This paper presents work in progress under the Employment and Labour Market Studies in the School of Economics at USP. Comments, criticisms and enquiries should be addressed to the author.

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REVIEW OF LABOUR LAWS
IN
SOLOMON ISLANDS

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## Contents

Abstract 4

Part One

1.0 Labour Market and Employment Context 5
1.1 The Economy 7
1.2 Labour Laws and Industrial Relations 7

Part Two

2.0 Review of Labour Laws 9
2.2 Redundancy 10
2.3 Dismissal 10
2.4 Notice of Termination of Employment 11
2.5 Contract of Employment 11
2.6 Employers, Liability Insurance 12
2.7 Notice of Redundancy 13
2.8 Unfair Dismissal 13
2.9 Prohibition of Forced or Bonded Labour 14
2.10 Trade Disputes Act, 1981 15
2.11 Industrial Dispute Settlement 15
2.12 Trade Union Act, 1966 16
2.13 Right to Organise 17
2.14 Trade Union Activity 17
2.15 Labour Act, 1982 18
2.16 Minimum Age 18
2.17 Hours of Work and Weekly Rest 20
2.18 Protection of Children 20
2.19 Maternity Leave 21
2.20 Holidays, Sick Leave and Passages Rules (Section 80) 22
2.21 Care of Workers, Housing and Medical Treatment 22
2.22 Safety at Work Act, 1982 23
2.23 Workmen’s Compensation Act, 1982 25
2.24 National Provident Fund Act, 1976 26

Part Three

3.0 Recommendations 27
3.1 Employment Act, 1981 27
3.2 Redundancy 27
3.3 Dismissals 27
3.4 Notice of Termination of Employment 28
3.5 Contract of Employment 28
3.6 Employers, Liability Insurance 29
3.7 Notice of Redundancy 30
3.8 Unfair Dismissal Act, 1982 31
3.9 Trade Disputes Act, 1981 32
3.10 Trade Union Membership (Trade Union Act, 1966) 33
3.11 Right to Organise and Bargain 33
3.12 Labour Act, 1982 34
3.13 Minimum Wage 34
3.14 Hours of Work and Weekly Rest 35
3.15 Protection of Children 35
3.16 Maternity Leave 35
3.17 Holidays, Sick Leave and Passages Rules (Section 80) 36
3.18 Care of Workers, Housing and Medical Treatment 37
3.19 Safety at Work Act, 1982 37
3.20 Workmen’s Compensation Act, 1982 38
3.21 National Provident Fund Act, 1976 38

Reference

I: Legislations 39
II: Other Supplementary Works 39
III: Interviews 39
Abstract

The review of labour laws in Solomon Islands should be viewed as an initial attempt made to provide as a reference point for further examination of the legislations later. The legislations are generally obsolete and several of them have not been reviewed since enacted in the 1960s and 70s. The recommendations suggested pertain to some of the most obvious deficiencies detected in the Acts. However, a more extensive review of the labour laws in Solomon Islands later would probably do justice to the issue of compliance and best labour practices to meet international labour standards in its entirety. Therefore, this is a modest attempt in taking on this momentous task.
Part One

1.0 The Labour Market and Employment Context

Part One of the Report provides a brief overview of labour market and employment conditions in Solomon Islands. The labour market issues are acute compounded by complex structural issues emanating from civil society, government, investors and other areas. The discussion serves as a background to Parts Two and Three of the Review of Labour Laws in the country.

There are two caveats to be noted in the outset before proceeding with the analysis of labour laws. First, the paper only deals with the existing labour laws in the country. Their salient features and weaknesses are discussed and recommendations posed. This effectively limits the discussion of other bodies of law such as common law with its judicial precedents and customary law which may have an impact on labour, employment and work. However, it is not the intention of this paper to review all sources of law, references are made where necessary. Second, the paper also isolates discussion on matters which may involve labour laws with other legislations regarding the regulation of work and remuneration. The possibility of such a discussion is there but it may be too large a project for this paper to consider.

1.2 The Solomon Islands Labour Market

Solomon Islands is emerging from a major civil disorder which was on the verge of disintegrating the country since 1998. Only in the two years, has there been some progress in civil society and business environment as a result of the presence of Australian sponsored and dominated police peace keeping force stationed in the country. The six year crisis was initially triggered by some restless and frustrated youths from Guadalcanal Island who formed a militant group to forcibly drive out the migrant Malaitan settlers who (they claimed) were ‘dominating’ them in Honiara. This civil disorder was also grounded in general dissatisfaction over the scarcity of limited opportunities in the small but stagnant labour market and exploitative nature of national development projects which have left foreign investors to pay secondary consideration to local needs (www.warpeace.org/solomon-islands.htm; Moore, 2005). Although peace and stability seem to gradually return to this Melanesian backwater, the initial issues that led to the conflict may not go away for a very long time, as long as the economy struggles to keep pace with the ever increasing population growth of three per cent per annum.

Current figures for employment are not readily available. However, in 1998 a little over 34,000 persons were employed in the formal sector. Of those approximately 45 per cent were employed in the service sector, bulk of them in the public service. An additional 22 per cent were employed in the primary sector and 16 per cent in manufacturing and construction. The private sector absorbed most of the employment accounting for 70 per cent of total wage employment (The United Nations Solomon Islands Report, 2001:14). The Table below provides (last known) employment figures by industry for 1982-1998.
Current figures for employment are not readily available. However, in 1998 a little over 34,000 persons were employed in the formal sector. Of those approximately 45 per cent were employed in the service sector, bulk of them in the public service. An additional 22 per cent were employed in the primary sector and 16 per cent in manufacturing and construction. The private sector absorbed most of the employment accounting for 70 per cent of total wage employment (The United Nations Solomon Islands Report, 2001:14). The Table below provides (last known) employment figures by industry for 1982-1998.

