer.

**12. Duty of employer to provide work**

Except in the case of, and during, an emergency which prevents him from doing so, every employer shall provide the employee with work in accordance with the contract during the period for which the contract remains in force and on such number of working days as is expressly or impliedly provided for in that contract. If the employer fails to provide work as aforesaid he shall pay to the employee, in respect of every day on which he shall so fail, remuneration at the same rate as if the employee had done the day's work.

**13. Sanitary facilities etc.**

Where an employee is required to work in a building the employer shall provide adequate lighting and ventilation in the building and shall at or near the place of work, provide and maintain for the use of the employees, so far as it shall be practicable in the circumstances of the undertaking –

1. adequate sanitary and washing facilities;
2. adequate facilities for the taking of meals;
3. adequate supply of drinking water; and
4. where necessary adequate –
5. arrangements for the nursing of children of employees;

(ii) residential accommodation;

(iii) arrangements for the health, safety and welfare of the employees.

**14. Probationary period**

(1) Every contract of employment for an unspecified period shall be subject to a probationary period of 15 days. This period may be increased to a maximum of 6 months, including renewals, by agreement between the parties to the contract.

(2) During the probationary period a contract of employment may be terminated by either party without notice at any time.

**15. Period of contract**

The maximum duration of employment that may be stipulated or implied in any contract shall in no case exceed 3 years:

Provided that in the case of a married man if he is to be unaccompanied by his family at the place of employment during the term of the contract the maximum duration so stipulated or implied –

(a) if the distance between the employee's ordinary place of residence and the place of employment exceeds 50 kilometres, shall not exceed 12 months; and

(b) if the employee's ordinary place of residence is outside Vanuatu, shall not exceed 2 years.

**PART 5 – REMUNERATION**

**16. Remuneration**

(1) All monetary remuneration of an employee shall be paid in legal tender:

Provided that, subject to the written approval of a labour officer, remuneration may be paid by bank cheque in cases in which payment in this manner is customary or is reasonable because of special circumstances or with the consent of the employee.

(2) Subject to the written approval of a labour officer, a part of the remuneration may be paid in the form of allowances in kind in industries or occupations in which such payment is customary or desirable because of the nature of industry or occupation concerned; before granting his approval the labour officer shall satisfy himself that –

(a) such allowances are appropriate for the personal use and benefit of the employee and his family;

(b) the value attributed to such allowance is fair and reasonable.

(3) Payment of remuneration or any part thereof in intoxicating liquor or noxious drugs is prohibited in all circumstances.

(4) The payment of remuneration where paid in cash shall be made on working days only at or near the place of work, unless some other arrangement known to the employee is more appropriate in any individual case.

(5) Payment of remuneration in taverns or similar establishments and, where necessary to prevent abuse, in shops or stores for the retail sale of goods and in places of amusement is prohibited except in the case of persons employed therein.

(6) Remuneration shall be paid not later than 8 days after the end of the period to which it relates.

1. Remuneration shall be paid at regular intervals not exceeding 15 days to every employee whose remuneration is calculated by the hour, the day of the week and monthly to any other employee:

Provided that where remuneration is paid twice monthly the employer may pay allowances and accessories to wages once each month.

1. In case of termination of contract, remuneration and allowances, including where appropriate, payments in lieu of holidays, shall be paid as soon as the service has ceased.

(9) The preceding subsections shall not apply in relation to the remuneration payable to any employee who is not ordinarily resident in Vanuatu and who has been recruited in some other country for the purpose of his employment in Vanuatu.

**17. Receipts for remuneration**

(1) Payment of remuneration shall be recorded on a document prepared or certified by the employer or his representative and initialled by each payee:

Provided that if the employee is unable to sign his name he shall mark the document with his thumbprint.

(2) The documents mentioned in subsection (1) shall be preserved by the employer for a period of not less than 3 years in the same way as other accountancy documents and shall be presented to a labour officer on demand.

(3) Except where otherwise authorised by the Commissioner the employer shall give an individual pay voucher to the employee at the time of payment of remuneration if the employee request such a voucher.

(4) Such voucher shall be in any form that it is convenient for the employer to adopt but shall state the names of the employer and of the employee and give details of the way in which the remuneration has been calculated.

**18. Acceptance by employee of pay is no bar to subsequent proceedings**

(1) No statement such as "received in full settlement of all claims" made by the employee, whether during the period of his contract or after its termination, shall have the effect of waiving any rights he may have under the said contract.

(2) The acceptance without protest or reservation by an employee of a pay document shall not be held to imply renunciation on his part of the claim for all or any part of remuneration which may be due to him and such acceptance shall not be held to imply the settlement of all claims.

**19. Guarantees as regards remuneration**

(1) No sum due to a contractor undertaking any public works shall be the subject of a garnishee order nor shall payment thereof be stopped to the prejudice of the employees to whom remuneration is due.

(2) Remuneration due to the employees shall be paid in priority over those due to suppliers.

**20. Period of limitation**

No proceedings may be instituted by an employee for the recovery of remuneration after the expiry of 3 years from the end of the period to which the remuneration relates.

**21. Deductions from remuneration**

(1) Except as provided in this section and subject to any collective agreement binding on the employer and the employee, no employer shall make any deduction or make any agreement with an employee for any deduction from the employee's remuneration for, or in respect of, any fine or of bad or negligent work or damage to the materials or other property of the employer:

Provided that subject to a prior written approval of a labour officer, a deduction may be made in respect of any loss or damage to materials or other property of the employer caused by the wilful misconduct or negligence of the employee.

(2) Deductions may be made from the remuneration of an employee only in respect of all or any of the following –

(a) any sums advanced by the employer to the employee, in anticipation of the regular period of payment of his remuneration;

(b) the actual cost to the employer of any materials, tools or implements supplied to the employee by the employer at the employee's request for use by him outside the course of his employment;

(c) an amount, approved by a labour officer, being the fair value of any rations of the fair rent for any accommodation provided by the employer for the employee;

(d) at a written request of an employee –

1. the cost of any articles purchased by him on credit from the employer;

(ii) the cost of any food provided by the employer and prepared or consumed on his premises:

Provided that such cost shall not exceed the lowest price at which the employer sells such articles or food to members of the public;

(e) the amount of any membership fees or similar dues paid over by the employer at the employee's request to any trade union registered under the Trade Unions Act [Cap. 161];

(f) any sum in respect of any other matter as may be prescribed:

Provided that, except in the case of an attachment or assignment of remuneration ordered by the court, the total amount of the deductions referred to in this section may not exceed one-third of the total amount of the employee's remuneration in any pay period.

(3) Notwithstanding anything contained in subsections (1) and (2) an employer may at the request of an employee make deductions from the employee's remuneration and pay to the appropriate authority, person or account any subscriptions which the employee has agreed to contribute to any provident or pension fund or similar scheme approved by the Commissioner.

**PART 6 – HOURS OF WORK AND OVERTIME PAY**

**22. Days and hours of work**

(1) Subject to the provisions of this Part no employee shall be required to work in any undertaking more than 44 hours or 6 days in any week or more than 8 hours in any day exclusive of the time allowed for meals and tea.

(2) The limit of hours of work provided for in subsection (1) may be exceeded –

(a) in case of accident, actual or threatened, or in case of urgent work to be done to machinery or plant, or in case of an emergency, but only so far as may be necessary to avoid serious interference with the ordinary working of the undertaking;

(b) in those processes which by their nature are required to be carried on continuously by a succession of shifts:

Provided that the working hours shall not exceed 56 in a week on the average.

(3) In case of a general interruption of work due to holidays or accidents to plant, interruption of power, light or water, or similar occurrences causing serious material damage to an undertaking, hours of work in the day may be increased for the purpose of making up the hours of work which have been lost:

Provided that –

1. hours of work which have been lost shall not be made up on more than 30 days in the year and shall be made with a reasonable lapse of time;
2. the increase in hours of work in the day shall not exceed 1 hour;
3. hours of work in the day shall not exceed 10; and

(d) the employer shall as soon as practicable notify the labour officer of any increase of hours of work mentioned in this subsection.

**23. Work on public holidays**

(1) Except where he voluntarily undertakes so to do no employee shall be required to work on a Sunday or public holiday.

(2) Subsection (1) shall not apply in relation to persons employed in –

(a) undertakings engaged in the transport of passengers or goods by road, sea or air, including the handling of passengers or goods at docks, quays, wharves, warehouses or airports;

(b) undertakings of public utility including provision of water or gas, generation or supply of electricity, postal and telecommunication services, sewerage and similar services;

(c) hotels, guest houses, bars, restaurants, clubs and similar establishments;

(d) theatres and places of public amusement;

(e) establishments for the treatment and care of the sick, infirm, destitute or mentally unfit;

(f) newspaper and' radio broadcasting undertakings;

(g) animal husbandry;

(h) any other work approved, on the application of an employer, by a labour officer for the purpose of this subsection, having regard to the requirements of the proper management of the undertaking and the convenience of the public.

(3) An employee working on a Sunday or public holiday in pursuance of subsection (2) shall be granted an equivalent period of time off work on another day.

**24. Meal and tea breaks**

Every employee who is at work for more than 6 consecutive hours on 1 day shall be granted a break of 1 hour for a meal and a tea break of 20 minutes or 2 tea breaks of 10 minutes each.

**25. Weekly day of rest**

Every employee shall be entitled to a weekly rest of 24 consecutive hours which shall normally fall on a Sunday except where another day has been fixed by agreement between employee and employer or in any trades where it is usual to take another day:

Provided that in any undertaking where work is continuous and where simultaneous taking of the day of rest by all the staff would be to the prejudice of either the public or the proper working of the undertaking the employer may grant the weekly day of rest by rotation or may divide it into 2 half-days. In any such case the allocation of the weekly day of rest shall be posted up at the place of work.

**26. Overtime pay**

(1) In respect of work carried out in excess of the normal hours of work mentioned in section 22(1) an employee shall be paid overtime at the following rates –

(a) for work on public holidays or Sundays: at a minimum rate equal to one-and-a-half times the normal hourly rate;

(b) for work carried out in excess of the normal weekly hours of work –

(i) for the first 4 hours: at a minimum rate equal to one-and-a-quarter times the normal hourly rate;

(ii) in excess of 4 hours: at a minimum rate equal to one-and-a-half times the normal hourly rate;

(c) for work (other than work as a night watchman) carried out at night between 8 p.m. to 4 a.m. in excess of the normal weekly hours of work: a minimum rate equal to one-and-three-quarter times the normal hourly rate.

(2) Subsection (1) shall not apply to persons engaged in domestic service of the employer.

**27. Classes of employees to whom sections 22-26 do not apply**

Nothing in sections 22 to 26 inclusive shall apply to or in relation to –

(a) any undertaking in which only members of the employer's family are employed;

(b) offices in which staff is engaged in connection with the administration of public authority;

(c) persons occupying positions of management or employed in a confidential capacity;

(d) such other classes of persons as may be prescribed.

**28. Meaning of "hours of work"**

In this Part the expression "hours of work" means the time during which an employee is at the disposal of the employer and does not include rest periods during which he is not at the disposal of the employer.