Table 1. Employment by industry 1982-1998

<table>
<thead>
<tr>
<th>Month Year</th>
<th>Agriculture</th>
<th>Forestry</th>
<th>Fishing</th>
<th>Manufacture</th>
<th>Utilities</th>
<th>Const</th>
<th>Trade</th>
<th>Transp</th>
<th>Finance</th>
<th>Admin</th>
<th>Others</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 1982</td>
<td>4,408</td>
<td>1,798</td>
<td>961</td>
<td>1,831</td>
<td>222</td>
<td>1,395</td>
<td>2,122</td>
<td>1,795</td>
<td>446</td>
<td>2,272</td>
<td>3,597</td>
<td>20,847</td>
</tr>
<tr>
<td>June 1983</td>
<td>4,414</td>
<td>1,646</td>
<td>962</td>
<td>1,846</td>
<td>248</td>
<td>1,327</td>
<td>2,081</td>
<td>1,925</td>
<td>418</td>
<td>2,207</td>
<td>4,022</td>
<td>21,132</td>
</tr>
<tr>
<td>June 1984</td>
<td>4,961</td>
<td>1,534</td>
<td>1,118</td>
<td>1,845</td>
<td>323</td>
<td>1,487</td>
<td>2,285</td>
<td>2,182</td>
<td>537</td>
<td>2,224</td>
<td>4,192</td>
<td>22,688</td>
</tr>
<tr>
<td>June 1985</td>
<td>5,229</td>
<td>1,570</td>
<td>1,240</td>
<td>1,815</td>
<td>315</td>
<td>1,466</td>
<td>2,566</td>
<td>2,149</td>
<td>525</td>
<td>2,353</td>
<td>4,768</td>
<td>23,996</td>
</tr>
<tr>
<td>June 1986</td>
<td>5,176</td>
<td>1,973</td>
<td>1,262</td>
<td>1,872</td>
<td>328</td>
<td>1,385</td>
<td>2,491</td>
<td>1,888</td>
<td>604</td>
<td>2,345</td>
<td>4,702</td>
<td>24,026</td>
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<tr>
<td>June 1987</td>
<td>3,879</td>
<td>1,448</td>
<td>1,281</td>
<td>2,257</td>
<td>307</td>
<td>1,084</td>
<td>2,696</td>
<td>1,251</td>
<td>693</td>
<td>3,556</td>
<td>5,338</td>
<td>23,790</td>
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<tr>
<td>June 1988</td>
<td>4,105</td>
<td>1,643</td>
<td>1,218</td>
<td>2,312</td>
<td>297</td>
<td>1,240</td>
<td>2,396</td>
<td>1,477</td>
<td>699</td>
<td>3,367</td>
<td>6,091</td>
<td>24,845</td>
</tr>
<tr>
<td>June 1989</td>
<td>4,220</td>
<td>1,906</td>
<td>1,405</td>
<td>2,286</td>
<td>296</td>
<td>1,355</td>
<td>2,714</td>
<td>1,450</td>
<td>755</td>
<td>3,164</td>
<td>5,887</td>
<td>25,438</td>
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<tr>
<td>June 1990</td>
<td>3,928</td>
<td>2,159</td>
<td>1,449</td>
<td>2,285</td>
<td>294</td>
<td>1,384</td>
<td>2,637</td>
<td>1,348</td>
<td>866</td>
<td>4,027</td>
<td>5,745</td>
<td>26,122</td>
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<tr>
<td>June 1991</td>
<td>3,877</td>
<td>2,356</td>
<td>1,471</td>
<td>2,113</td>
<td>341</td>
<td>1,071</td>
<td>2,849</td>
<td>1,580</td>
<td>781</td>
<td>3,290</td>
<td>6,902</td>
<td>26,631</td>
</tr>
<tr>
<td>June 1992</td>
<td>4,097</td>
<td>1,161</td>
<td>1,097</td>
<td>2,040</td>
<td>386</td>
<td>1,109</td>
<td>3,201</td>
<td>1,418</td>
<td>1,195</td>
<td>4,273</td>
<td>6,865</td>
<td>26,842</td>
</tr>
<tr>
<td>June 1993</td>
<td>3,330</td>
<td>2,376</td>
<td>2,400</td>
<td>2,844</td>
<td>245</td>
<td>977</td>
<td>3,390</td>
<td>1,723</td>
<td>1,144</td>
<td>4,303</td>
<td>6,845</td>
<td>29,577</td>
</tr>
<tr>
<td>June 1994</td>
<td>3,523</td>
<td>3,399</td>
<td>1,733</td>
<td>3,766</td>
<td>307</td>
<td>907</td>
<td>3,732</td>
<td>1,852</td>
<td>1,131</td>
<td>4,377</td>
<td>7,792</td>
<td>32,519</td>
</tr>
<tr>
<td>June 1995</td>
<td>3,388</td>
<td>3,469</td>
<td>1,770</td>
<td>4,122</td>
<td>325</td>
<td>1,053</td>
<td>3,884</td>
<td>1,683</td>
<td>1,240</td>
<td>4,373</td>
<td>7,796</td>
<td>33,103</td>
</tr>
<tr>
<td>June 1996</td>
<td>3,418</td>
<td>3,655</td>
<td>1,803</td>
<td>4,179</td>
<td>326</td>
<td>1,053</td>
<td>4,205</td>
<td>1,698</td>
<td>1,515</td>
<td>5,672</td>
<td>6,574</td>
<td>34,098</td>
</tr>
<tr>
<td>June 1997</td>
<td>3,393</td>
<td>3,001</td>
<td>1,677</td>
<td>4,098</td>
<td>329</td>
<td>1,367</td>
<td>4,210</td>
<td>1,672</td>
<td>1,393</td>
<td>3,937</td>
<td>8,273</td>
<td>33,349</td>
</tr>
<tr>
<td>June 1998</td>
<td>3,356</td>
<td>2,658</td>
<td>1,412</td>
<td>4,348</td>
<td>387</td>
<td>1,187</td>
<td>4,641</td>
<td>1,878</td>
<td>1,183</td>
<td>4,261</td>
<td>8,750</td>
<td>34,061</td>
</tr>
</tbody>
</table>


Notes: Other services refer to education, medical and other services. Manufacturing including mining and quarrying.

While the employment figures are not promising, like all South Pacific Island Countries, the near majority of the people take refuge in the subsistence sector. In the 1986 census 71 per cent of the economically active population (133, 498) claimed to be “doing nothing” and therefore not engaged in any productive money earning activities. Some 45 per cent (111, 905) of the population aged 14 years and over were in unpaid work in 1999. A limited number (23 per cent) were engaged in formal wage employment. This is just a third of the 538, 000 total population of the country (ibid: 10).
There are indications of grave unemployment and underemployment in the country. An estimated 7,000 school leavers drop out of the education system each year where the labour market is capable of generating only 500 new jobs each year. Some 28,000 people were recorded in the 1999 Solomon Islands Population and Housing Census as seriously looking for paid jobs. The study estimated that over the next decade the number of young people entering the small labour market would increase to 10,000 (Solomon Islands Statistics Office, 2000).