**PART 7 – ANNUAL LEAVE AND SICK LEAVE**

**29. Annual leave**

1) Every employer shall grant to an employee who has been in continuous employment **for 4 or more days per week for a period of 12 months annual leave on full pay at a rate of 15 days per year worked.***A*

**(2) Any leave that was accrued under the Employment Act at a different rate prior to XXX DATE shall remain as part of the employee’s annual leave entitlement.**

(3) For the purpose of this section there shall be included in the period of continuous employment any periods of absence from work caused by –

(a) an accident at work duly certified by a recognised medical practitioner;

(b) illness arising from employment duly certified by a recognised medical practitioner;

(c) maternity leave up to a period of 12 weeks;

(d) illness duly certified by a medical practitioner up to a period of 3 months.

**30. Manner in which annual leave to be taken**

(1) The annual leave shall be taken in one period or if the employer and the employee so agree, in not more than 2 separate periods.

(2) If the employer and the employee so agree, the annual leave or either of its parts, may be taken wholly or partly in advance before the employee has acquired entitlement thereto.

(3) The date of the annual leave shall be fixed by the employer, who shall in so far as it shall be practicable in the circumstances of the undertaking, comply with the employee's request in this respect.

**31. Remuneration during annual leave**

The employer shall pay to the employee during the annual leave remuneration at least equal to the employee's average remuneration for the 12 months preceding the commencement of the leave:

Provided that such remuneration unless the parties otherwise agree need not include any bonuses, overtime pay, expatriation allowances or reimbursement of expenses.

**32. Entitlement when contract terminated**

If a contract of employment terminates before the employee has acquired entitlement to annual leave, an allowance calculated on the basis of the entitlement provided for in section 29 shall be paid in the place of leave:

Provided that if the contract has been broken by the employee such allowance shall only be payable on condition that the employee has completed at least 6 months service, and, that in the case of hourly or daily paid employees 1 month service shall mean not less than **4 days work per week**.

**33. Duration of entitlement**

After leaving the service of his employer any employee may avail himself of his annual leave and travel, if any, within 6 months counting from the date on which he ceased to work for that employer:

Provided that travel shall only be paid for by the employer if the employee actually makes the journey.

**34. Sick leave**

**(1) Where an employee who has completed more than 6 months continuous service of 4 or more days per week with the same employer and who is incapable of work because of sickness or injury, the employee is entitled to paid sick leave of not less than 10 working days during each year of service.**

**(2) For an employee to be entitled to sick leave, the employee must ⎯**

**(a) as soon as reasonably practicable notify the employer of his or her absence and the reason for it; and**

**(b) produce, if requested by the employer, a written certificate signed by a medical practitioner, certifying the worker’s incapacity for work.**

**(3) If an employer doubts the medical certificate being provided to him or her by the employee, the employer may refer the employee to a certified medical practitioner of the employer’s choice for a second consultation at his cost.**

**(4) A medical practitioner who knowingly issues a medical certificate to a worker whom the medical practitioner knows is capable of work commits an offence as does the worker who sought the medical certificate.**

**PART 8 – EMPLOYMENT OF WOMEN AND YOUNG PERSONS**

**35. Prohibition of employment of women at night**

(1) Subject to subsection (2), women shall not be employed during the night in any undertaking, except where the night work –

(a) has to do with raw materials or materials in course of treatment which are subject to rapid deterioration;

(b) is necessitated by an emergency which it was impossible to foresee and which is not of a recurring character;

(c) is that in a responsible position of management held by a woman who is not ordinarily engaged in manual work;

(d) is that of nursing and of caring for the sick, or other health or welfare work, including work in pharmacy;

(e) is carried on in a theatre or other place of public amusement;

(f) is carried on in connection with a hotel, guest hotel, bar, restaurant, club, or similar establishment;

(g) is carried on in connection with the transport of passengers by sea or air;

(h) is carried on in connection with postal and telecommunication services or broadcasting;

(i) is authorised by the Minister by order in conformity with international conventions.

(2) The Ministry may by Order suspend the prohibition of the employment of women during the night when in case of serious emergency the public interest so demands.

(3) In this section "night" means the period between 7 o'clock in the evening and 6 o'clock in the morning.

***36. Entitlement to maternity leave***

**(1) A woman employed in a workplace for a period of at least 12 months before the date of giving birth and who expects to give birth is entitled to maternity leave for a period of 12 consecutive weeks provided that she furnishes to her employer a certificate from a medical practitioner or registered nurse confirming her pregnancy and specifying the expected date of delivery of a child.**

**(2) All maternity leave shall be paid at a rate of pay not less than 50% of the wage and other benefits the woman would have earned had she had been at work.**

**(3) A woman may take maternity leave at any time before or after confinement provided that at least 6 weeks of her maternity leave is taken immediately after the birth of a child.**

**(4) For the purposes of this section, if a woman is absent from work for a period of more than 12 consecutive weeks she is not entitled to wages in respect of the days in excess of 12 weeks except by way of agreement with her employer.**

**(5) A woman who returns to her employment after maternity leave must be appointed to the same or equivalent position held prior to proceeding on maternity leave, without any loss of salary, wages, benefits or seniority.**

**(7) For the purposes of nursing a child during her working hours, an employer shall allow a woman worker nursing breaks of:**

**(a) one hour for every four hours worked, where the child is aged up to 6 months; and**

**(b) half an hour for every four hours worked, when the child is aged between 6 and 12 months .**

**(8) Nursing breaks for the purposes of subsection 7 shall be counted as hours worked for the purposes of calculating wages.**

***37. Restriction on termination due to pregnancy***

**(1) An employer must not terminate a woman’s employment by reason of being pregnant.**

**(2) No employer shall give notice of dismissal to a woman who is absent following taking maternity leave and who remains absent as a result of an illness arising out of pregnancy or childbirth that is certified by a medical practitioner rendering her unfit to work, provided that such absence shall not exceed 3 months.**

**(3) If a woman is terminated under subsection (3) she is deemed to have been employed up to and including her period of maternity leave for the purpose of determining her period of employment.**

**38. Prohibition of employment of persons under 12**

No person under the age of 12 years shall be employed in any capacity, except on light work suitable to his capacity in an agricultural undertaking owned and managed by the family of which he is a member.

**39. Employment of persons under 14**

A person under the age of 14 years shall not be employed except on light work of an agricultural or domestic character in which members of the employer's family are employed with him, or on agricultural light work carried on collectively by the local community.

**40. Employment of persons under 15**

A person under the age of 15 years shall not be employed on work –

(a) in any industrial undertaking except in employment approved by the Commissioner;

(b) on any ship.

**41. Employment of persons under 18**

(1) A person under the age of 18 years shall not be employed during the night in any industrial undertaking, except that, if such person is over the age of 16 years, he may be so employed subject to the written consent of a labour officer.

(2) In subsection (1) "night" means a period of at least 7 consecutive hours falling between 10 o'clock in the evening and 6 o'clock in the morning.

**42. Employment of persons under 18 on ships**

A person under the age of 18 years shall not be employed on any kind of work on a ship unless certified by a medical practitioner to be fit for such work:

Provided that in urgent cases a labour officer may permit the engagement of a person under the age of 18 years without prior medical examination, and in such case the employer shall at his own expense have such a person medically examined at the first place of call at which there is a medical practitioner, and should such practitioner not attest such person as fit for the work, the employer shall at his own expense return such person as a passenger to the port or place where he was engaged, or to his home, whichever is the nearer.

**43. Register of young persons**

Every employer in an industrial undertaking and every master of a ship shall keep a register of all persons under the age of 18 years employed in such undertaking or on such ship, and shall enter therein the names of such persons, the dates of their birth and the dates when their employment begins and ceases; such register shall be open to inspection by a labour officer.

**44. Presumption**

In any proceedings in respect of an offence under sections 38 to 43 inclusive the Court may determine the age of the person.

**PART 9 – SAFETY PRECAUTIONS AND MEDICAL FACILITIES**

**45. Employers to provide safe working conditions**

(1) Every employer shall take appropriate steps as soon as possible to remedy any working conditions which may be dangerous for the health or welfare of his employees.

(2) The Commissioner may issue a written notice to any employer recording any offences or dangerous conditions discovered and fixing the period within which they shall be eliminated.

**46. Notification of accidents**

Every employer shall as soon as possible inform a labour officer, giving all relevant details, of any accident at work or illness arising from work that has occurred in his undertaking.

**47. First-aid and medical treatment**

(1) Every employer shall at his own expense provide for his employees and members of their families living with them, medical aid in accordance with such scale as the Minister may prescribe as suitable in the circumstances of any undertaking:

Provided that the provision of medical aid for members of the employee's family shall only be required where they are resident on the employer's property with his consent.

(2) In the event of an injury to, or sickness of, an employee occurring on the premises of an undertaking the employer shall, if necessary, make such arrangements as may be practicable to move the injured or sick person to the nearest hospital, clinic or similar place.

(3) Every employer shall have permanently available on the premises of the undertaking such medicines, dressings and similar articles as are necessary for first-aid.

**PART 10 – TERMINATION OF CONTRACT**

**48. Termination of contract**

Subject to the provisions of this Part

 a contract of employment shall terminate on the last day of the period agreed in the contract or on the completion of the piece of work specified therein.

***49. Termination by the employer only for valid reason***

**(1) A contract of employment of indefinite duration or a contract for a fixed period where that fixed period has not yet expired, or a contract for a fixed task where that fixed task has not yet expired shall not be terminated by the employer unless there is a valid reason for such termination. A reason will only be valid if it:**

1. **was due to serious misconduct of the worker and section 50 has been complied with; or**
2. **relates to the worker’s capacity or conduct and sections 50Ahas been complied with; or**
3. **was due to the genuine redundancy of the worker’s position and section 50B has been complied with; or**

**(d) was due to retirement and section 50C has been complied with; and**

**(e) is not an unlawful reason under section 49A of this Act.**

**(2) Contracts engaging a worker on a casual basis can be terminated at any time by either party at the end of each working shift.**

***49A. Unlawful termination***

**(1) Unlawful reasons for termination of a contract of employment include the following reasons and reasons similar to the following reasons:**

1. **temporary absence from work because of illness or injury;**

1. **trade union membership or participation in trade union activities outside working hours or, with the employer's consent, during working hours;**
2. **non-membership of a trade union;**
3. **the filing of a complaint, or the participation in proceedings, against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;**
4. **absence from work during maternity leave.**

**50. Termination for serious misconduct of employee**

(1) In the case of a serious misconduct by an employee it shall be lawful for the employer to dismiss the employee without notice and without compensation in lieu of notice.

**(2) Serious misconduct in the course of employment includes but is not limited to the following circumstances or circumstances similar to the following circumstances –**

**(a) engaging in reckless conduct that is a serious and imminent risk to the health or safety of another person;**

**(b) theft or fraud by the employee;**

**(c) violence or the assault of another person or threats of violence;**

**(d) deliberate falsification of skills or qualifications during the employment application or promotion process;**

**(e) being under the influence of intoxicating liquor or a drug (except a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), to the extent that an employee is unable to undertake their duties or poses a risk of harm to himself or others;**

**(f) Conduct of such a nature that it would be unreasonable to require the employer to permit the employee to continue in their employment during the notice period due to a breakdown in the necessary relationship of mutual trust and confidence.**

(3) Dismissal for serious misconduct may take place only in cases where the employer cannot in good faith be expected to take any other course.

(4) No employer shall dismiss an employee on the ground of serious misconduct unless he has given the employee an adequate opportunity to answer any charges made against him and any dismissal in contravention of this subsection shall be deemed to be an unjustified dismissal.