1.2 The Economy

The economy of Solomon Islands is dominated by few large extractive industries and small secondary sector mainly in wholesaling and retailing outlets, mostly emphasized in the capital, Honiara. Most of the businesses are owned and operated by the resistant Chinese community. The capacity of the economy to generate employment opportunities has been hampered by a lack of large scale foreign investment, apart from the mainstay of logging and to some extend fishing and a single mine. Particularly, the logging industry has been prone to corruption and this has marred the image of general conduct of business practice in the country (Lamour and Barcham, 2004).

However, recent macroeconomic assessment from the Asian Development Bank Outlook portray the Solomon Islands in positive light for its improving political stability and an estimated economic growth achievement of 4.6 per cent in 2004. Mainly agriculture, logging and commercial sub sector are acknowledged for contributing to this record. While inflation has fallen to 6.5 per cent from a high of 13.2 per cent in 2003, most villagers’ living standards have not improved since the arrival of the Australian led regional peace keeping force (www.adb.org/Documents/ADO/2005). The raising cost of basic goods and services coupled with a chronic unemployment figure of 15 per cent of the employable age population continues to haunt the Solomon Islands Government on a daily basis.

1.3 The Informal Economy

The large informal sector exists independently from the formal sector. The small workforce that subsist in the paid employment also take refuge in the sector. Although the rural population is subsistence based where gardening and fishing take centre stage and sometimes supplemented by market garden and cash crops, there is healthy informal activity exist in the urban areas, particularly in the country’s capital, Honiara.

However, the Solomon Islands Government is yet to legislate on the informal economy to harness its potential as a significant source of threshold for its population. Unless that is done, any prevailing restrictions and obstacles exist may continue to isolate the sector as rural based and therefore would not be embraced openly as it should in the urban areas.
1.4 The Constitution

The Constitution of Solomon Islands is the ultimate law which provides the most basic individual rights in the country. They are respected by authorities, and defended by an independent judiciary. Discrimination and violence against women continue to remain a major problem which stems from the country’s culture’s insubordination to them. There is a constitutionally provided ombudsman to look into and provide protection against improper or unlawful administrative treatment of citizens, including workers.

The Common Law of England is part of the Solomon Islands Law as so long as it is not consistent with the Constitution and any other laws passed by the country’s parliament, including customary laws. While the Constitution is imposing and regulates the structure of the three arms of government (legislature, executive and judiciary) and civic society, it only implicitly touches on the labour and employment rights of individuals. References made to them in the context of discussing fundamental rights of individuals. For instance, Section 2 of the Constitution on Respect for Civil Liberties makes provision for the freedom of peaceful assembly and association and this right is freely exercised. This right is also extended to the freedom of association for workers to form trade unions and other associations. Similarly, Section 5 disallows discrimination based on race, sex, religion, disability, language, or social status in respect of access to public places. It further prohibits any laws which would have discriminatory results, and provides that no person should be treated in a discriminatory manner by anyone acting in an official capacity. The implication of Section 5 is wide ranging and extends to employment opportunities. However, due to unemployment problems, there is a limited number of jobs available to women and to the disabled. The Constitution also prohibits forced or compulsory labour and also forbids child labour by children under the age of 12, except light agriculture or domestic work performed in the company of parents. The specific aspects of labour, work and employment are dealt with by the country’s seven labour laws, which are the subject of this review.

1.4 Labour Laws and Industrial Relations

Politically, the Solomon Islands has a modified parliamentary system of government consisting of a single-chamber Legislative Assembly of 50 members. Executive authority is vested in the Prime Minister and his Cabinet. The Prime Minister, elected by a majority vote of Parliament, selects his own Cabinet. Laws pertaining to work and employment are predominately passed in parliament and gets implemented and policed by the bureaucracy and judiciary. There are eight major laws which regulate all aspects of employment. They are:

- Unfair Dismissal Act, 1982
- Trade Disputes Act, 1981
- Trade Union Act, 1966
- Labour Act, 1982
The management of industrial relations seems to exist in a liberal environment where rights of employers and employees are guaranteed and acknowledged by the Constitution and stated laws. There are three main employer groupings: The Chinese Association, The Chamber of Commerce and The Federation of Employers. While 14 trade unions are affiliated to the Solomon Islands Council of Trade unions which cover almost all sectors of the economy. Major industrial confrontations are not common but during the civil crisis, several strikes over non payment of wages were staged by disgruntled public servants and private sector workers. When strikes do occur, they are quickly referred to the Trade Disputes Panel (TDP) for arbitration, either before or after the strike (Labour Officer, Interviewed, 5/12/05). Workers are protected from arbitrary dismissal or lockout while the TDP is deliberating. The TDP’s capacity to settle disputes is effective and decisions are bidding. The civil crisis has led to a lot of job losses and the few who are still in employment may find it a little luxury to exercise their industrial rights for improved work conditions in a country blanketed by massive unemployment. Consequence of the subdued industrial relations scene, there is a large scale abuse of worker rights by many employers in paying below minimum wage and little care in provision of liberal workplaces (Interview, Trade Unionist, 7/12/05).

Table 2: List of Ratifications of International Labour Conventions by Solomon Islands

<table>
<thead>
<tr>
<th>No.</th>
<th>Convention</th>
<th>Year Ratified</th>
</tr>
</thead>
<tbody>
<tr>
<td>C.8</td>
<td>Unemployment Indemnity (Shipwreck) Convention, 1920</td>
<td>1985</td>
</tr>
<tr>
<td>C.11</td>
<td>Right of Association (Agriculture) Convention, 1921</td>
<td>1985</td>
</tr>
<tr>
<td>C.12</td>
<td>Workmen’s Compensation (Agriculture) Convention, 1921</td>
<td>1985</td>
</tr>
<tr>
<td>C.14</td>
<td>Weekly Rest (Industry) Convention, 1921</td>
<td>1985</td>
</tr>
<tr>
<td>C.16</td>
<td>Medical Examination of Young Persons (Sea), 1921</td>
<td>1985</td>
</tr>
<tr>
<td>C.19</td>
<td>Equality of Treatment (Accident Compensation), 1925</td>
<td>1985</td>
</tr>
<tr>
<td>C.26</td>
<td>Minimum Wage-Fixing Machinery Convention, 1928</td>
<td>1985</td>
</tr>
<tr>
<td>C.29</td>
<td>Forced Labour Convention, 1930</td>
<td>1985</td>
</tr>
<tr>
<td>C.42</td>
<td>Workmen’s Compensation (Occupational Diseases) Convention (Revised), 1934</td>
<td>1985</td>
</tr>
<tr>
<td>C.45</td>
<td>Underground Work (Women) Convention, 1935</td>
<td>1985</td>
</tr>
<tr>
<td>C.81</td>
<td>Labour Inspection Convention, 1947</td>
<td>1985</td>
</tr>
<tr>
<td>C.94</td>
<td>LabourClauses (Public Contracts) Convention, 1949</td>
<td>1985</td>
</tr>
<tr>
<td>C.95</td>
<td>Protection of Wages Convention, 1949</td>
<td>1985</td>
</tr>
<tr>
<td>C.108</td>
<td>Seafarers’ Identity Documents Convention, 1958</td>
<td>1985</td>
</tr>
</tbody>
</table>