(5) An employer shall be deemed to have waived his right to dismiss an employee for serious misconduct if such action has not been taken within a reasonable time after he has become aware of the serious misconduct.

***50A. Termination for reasons related to capacity or conduct***

1. **For the purposes of this section capacity or conduct means;**
2. **the ability of an employee to perform the duties for which they were hired to a satisfactory level that would be reasonably expected by an employer; or**
3. **the behaviour by an employee that would reasonably be expected by an employer in the workplace.**

**(2) An employer may summarily dismiss an employee without notice and without compensation in lieu of notice employment for reasons of capacity or conduct in accordance with the procedure in subsection (3).**

1. **Prior to termination of the contract of employment for reasons of capacity or conduct, the employee must have been:**
2. **warned about any unsatisfactory capacity or conduct; and**
3. **provided with an opportunity and reasonable assistance to improve their capacity or conduct; and**
4. **given a reasonable opportunity to respond to any issues raised about their capacity or conduct; and**
5. **afforded a reasonable opportunity for the employee, a representative or trade union representative, to be present or represent their interests with respect to a decision about a proposed termination; and**
6. **notified of the reason for the termination.**
7. **An employer is deemed to have waived his right to dismiss an employee for reasons of capacity or conduct if such action has not been taken within a reasonable time after the warning under subsection 3(a) is issued.**

***50B. Termination because of redundancy***

**(1) If an employer contemplates the termination of ten or more employees’ contracts of employment by reason of redundancy, the employer must not less than 28 days before the proposed date on which the terminations take place, provide the employees, their representatives and the Commissioner of Labour with relevant information including the reasons for the terminations contemplated, the number and categories of employees likely to be affected and the period over which the terminations are intended to be carried out.**

**(2) At any time after being notified under subsection (1) the Commissioner may by written notice, require the employer to give him such further information as may be specified in that notice.**

**(3) If in any case there are any special circumstances rendering it not reasonably practicable to comply with the requirements of this section, the employer shall take such steps towards compliance with such requirements as are reasonably practicable in those circumstances.**

**(4) Employees who are terminated because of redundancy must be given notice in accordance with section 50D.**

***50C. Other terminations by notice***

**(1) An employer may terminate a contract of employment for an indefinite duration for the reason of retirement on or after the employee reaches the age of 55 by giving notice to the other party to the other of his intention to terminate the contract.**

**(2) An employee may terminate a contract of employment for an indefinite duration by giving notice to the other party to the other of his intention to terminate the contract.**

**(3) An employee may only terminate a contract of employment for a fixed period or a fixed task if the contract expressly permits termination of the employment contract by giving notice.**

**(4) Unless otherwise specified in the contract notice may be verbal or written, and, subject to subsection (4), may be given at any time.**

**(5) In the absence of any provisions in the contract of employment, the length of notice to be given under subsection (1) shall be determined by section 50D.**

**(6) If an employee fails to give to the employer appropriate notice under this section, the employer may deduct from the employee’s entitlements the sum required for the period of notice.**

***50D. Provisions as to notice***

 **(1) In the absence of a specific written agreement as to notice between the parties to the contrary, notice to be given when an employment contract is terminated in accordance with section 50B or section 50C is as follows ⎯**

1. **if the employee has been employed for less than one year, by one week of notice;**
2. **if the employee has been employed for more than one year but less than three years, by two weeks of notice;**
3. **if the employee has been employed for more than three years but less than five years, by three weeks of notice; or**
4. **if the employee has been employed for more than five years, by four weeks of notice.**

**(2) Unless otherwise provided in this Act the notice required under subsection (1) may be given orally or in writing.**

**(3) Payment in lieu of notice may be provided, at the employer’s discretion.**

**(4) If payment is made in lieu of notice the payment must include the wages and benefits that would have been payable to the worker if the employee had worked during the period of notice.**

**51. Employees may seek work during notice**

During the period of notice an employee shall be entitled to a reasonable period of time off work without loss or reduction of remuneration in order to be able to seek other employment.

**52. Certificate of employment**

(1) An employee whose employment has been terminated shall be entitled to receive from the employer, on request, at the time of the termination, a certificate specifying the dates of his engagement and termination and the type of work on which he was employed.

(2) Nothing unfavourable to the employee shall be inserted in such a certificate.

**53. Breach of contract by employer**

(1) If an employer ill treats an employee or commits some other serious breach of the terms and conditions of the contract of employment, the employee may terminate the contract forthwith and shall be entitled to his full remuneration for the appropriate period of notice in accordance with section 49 without prejudice to any claim he may have for damages for breach of contract.

(2) An employee shall be deemed to have waived his right under subsection (1) if he does not claim it within a reasonable time after he has become aware of his being entitled thereto.

**PART 11 – PAYMENTS ON TERMINATION**

***54. Redundancy pay***

**(1) Subject to this section, if an employer terminates an employee’s contract of employment for reasons of redundancy, the employer must pay to the employee 1 week’s wages as redundancy pay for each completed year of service.**

**(2) Notwithstanding subsection (1) and a worker’s length of service, an employer is not required by this Act to pay any employee more than 3 months wages as redundancy pay.**

**(3) The redundancy payment shall be paid in a lump sum at the time the employee’s employment is terminated, provided that, with the written permission of the Commissioner of Labour, the redundancy payment may be paid by instalment at a rate that is no less than 1 month’s wages per instalment and may commence prior to the employment being terminated.**

**(4) An employee is not entitled to the payment specified in subsection (1) unless the worker has completed at least one year of service with the employer.**

 **(5) Subject to subsection (6), an employee is not entitled to the payment specified in subsection (1) if the employer obtains and the employee accepts, suitable alternative employment for the employee, and the new employer provides the employee with continuity of service.**

**(6) An employee’s entitlement to redundancy pay in accordance with subsection (1) is maintained until the employee signs a written contract of employment with the new employer accepting the alternative employment.**

**(7) Notwithstanding subsection (2), nothing in this Act prevents an employer giving to an employee a redundancy payment in excess of that required to be given by this Act.**

**(8) For the purposes of priorisation of payments in event of bankruptcy pursuant to the Companies Act, redundancy pay is deemed to be wages.**

***55. Transition provisions in respect of severance allowance***

**(1) Any employee that would have been entitled to severance allowance under the Employment Act [Cap 160] if the employer terminated the employee’s employment on XXX DATE shall have the severance allowance they would have been entitled to on XXX DATE fixed.**

**(2) The calculation for the fixed severance allowance shall be:**

**(a) For continuous employment prior to 1 January 2009, 2 weeks’ wages per year worked**

**(b) For continuous employment from 1 January 2009 to XXX DATE, 1 months’ wages per year worked and 1/12 of 1 month’s wages for every partial year worked.**

**(3) The employee is entitled to his fixed severance allowance payment under section 1(1) regardless of which party terminates the contract and any subsequent reasons for termination.**

**(4) The fixed severance allowance payment shall be paid in a lump sum at the time the employee’s employment is terminated, provided that, with the written permission of the Commissioner of Labour, the fixed severance allowance payment may be paid by instalment at a rate that is no less than 1 month’s wages per instalment and may commence prior to the employment being terminated.**

 **(5) Where wages are fixed at a rate calculated on work done or includes any sum paid by way of commission in return for services, the wage shall, for the purposes of this section, be computed in the manner best calculated to give the rate at which the employee was being paid over a period not exceeding 12 months prior to XXX DATE.**

 **(6) For the purposes of this section the wage which shall be taken into account in calculating the severance allowance shall be the wage payable to the employee on XXX DATE.**

**57. Deductions from severance allowances**

(1) An employer may deduct from any severance allowance payable –

(a) in the case of an employee who is retired on or after attaining the age of 55 years:

(i) half the amount of any gratuity due at the age of 55 years from any pension fund;

(ii) any gratuity granted at the age of 55 years by the employer;

(iii) 5 times the amount of any annual pension granted at the age of 55 years from any pension fund mentioned in paragraph (a)(i) above;

(iv) 10 times the amount of any annual pension granted at the age of 55 years by the employer;

(b) in any other case –

 (i) any gratuity granted by the employer;

 (ii) any contribution made to any pension fund mentioned in paragraph (a)(i) above by the employer.

(2) For the purpose of this section "pension" fund means any provident or pension fund or seminal scheme (other than the Vanuatu National Provident Fund established by and under the Vanuatu National Provident Fund Act [Cap. 189], as amended from time to time) which fund is specifically approved by the Commissioner.

**(3) Deductions permitted under subsection (1) include any gratuity payments, annual pensions and contributions into pension funds made after XXX DATE.**

**(4) In subsection (1) “gratuity” includes all gratuities paid during the course of employment.**

**PART 12 – REPATRIATION OF EMPLOYEES**

**58. Employee's right to repatriation**

(1) Subject to section 63 every employee whose ordinary place of residence is more than 50 kilometres away from his place of employment and who has been brought to the place of employment by the employer or his agent shall have the right to be repatriated at the expense of the employer to his place of origin or engagement, whichever is nearer to the place of employment, in the following cases –

1. on the expiry of the term of contract;

(b) in the case of a termination of a contract when the employee has become entitled to a paid annual leave;

(c) in the case of a breach of contract or a serious offence committed by the employer;

(d) in the case of the termination of a contract due to the inability of the employee to complete the contract owing to sickness or accident.

(2) The right of an employee under subsection (1) shall lapse if not used by him within 6 months from the date at which he becomes entitled thereto.

**59. Repatriation of employee’s family**

(1) Where the family of an employee has been brought to the place of employment by the employer or his agent in the circumstances mentioned in section 58 the family shall have the right to be repatriated as provided in that section whenever the employee is repatriated or in the event of his death.

(2) The expression "family" in subsection (1) means the wife and the dependent minor children of an employee who reside with him.

**60. Proportional payment of travel costs**

When a contract is terminated for any cause other than those provided for in section 58 or by reason of a serious offence committed by the employee the employer shall bear travel costs proportionate to the length of the employee's service in respect of both the journey to and from his place of employment.

**61. Means of transport**

The means of transport shall be determined by the employee's position in the undertaking in accordance with the local usage:

Provided that the employer shall ensure that the employee and his family are transported in reasonable comfort and safety.

**62. Subsistence during repatriation**

(1) Subject to subsection (2) and to section 60 the expenses of repatriation shall include–

1. the cost of travelling and reasonable subsistence expenses during the journey;

(b) reasonable subsistence expenses during the period, if any, between the date of the expiry of the contract and the date of repatriation.

(2) The employer shall not be liable for subsistence expenses in respect of any period during which the repatriation of an employee has been delayed –

(a) unreasonably by the employee's own choice;

(b) for reasons of force majeure, unless the employer has been able during that period to use the services of the employee at the rate of remuneration applicable under the expired contract.

**63. Exemption from employer's duty to repatriate**

Notwithstanding anything contained in the other sections of this Part an employer shall not be liable for the costs of repatriation or subsistence expenses if it is proved to the satisfaction of a labour officer –

(a) that the employee has signified, in writing or otherwise, that he does not wish to exercise the right to repatriation;

(b) that the employee has been settled, at his own request or with his consent, at or near the place of his employment;

(c) that his contract has been terminated owing to a breach thereof by the employee;

(d) when the contract has been terminated otherwise than by reason of the employee's inability to complete the contract owing to sickness or accident and the labour officer is satisfied that–

(i) in fixing the rate of the remuneration proper allowance has been made for the payment of the costs of repatriation by the employee;

(ii) that suitable arrangements have been made by means of a deferred pay system or otherwise to ensure that the employee has the funds necessary for the payment of such costs.