Solomon Islands became a member of the International Labour Organisation (ILO) in 1984. The following year it ratified 14 conventions including the Forced Labour Convention, 1930 (No. 29), one of the eight core ILO conventions. Table 2 shows the Conventions which have been ratified and in force. However, the country is yet to ratify many of the other ILO Conventions governing the conditions of work and workers.
Part Two

2.0 Review of Labour Laws

Part Two of the report provides review of the main legislations that regulate employment and work between employers and employees in Solomon Islands. There are eight such legislations, (as specified in Part One) that are reviewed. Brief overviews are provided in the outset of each piece of legislation before identifying the salient factors which have a significant bearing on employment relationship. The deficiencies in the current legislations and ordinances are also identified.

In Solomon Islands, there is little distinction between laws applicable to the public sector and those regulating the private sector. Only a handful of ordinances and policies regulate some pockets of the Public Service, in terms of remuneration, employment and discipline, however because of their unavailability, they were not reviewed.


The Employment Act 1981 (Revised Edition 1996) provides the up-to-date regulation of employment in regard to several main aspects of work. The 1996 Edition amongst others repealed sections on forced labour and written contract. It basically covers provisions pertaining to redundancy payments; pension benefits for long service and requires employers to provide written particulars of terms of employment; and insure against liability for injury or disease suffered by their employees.

The Act repeals Parts V (Recruitment of workers,) VI (Written contracts of employment) and VII (Forced labour) of the Labour Act 1982.

It is divided into five main parts with Part I providing preliminary remarks; Part II concentrates on redundancy payments; Part III lays out provisions for long service benefit; Part IV on contracts of employment and employers’ liability insurance; and Part V contains general provisions related to notice of redundancy, excluded employees and others.

The Employment Act provides the most comprehensive regulatory framework for undertaking proper redundancy exercises by employers. The 16 pages Act contains easy to understand provisions outlining the worker’s right and exclusion of right to redundancy payment. The definitions of redundancy, dismissals and formula for calculating payments, amongst others are clearly set out in the Act.

However, the Act is beset with several basic shortcomings and requires urgent attention to rectify them to reflect current work practices.
2. 2 Redundancy

The definition stated in Section 4:1a, b&2 on “because of redundancy” is too brief, assuming and leaves too much discretion to the employers to dismiss workers at will. The provisions read:

For the purpose of this Act (Section 4:1), when an employee is dismissed his dismissal is to be taken to be because of redundancy if it is attributable wholly or mainly to –

(a) the fact that his employer for the purposes of which the employee was employed by him; or
   (i) to carry on the business for the businesses of which the employee was employed by him; or
   (ii) to carry on that business in the place where the employee was so employed; or
(b) the fact the requirements of that business –
   (i) for employees to carry out work of particular kind; or
   (ii) for employees to carry out work of a particular kind in the place where he was so employed,

have ceased or diminished or are expected to cease or diminish.

The above provisions imply a lot of discretion to employers to use ‘struggling businesses as a reason to dismiss workers at will.

Solomon Islands had not acceded to Termination of Employment Convention (No. 158) and Recommendation (No. 166), 1982 and Termination of Employment Recommendation, 1963 (No. 119) which specify the redundancy age of 55.

2. 3 Dismissals

Similarly, the Employment Act (Section 5:1 & 2) provides only an outline of the ending of an employee’s employment mainly due to the expiry of various modes of contractual and fixed term contract employment. Most importantly, it is conspicuously silent on the grounds for termination of a contract or employment which is also evident in the Unfair Dismissal Act, 1982. These provisions attempt to largely justify a ‘fair’ dismissal effecting from the conclusion of ending of employment contracts through:

- termination of a contract, and
- expiry of a fixed contract.

Despite what would be the varying circumstances, these provisions demonstrate the heart of the process of a dismissal involving the application of some basic contract law and a little fairness.
2. 4 Notice of Termination of Employment

Section 5:3 prescribes the requirements for the date of an employee’s dismissal to take effect on which the notice expires and therefore takes effect. However, delivery of the notice of termination is sufficient to warrant a termination of employment has occurred.

- The Act emphasizes the intended date of the termination at the expense of other facets of the function of severing determination notice. For instance, the notice of termination only becomes effective when it is delivered to the contracting party to whom the notice of termination is to be given. One has to differentiate between dismissal of persons present and persons not present. The Employment Act makes no reference to the distinction towards a person present nor not present for acknowledgement purpose and presumes the termination of employment takes effect as soon as the particular date appears on the notice.

These provisions contradict the call for explicit instructions in communications to terminated employees prescribed in the relevant provisions of ILO Employment Policy (Convention (No. 122) and Recommendation (No. 122), 1964 and Employment Policy (Supplementary Provisions) Recommendation (No. 169), 1984.

2.5 Contract of Employment

Part IV of the Employment Act provides the conditions of contract of employment and employers’ liability insurance. It is usually understood that an employment relationship is a legal relationship between the individual employee and his employer. According to it the employee is first of all obliged to perform the work and the employer first of all to pay wages. These obligations are constituted by an employment contract between the employee and the employer.

The pronouncements accommodating these principles are embedded in Section 18 (1-7) of the Employment Act; however, there are several conspicuous omissions:

- Section 18:1 prescribes that it is the duty of every employer (a) to ensure that, in the case of each employee, the relevant particulars of the terms of his employment are recorded in writing.