**PART 13 – MISCELLANEOUS**

**64. Power of criminal court to order payments to employees**

(1) Where, in the course of proceedings against a person being an employer in respect of any offence under this Act, it is proved to the satisfaction of the court, that a sum of money is owning by that person to his employee, by way of remuneration or otherwise, under, or arising out of, his contract of employment, the court, in addition to dealing with that person in any other way, may, on application or otherwise, make an order requiring him to pay that sum to the employee.

(2) An order made under subsection (1) shall be suspended –

(a) in any case until the expiration of the period prescribed by law for the giving of notice of appeal against a decision of the court;

(b) where notice of appeal is given, until the date of the determination or abandonment of appeal.

(3) Where an order under subsection (1) has been made against a person in respect of any offence taken into consideration in determining his sentence –

(a) the order shall cease to have effect if he successfully appeals against his conviction of the offence or, if more than 1, all the offences, of which he was convicted in the proceedings in which the order was made;

(b) he may appeal against the order as if it were a part of the sentence imposed in respect of the offence or, if more than 1, any of the offences, of which he was so convicted.

**65. Employment agencies**

(1) No person shall carry on the business of an employment agency except in accordance with the conditions specified in subsection (2).

(2) The conditions mentioned in subsection (1) are –

(a) that such person must apply in the prescribed form for an employment agency licence and be the holder of a valid current employment agency licence;

(b) an application must be accompanied by the prescribed fee;

(c) that such books and records shall be kept as shall be required by the Commissioner;

(d) that placement and recruitment of persons for employment outside Vanuatu shall not be carried on without an express permission in the licence mentioned in paragraph (a), and that any contract made or intended to be made in respect of such employment shall be submitted for the prior approval by the Commissioner.

(2A) A licence under subsection (2)(a) is to be issued by the Commissioner

(3) The expression "employment agency" in subsection (1) means an agency which acts as an intermediary for the purpose of procuring employment for a person or supplying an employee for an employer with a view to deriving either directly or indirectly a pecuniary or other advantage from the employer or employee:

Provided that the expression "employment agency" shall not include newspapers or other publications unless they are published wholly or mainly for the purpose of acting as intermediaries between employers and employees.

**65A. Licence fee**

(1) The holder of an employment agency licence must pay to the Commissioner the prescribed annual fee for the issue and renewal of the licence on or before the prescribed date.

(2) he holder fails to pay the annual fee by the due date the Commissioner may, by notice in writing to the holder, cancel the holder’s licence.

(3 his section and section 65 –

"prescribed" means prescribed by order of the Minister.

**66. Crimping**

If an employee who has wrongfully broken a contract takes service with a new employer, the new employer shall be liable jointly and severally with the employee for any prejudice caused to the former employer if he has induced the employee to leave his former employment or if he has engaged or continued to employ an employee whom he knew to be already bound by a contract.

**68. Works stores**

(1) Subject to the written approval of a labour officer an employer may establish at or near a place of employment a store for the sale of any commodities to the employees, on the condition that –

1. the employees concerned shall be free from any coercion to use such stores;

(b) the goods shall be sold mainly for the convenience of the employees and not for securing profit to the employer;

(c) the accounts of the stores shall be kept separate from the accounts of other undertakings of the employer and shall be readily available for inspection by a labour officer;

(d) the prices charged shall be fair and reasonable, and shall be displayed in a clear and legible manner.

(2) Where facilities are provided for the employees to purchase goods from a store mentioned in subsection (1) on credit, the prices charged to the employees must not exceed –

(a) where the store is situated within the municipal boundaries of Port Vila or Luganville, the lowest price at which such goods are sold to members of the public;

(b) where the store is situated elsewhere, the full cost price of the goods to the employer taking into account the cost of transport and recognised overheads.

(3) If an abuse in the manner in which a store is operated is found by a labour officer he may, after giving a suitable warning notice to the employer, order a provisional closure of the store for a period not exceeding 1 month.

(4) On a report by a labour officer of any such abuse the Commissioner may order the permanent closure of any such store.

**69. Control of prices in certain stores**

When an employer sells or supplies goods to the public and where in the absence of any other source of supply close to the place of employment his employees are obliged to provision themselves in his store the manner in which such sales or supplies are made shall be subject to inspection by a labour officer who shall have the power to fix maximum prices charged to the employees based on the prices which prevail on the open market:

Provided that if any such goods are subject to a statutory price control the labour officer shall exercise his powers under this section in consultation with the appropriate price control authority.

**70. Minister's power to prescribe housing standards**

(1) The Minister may by Order make rules specifying the standards, sanitary and otherwise, with which any housing provided by an employer for his employees must comply.

(2) Any such housing shall, at all reasonable times, be open to an inspection by the Commissioner or any labour officer, and section 4 shall apply in relation to such housing as it applies in relation to any premises referred to in that section.

**71. Apprenticeship**

The Minister may make regulations in respect of –

(a) the technical and other qualifications required of employers in order that they may employ and train apprentices;

(b) the conditions governing the entry of young persons into apprenticeship;

(c) the mutual rights and obligations of employer and apprentice.

**72. Employers may be required to submit returns**

The Commissioner may, by written notice, require any employer to submit to him, within a period specified in the notice, a return in a prescribed form showing –

1. the date of opening of his undertaking;

(b) the business of the undertaking; and

(c) the numbers of workers employed in the various trade categories of the undertaking at such date as shall be specified in the notice.

**73. Employer's register**

Every employer who employs ten or more persons at any undertaking at any time, shall keep permanently up to date at each place of work, a register, to be known as the "Employer's Register", in such form as may be prescribed.

**74. Statistical returns**

Without prejudice to the generality of the provisions of section 3 the Commissioner may require any employer to furnish in writing returns and statistics, whether periodically or otherwise, as to the number of employees employed by him in any particular employment and the rates of remuneration and other conditions affecting the terms or conditions of employment.

**75. Employers may make regulations**

(1) An employer may make regulations to provide for matters concerning the technical organisation of the work of the undertaking, discipline and requirements concerning hygiene and safety necessary for the proper operation of the undertaking.

(2) Any regulations mentioned in subsection (1) shall, before coming into operation, be submitted for approval by a labour officer, and, if approved by him, shall be deemed to form a part of the contract of employment of all the employees to whom they relate.

(3) Any regulations mentioned in subsection (1) shall be displayed at some conspicuous place easily accessible to the employees.

**76. Application of the Act to public service**

(1) Except as provided in subsection (3) the provisions of this Act shall apply in relation to public servants and to the Government and any other public authority in Vanuatu subject to the modifications set out in subsection (2).

(2) The modifications mentioned in subsection (1) are as follows –

(a) the references in this Act to the Minister shall be taken as references to the Minister responsible for matters relating to the public service;

(b) certain functions of the Tripartite Labour Advisory Council may also be exercised by the following commissions:

(i) the Public Service Commission, in relation to public servants;

(ii) the Teaching Service Commission, in relation to teaching service staff;

(iii) the Judicial Service Commission, in relation to judicial service staff;

(iv) the Police Service Commission, in relation to members of the Police Force.

*Amended by Act 25 of 2010.*

(c) except in section 65, the powers and duties of the Commissioner of Labour shall vest in the Director of Public Service Department;

1. the powers and duties of a labour officer shall vest in the Director of Public Service Department or an officer appointed by him for that purpose;

(e) sections 67, 72, 73, and 74 shall not apply.

(3) Nothing contained in this Act shall apply in relation to members of the armed forces, police force or prison service.

**77. Minister's power to exempt persons etc. from provisions of this act**

The Minister may by Order exempt any person or class of persons or any public authority or class of public authorities or any contract of employment or class of such contracts from the operation of all or any of the provisions of this Act:

Provided that no exemption may be made from the provisions of section 7.

**77A. Regulations**

The Minister may make regulations so as to give effect to all or any of the purposes of this Act.

**77B Rules of the Council**

The Council may determine its own rules and procedures.

*Amended by Act 25 of 2010.*

**78. Offences**

(1) Except as provided in subsection (2) any person who contravenes or fails to comply with any provisions of this Act or with any order or direction made by the Commissioner or a labour officer acting in the exercise of his functions under this Act shall be guilty of an offence.

(2) Any person who –

(a) contravenes the provisions of section 7 which relates to forced or compulsory labour or section 16(3) which relates to payment of remuneration in intoxicating liquor or noxious drugs;

(b) obstructs the Commissioner or a labour officer in the exercise of his functions under this Act;

(c) knowingly makes a statement false in any material particular when required to make a statement under this Act;

(d) makes, or knowingly allows to be made, any entry in a record required to be kept by an employer which he knows to be false or misleading in a material particular, shall be guilty of an offence.

Penalty: VT 100,000 or imprisonment for a term not exceeding 3 years or both.

**79. Continuing offences**

Every act or default under this Act constituting an offence shall constitute a new offence in every week during which it continues.

***Table of Amendments (since the Revised Edition 1988)***

*54(1) Amended by Acts 33 of 1989, 8 of 1995*

*20 Amended by Act 8 of 1995*

*57 Substituted by Act 3 of 1997*

*65(2)(a) Substituted by Act 16 of 2001*

*65(2)(b) Substituted by Act 16 of 2001*

*65(2A) Inserted by Act 16 of 2001*

*65A Inserted by Act 16 of 2001*

*77A Inserted by Act 16 of 2001*

**SCHEDULE 1**

**This pro forma provides a basic structure for an employment contract. Employers should delete the sections that are not relevant and fill in as much information as possible.**

**Introductory matters**

**Name of Employer:**

**Name of Worker:**

**Position Description / Inherent Requirements of Position:**

**Place of Work:**

**Employment type (contract for an indefinite duration/fixed period contract/fixed work contract/casual contract):**

**Start date and, if applicable, end date:**

**Probation period:**

**Hours of work**

**Usual hours of work:**

**When overtime may be worked:**

**Remuneration**

**Wages/Salary:**

**Overtime payments:**

**Allowances:**

**Deductions (including VNPF):**

**Time and place of payment of wages/salary and allowances:**

**Leave entitlements & other benefits**

**Annual leave:**

**Sick leave:**

**Maternity leave:**

**Other Entitlements:**

**Termination**

**How the contract can be terminated:**

**(For fixed period/fixed work contracts) how the contract may be renewed:**

**Signed by:**

**Employer: Worker:**

**Date:**

1. \* Prepared by Anita Jowitt Employer Representative on the Vanuatu Tripartite Labour Advisory Council and Lecturer in law at the University of the South Pacific for the Vanuatu Chamber of Commerce and Industry. We’d like to hear your views. Please mail the VCCI at Box 189, Port Vila or email employerstpa@vcci.com.vu. More information is on [www.vcci.com.vu](http://www.vcci.com.vu). [↑](#footnote-ref-1)
2. \* Prepared by Anita Jowitt Employer Representative on the Vanuatu Tripartite Labour Advisory Council and Lecturer in law at the University of the South Pacific for the Vanuatu Chamber of Commerce and Industry. We’d like to hear your views. Please mail the VCCI at Box 189, Port Vila or email employerstpa@vcci.com.vu. More information is on [www.vcci.com.vu](http://www.vcci.com.vu). [↑](#footnote-ref-2)