This provision omits the allowance of oral contract which also carries the same weight as a written contract and therefore as a rule such an employment contract need not be concluded in writing. For a country whose bulk of the population is illiterate it is odd to demand every contract of employment to be written. Although, the written form is proper in order to avoid later differences of opinion with regard to the burden of proof. At least this relevant provision should be amended to also prescribe the issuance of an oral contract.
• The relevant particulars in the content of the document of the employment contract include most of the requirements as cited in Section 18:2. Yet, there is no reference to “place of work” (in case of changing places of work) in the provision nor is there a requirement for a brief description of work to be undertaken. The two particulars are acutely pertinent in any contract of employment as they not only describe but situate the job in terms of location and therefore require insertion in the provision.

• The provision does have the most favored-solution-clause 18:2:j “any other matter specified for the purposes of this subsection by the Minister by notice in the Gazette”. The Minister has to make possible the legal assertion of rights of employees arising from this directive. The Minister may, however, provide for this only after the employee has reminded the employer of his obligation without success. The directive does not include any provision regarding offences committed by the employer incurring fines. This means the employee can only sue for issuing the document.

2.6 Employers, Liability Insurance

Section 20:1-4 prescribes the accident insurance measures for employers to comply in ensuring workers are protected in undertaking duties whilst in employment situation. Three matters in the provisions warrant mention:

• First, is acknowledgement of the Minister’s discretion in exempting certain employers from liability for personal injury. According to Section 20:3

“The Minister may be by regulation provide- (a) that insurance under a policy of insurance which is subject to any conditions or exceptions prohibited by the regulations shall not constitute compliance with subsection (1)” – which makes it compulsory for every employer to insure and maintain insurance, against liability for bodily injury or disease.

Probably an arbitrary decision by the Minister to exempt other employers from insurance liability may bring discrepancy into the regulation of accident insurance. The purported discretionary powers of the Minister must be curtailed to allow a uniform regulation in the Employment Act.

• Second, Section 20:4 of the Employment Act is rather ambiguous and does appear to be lost in its meaning. It states “A person who, on any day, is required to be insured in accordance with this section and is not so insured shall be guilty of an offence and liable to a fine of $100”. The “person” it implies more appears to be the employee but does not ascertain who is responsible for his insurance; the employee or the employer. Similar ambiguities exist in the provisions under these clauses and require urgent attention in fine tuning to expose the real meaning.
• Third, although liability for personal injury is given prominence in Section 20, increasingly many workplaces are also regulated by two other employer insurance liability provisions enacted in employment legislations. They are the liability for damage to property and liability for violation of the personality right of employee by employer. The two liability provisions are worth considering in an update of the Employment Act. As liability for personal injury is just one aspect of the employer responsibility in ensuring an employee is entitled to damages for not only physical pain but also for violating his personal right and damages to third parties by him.

2.7 Notice of Redundancy

Section 21 (1-3) of Part V of the Employment Act stipulates the requirement for an employer to notify the Commissioner of Labour of the intention to dismiss an employee because of redundancy before or after the end of the period of 28 days. Although the acknowledgement by the Commissioner may be for administrative purpose to ensure the Act is properly implemented, it is really not necessary to inform the Commissioner unless the redundancy exercise confronts problems which would allow the intervention of the Commissioner for arbitration or otherwise. Unless necessary, which the provisions fail to state, the notification of the Commissioner is time consuming and employer should consult the employee to initiate the redundancy.

2.8 Unfair Dismissal Act, 1982

The Unfair Dismissal Act, 1982 is a brief piece of legislation (8 pages) stipulating the right not to be unfairly dismissed, redundancy payments, and some related matters. The Act has not been revised since its inception. It basically provides points of “right not to be unfairly dismissed” (Section 2); meaning of “dismiss” (Section 3); “fair” and “unfair” dismissal (Section 4); excluded cases (Section 5); complaint of unfair dismissal (Section 6) and amount of compensation (Section 7). While Sections 8-10 accommodates provisions related to redundancy payments and general matters.

The Act is basically straight forward and can be easily understood by any lay person. Although like the other Acts, the Unfair Dismissal Act, 1982 is not without weaknesses and omissions. There are several:

• Of the most obvious is the failure of the Act to provide the grounds for dismissal of contract. It is probably presumed by the Act (Sections 2-4) that dismissal is occurring because of “a substantial reason of a kind such as to justify the dismissal of an employee holding his position” (Section 4:1a) and “in all the circumstances, the employer acted reasonably in treating that reason as sufficient for dismissing the employee” (Section 4:1b).
The workers’ organizations interviewed overwhelmingly agreed that the omissions of plausible or possible reasons (such as serious misconduct and poor performance) work in favour of the employers to make use of the “implied” provisions to the “fullest” in dismissing workers. They suggested that the relevant provisions be amended to accommodate “grounds for dismissals” so that dismissal powers of the employers can be “minimized” to reflect what is stated in the Act. From their observations, employers are effectively utilizing the ambiguous provisions of Sections 2 and 3 more freely in dismissing workers.

It seems the reasons only become obvious when a dismissal case is brought by a complaint in the “trade dispute” (Section 6) against the employer.

- Section 3:c of the Act defines “dismiss” of an employee in the context of the employee dismissing his own employment “… by reason of the employer’s conduct, the employee is entitled to terminate it without notice”. Again the reason is too narrow and less generic as there are numerous reasons for employees to leave employment on their own accord and so singling out “employer’s conduct” is inconclusive.

- The justification of the meaning of “fair” and “unfair” in the provisions are too vague and too short and requires an enlightened extension to provide unfair dismissal standards in the Unfair Dismissal jurisdictions.

- Determination of compensation resulting from unfair dismissal in the complainant’s case, represents 52 x basic weekly wage of the complainant on the date of his dismissal (Section 7:2). There is provision for either party to appeal the decision to “a court” if it is unfavorable to one’s liking. The clause (Section 7.3) has to be exact to which court it recommends as any court would not be suited to such a case.

2.9 Prohibition of Forced or Bonded Labour

The fundamental convention on Worst Forms of Child Labour Convention, 1999 (No. 182) defines as a “child” a person under 18 years of age. The Convention urges countries to eliminate the worst forms of child labour, including all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and servitude and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; child prostitution and pornography; using children for illicit activities, in particular for the production and trafficking of drugs; and work which is likely to harm the health, safety or morals of children.

In Solomon Islands there is no evidence of forced labour. The Constitution under Section 6:1 &2 guarantees protection from slavery and forced labour. People getting employment do so through formal channels. Although there seem to be no form of forced or bonded labour existing in the Solomon Islands, only during the civil crisis between 1999-2003 there were allegations of children being recruited into the two main armed faction. The
Government of Solomon Islands has not yet ratified ILO Convention 182 on the worst forms of child labour. There are no regulations defining the worst forms of child labour. Therefore, there is an absence of a comprehensive policy for the elimination of such abuses.

2. 10 Trade Disputes Act, 1981

The Trade Disputes Act 1981 establishes the framework for the settlement of industrial disputes by a five member panel headed by a Chairman. The Act allows the making of binding awards where negotiations at workplaces fail and restricts industrial action while the panel considers the dispute. It also provides for the enforcement of awards and collective agreements and for the recovery of the expenses of providing the panel.

The Act repealed the Trade Disputes Act, 1976.

2.11 Industrial Dispute Settlement

The Trade Disputes Act, 1981 provides for the rights to organize and to bargain collectively and unions exercise these rights. Several weaknesses exist in the Act.

- The appointment of members to the TDP for two years is too brief (Section 2:5: a) as a member would require sufficient time to accumulate knowledge and expertise on such a significant position.

- Although the five member composition of the Panel including the Chairman is obvious for trade dispute settlement process, Section 3:1 calls for a three member Panel comprising two members appointed separately after consultation. This confusion is the lack of identification of the two appointed member’s origin of representation; employers or union. There seem to be, however, tacit understanding that each will represent one of the two parties.

The three member Panel deliberates disputes referred to them (Section 4) and initially attempt to facilitate conciliation as the process for dispute settlement. However, if the Panel reckons the dispute can not be settled through conciliation, they refer it for the case to be arbitrated. The handing down of the decision becomes an award and therefore bidding on employer and employees.

What is not clear in these provisions is the difference between the Panel initiated in the outset (with three members) to assess the initial dispute registered and the actual Panel which conciliates and arbitrates on the case. The member composition of the latter is not clear, however, it is implied the same three members sit through the case. This seems to be the case so the question is, what is the role of the remaining two members of the full five member Panel established by the Minister?
2.12 Trade Union Act, 1966

The Trade Union Act, 1966 is one of the few detailed and comprehensive pieces of legislation regulating the registration, operation and miscellaneous aspects pertaining to the existence of trade unions as industrial organizations. It has not been revised since enacted. Detailed in 39 pages, the Act has 11 topics:

- Part I. Preliminary
- Part II. Appointment of registration
- Part III. Registration
- Part IV. Rights and liabilities
- Part V. Constitution and rules
- Part VI. Amalgamation and dissolution
- Part VII. Application of funds
- Part VIII. Picketing and intimidation and other matters relating to disputes
- Part IX. Regulations
- Part X. Offences and penalties
- Part XI. Miscellaneous

The topics are wide ranging and accommodate essential provisions which give legal recognition to registered organizations and protect them from common law actions for restraint of trade. The provisions demanding accountability and prudent management of trade union records are there to encourage the democratic running of the organizations. This Act provides almost all safeguards required by trade unions to exist and function within the specified framework.

2.13 Right to Organize and Bargain

The rights of the workers to organize and to bargain collectively are implicitly enshrined in the Constitution (Section 13) and more so in the Trade Unions Act. Issues pertaining to working conditions are determined by collective bargaining. Disputes not resolved are referred to the TDP for arbitration. The three-member TDP, composes of a chairman appointed by the judiciary, a labour representative, and a business representative, independent and neutral.

Section 2:1 provides more than six persons as requirement for the registration of a trade union for the purpose of representing members’ interest. Likewise, Section 2:b prescribes more than six employers to form an organization for the purpose of representing their members’ in dealing with trade unions as the need arises. This Act (Section 2:2) does not apply to persons in the disciplined force which include: naval, military or air force; the fire service; the prisons service; the marine division; the police force; or any other special constabulary. The same goes for workers employed by the Crown (Section 3).

As far as registration of trade unions is concerned, there are a number of provisions that appear not to be in conformity with the principles of freedom of association:
• Section 7:4 – The Registrar may, if he thinks fit, from time to time grant an extension of the period specified in subsections 1 & 2 respectively for any further period or periods not exceeding six months in aggregate;

• Section 11 – The Registrar may call for further information for the purpose of satisfying himself that any application made by a trade union or proposed trade union for registration complies with the provisions of this Act or that the trade union or proposed trade union is entitled to registration under this Act;

• Section 13:1 – The Registrar may, in his discretion, refuse to register any trade union if he is satisfied that – mentions several (eight) administrative requirements unions must meet, one of them keeping proper financial records.

The above provisions imply huge discretion for the Registrar to exercise in approving and disapproving the registration of trade unions.

• Equality and non-discrimination are among the most important principles accommodated in Chapter 2 of the Solomon Islands Constitution. Non-nationals are equal before the law without regard to their origin, social status, nationality, sex, education, language, religion or political opinion. However, certain rights, including the right to join trade unions are denied to non-Solomon Islanders as per Sections 28 & 2 of the Act.

The presumption is based on expatriates’ capacity to earn high and therefore be on contract. Yet, in many cases in the Solomon Islands many of the expatriates are fellow Pacific Islanders who are not paid matching the stereotypical Western expatriate, despite being outsiders.

This is the only section with provisions relating to expatriates’ exclusion of trade union activities. As they are seen as an exclusive group with envious privileges and therefore not part of the national workforce, rest of the labour laws do not acknowledge them except implicitly viewing them as employers.

The Sections 28 & 2 of the Act conflicts with the principles of equality and non-discrimination enshrined in the ILO Conventions which underpin universal trade union rights of workers. They are:

• International Convention on Civil and Political Rights;
• ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87);
• ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98); or
• ILO Labour Relations (Public Service) Convention 1978 (No. 151).
2.14 Trade Union Activity

The Government of Solomon Islands seems to encourage the development of responsible unionism in the country. There are no restrictions on national unions joining international organizations. Members of the disciplined forces are not permitted, even under the Trade Unions Act to establish unions. The Police Act, 1972 (Section 15) and the Prison Act, 1972 (Section 14) provide for the establishment of one or more associations to look after the welfare of their members. The associations are entirely independent of and unassociated with any other trade unions or persons. They are not genuine trade unions and therefore not permitted to take industrial action.

There are eight trade unions in Solomon Islands and they are all affiliated to the Solomon Islands Trade Union Congress of Trade Unions. Only the Solomon Islands Medical Association is independent from the peak union body. The rest are Solomon Islands National Union of Workers (SINUW), Solomon Islands National Teachers’ Association, Paramedical Association, National Lecturers’ Association, High Education National Staff Association, Solomon Islands Public Employees Association and Solomon Islands Medical Association. The Police Association and Prison Association have observer status.

In 1999 the total membership of the SINUW was 15,000 of whom 4,000 (26 per cent) were female. The combined membership for all public sector unions in 2000 was approximately 3,000 (UN Economic and Social Council, 2001:16).

2.15 Labour Act, 1982

The right to just and favourable conditions of work is provided for under the Labour Act, 1982. The Labour Act establishes provisions for minimum wage, hours of work and weekly rest, protection of children, maternity leave, holidays, sick leave and passage leave and care of workers, housing and medical treatment. It is a comprehensive legislation and rather solid in its regulation, however, as the analysis demonstrates there are issues in interpretation and compliance as per each of the main aspects of the legislation.

2.16 Minimum Wage

Minimum wage had been in the Solomon since British Occupation. Although most of the provisions of the ILO Minimum Wage Fixing Convention, 1970 (No. 131:6) are found in the Labour Act, 1982, the country is yet to accede to the Convention. The Minister for responsible for Labour is empowered under the Labour Act, 1982 (Section 30:1-2) to determine the minimum wage for workers, in any occupation, class or grade of occupation. This Section means the Minister may award the minimum wage to some categories of workers but not to others. The Minimum Wage Order, 1996 of the Labour Act prescribes the minimum wage for workers. Workers employed in rural areas in industries such as mines, plantations and logging/forestry are excluded from the legal minimum wage. Urban workers such as domestic servants and shopkeepers also fall
outside the legal minimum wage. This also include casual workers, apprentices regardless of their location remain outside the legal minimum wage system.

The current minimum wage rate is $1.50 (Solomon Island dollars) per hour for all workers except those in fishing and agricultural sectors, who receive 1.25. The legal minimum wage does not seem to support an urban family to live decently however most family supplement their income through other means such as market gardening.

Parts III and IV of the Labour Act, 1981 provide a detailed outline of provisions relating to the determination, implementation and penalties associated with minimum wage in the Solomon Islands. The concept of minimum wage is defined as “the minimum rate of wages fixed … in respect of the particular occupation followed by the person concerned and applicable to that person” (Section 29).

The responsibility for fixation of minimum wage for a particular industry, place of work or any occupation rests with the Minister after consultation with the respective employer and trade union organizations (Section 30). The provisions cater for penalty for not paying wages in accordance with the minimum rate, allowance for legal proceedings and prevention of evasion. However, minimum wages determined in respect of collective bargaining in certain workplaces are also respected as long as they have a written permit of the Commissioner (Section 36:2).

There are also exceptions to minimum wage where infirm or disabled persons are paid the fraction less of the minimum. In such circumstances, the Commissioner of Labour issues a permit of exemption and specifies the minimum wage (Section 36.1) after consulting the employer and worker representatives.

The provisions seem to be adequate, although there are issues concerning the administration side of the minimum wage regime. These include:

- There is no mechanism in the Labour Act which provide for monitoring employer compliance with legal minimum wage in the country;

- The Minimum Wage Board (MWB) takes into account the basic commodities thought important for the workers and their families when considering the minimum wage. However, in practice the most important factor influencing the fixation of minimum wage is capacity of employers to pay the suggested minimum wage;

- The Minister for DCEL fixes the minimum wage on the advice of the MWB. There is no system in place to monitor and ensure that employers pay their workers the minimum wage. Any adjustment of the minimum wage is dependent on the Department of Commerce, Employment and Labour;
The meager resources in the Labour Division of the DCEL does not allow for the adequate policing of the minimum wage applications in the country. Although some trade unions have the capacity to monitor their employers, those workplaces which are not unionized are powerless when an employer breaches the Act and pay wages below the minimum.

In most cases, the suggested minimum wage in the MWB sittings are abandoned in favour of a much reduced wage which in reality is not reasonable to the workers.

The implication is that the review of minimum wage is irregular as the power to initiate a proceeding rests with the DCEL.

### 2.17 Hours of Work and Weekly Rest

The standard work week is 45 hours and is limited to six days per week allowed under Section 13 of the Labour Act, 1981. A normal work day comprises of nine hours and the total number of hours of work (including overtime) may be exceeded 57 hours in one week with the consent of the Commissioner of Labour. This may occur if additional time does not exceed 57 hours in any one week or 228 hours in any calendar month. It is not compulsory for any worker to work over the weekend unless specified in their contract. However, those workers in Essential Services Act (nursing, etc) are excluded. Workers’ get at least 30 minutes’ break for the lunch meal.

A worker working overtime is entitled to additional remuneration. The overtime rates are 1.5 times the regular hourly rate for Saturdays and Sundays and two times the regular hourly rates for gazetted public holidays.

There are several inconsistencies in the Labour Act which pertain to hours of work and weekly rest as far as compliance with the relevant ILO Conventions is concerned. Solomon Islands had ratified only the Weekly Rest (Industry) Convention, 1921 (No. 14) and the Labour Inspection Convention, 1947 (No. 81) in August 1985. But it is yet to ratify Weekly Rest (Commerce and Offices) Convention amongst others. As per the inconsistencies:

- The working hour week of 45 hours is high as it contravenes the ILO Reduction of Hours of Work Recommendation, 1962 (No. 116) and Forty-Hour Week Convention, 1935 (No. 47), both establish the principle of the 40-workweek;

- The 30 minutes break is too short for lunch for most workers; and

- The overtime rates of 1.5 times the regular hourly rates for the weekend is low and does not meet ILO standard on overtime.

### 2.18 Protection of Children
The status of Child Labour Practices and Minimum Age for Employment are provided for under the Part VII Section 45-52 of the Labour Act, 1981. The children under the age of 12 are forbidden in employment except for light or domestic work performed in the company of parents (Section 46). Similarly, those under the age of 15 are also forbidden in employment in industry or on ships and the same goes for persons under the age of 16 in underground mines (Sections 47 & 48). Those under the age of 18 may also not work underground or in mines (Section 49).

There are provisions for dealing with an offence committed contravening the law on Child Labour Practices and Minimum Age for Employment. The current provisions in the Labour Act on minimum age meet the ILO Minimum Age Convention, 1973 (No. 138) but slightly vary on one account. The ILO convention sets the general minimum age for admission to employment or work at 15 (13 for light work), while the Labour Act allow children under the age of 12 in employment except for light or domestic work performed in the company of parents.

- What exists as limitation is the likelihood of abuse of this Section allowing employment of children at the age of 12 in certain light industry by other places of work, such as the commercial sector.

- However, the Government has not yet ratified ILO Convention 182 on the worst forms of child labour. There is an absence of a comprehensive policy for the elimination of such abuses. There are no regulations defining the worst forms of child labour.

While the low minimum wage coupled with high unemployment provides little incentive to employ child labour in Solomon Islands. Further, the country had acceded to the Convention on the Rights of the Child in 1995; it is not a party to other Conventions such as International Convention on Civil and Political Rights.

### 2.19 Maternity Leave

The maternity provisions in the Labour Act, 1981 seem to be well respected in both public sector and private sector in the country. They are quite generous to the female worker than those found in PNG. A female worker upon producing of a medical certificate proving the details of her anticipated date of her confinement is entitled to 12 weeks’ leave from her employer (Section 42:1). Six weeks compulsory leave after confinement is also respected in which the employer is barred from displacing her employment in the period of absence.

There is allowance for any additional leave required as necessary following the 12 weeks of maternity leave. If this occurs the extended time gets compensated for a deduction in the annual leave or sick leave entitlement of the worker. However, before such an extension of time is given, the duration has to be confirmed by a medical practitioner.
The maternity leave is paid for by the employer at a rate of not less than 25 per cent of the wages the employee would have earned had she not been absent from work and for any period of additional annual or sick leave at the full rate to which she is entitled during such leave (Section 42:3).

There are also other benefits for female workers such as making choices in choosing medical services, taking two hours a day from working time off to attend to child and restriction on dismissal whilst on maternity leave.

The practice complies with the ILO’s Maternity Protection Convention (Revised), 1952 (No. 103).

2.20 Holidays, Sick Leave and Passages Rules (Section 80)

The Holidays, Sick Leave and Passages Rules (Section 80) of the Labour Act, 1982 prescribe the conditions under which holidays and sick leave are administrated and granted to workers. These Rules are particularly for Solomon Islanders and does not apply to immigrant workers. The Rules have the effect of being included in the contract of employment of each worker (Section 2) and also have effect of four provisions:

- Section 4:1 – Each worker is entitled to be given by his employer a holiday at the rate of not less than 1.25 working days for each complete calendar month of employment in an undertaking. Each worker is to be paid in respect of such holidays at his normal rate;

- Section 5:1 – A worker taking a paid holiday shall be entitled once in each calendar year to be paid by his employer the cost of return journeys made between the place of employment and the worker’s home by the worker, his wife and a maximum of 4 dependent children under the age of 18 years. The employer shall decide the route and method of travel;

- Section 6: - Where a worker taking a paid holiday travels to his home he shall be entitled to additional holiday without pay for a period equal to the number of days necessarily spent traveling to and from his home by the route and method of travel paid for by the employer;

- Section 7:1- Subject to paragraph (2) of this rule, a worker who – (a) has been continuously employed in an undertaking for a minimum of 26 weeks; and (b) is absent from work because of sicknesses shall be entitled to be paid by his employer during such absence from work for such period or periods not being more than 22 working days in any calendar year as may be certified to be necessary by a medical practitioner. Section 7:2 –

This rule shall not apply to absence from work caused by person injury to the workman by accident arising out of and in the course of his employment or in any other circumstances in which the employer is liable
to pay compensation to the workman under the Workmen’s Compensation Act.

The above sections adequately prescribe the rules which regulate the worker’s entitlements as per holidays, sick leave and passage. However, refinements are required in the provisions to be compatible with ILO standards (see Recommendations Section, Part Three).

2.21 Care of Workers, Housing and Medical Treatment

Under the Labour Act, an employer is allowed to accommodate the worker and his dependents if he is unable to return home. If no housing is provided a housing allowance should be provided. The employer may charge rent for the housing provided but the rate must not exceed the rate approved by the Commissioner of Labour (Section, 70).

Section 69 of Act prescribes employers to provide medical treatment, first-aid equipment, and appliances to transport sick or injured workers. Depending on circumstances, Section 71 of the Act require an employer to maintain at his/her own expense a hospital to serve workers. Where such a requirement is made, the employer must maintain a properly equipped sickroom and a separate building properly equipped as a hospital. Each facility must have accommodation for not less than 10 per cent of workers.

However, the issue with these provisions is the inspection aspects as rarely officers from the Labour Division have mobility in inspecting workplaces. They seem to maintain a reactive approach to address issues pertaining to general labour issues on the basis of complaints form workers.

2.22 Safety at Work Act, 1982

The Safety at Work Act, 1982 is one of the comprehensive pieces of legislations pertaining to conditions of work and it regulates workplaces to be safe for workers to undertake work. This Act is designed to provide for the health, safety and welfare of persons at work and to protect persons against risks to health or safety arising out of or in connection with the activities of persons at work. Provisions relating to the safety and health of workers are found in sections 4, 8, 9, 16 and 17 to 22. The law covers all workers.

It imposes specific requirements in respect of certain articles and substances that are a potential source of danger. The Act also makes minor amendments of the Labour Act and the Workmen’s Compensation Act. It is divided into four parts, each comprising of several topics and covers:

- definitions of “employer”, “employee” and “workplace”;
- codification of existing duties of employers and others;
- extension of existing duties;
- consequences of breach of duty;
• specific duties pertaining to:
  o pressure and vacuum systems;
  o machinery;
  o electrical installations;
  o fire and explosion;
  o miscellaneous;
  o penalties;
• codes of practice and regulations;
• administration;
• fees;
• interpretation; and
• miscellaneous.

The Act is simply a piece which ensures the compliance of basic safety standards at work and does not seem to be too wide ranging to accommodate the various ILO Codes of Practices on Safety, Health and Welfare. Although it is sound for the country like Solomon Islands, the prescriptions specified in the Act are too basic and generic. Like the PNG legislation, it relies heavily on enforcement through inspection on the expense of promoting collaborative action at workplaces. There are also other deficiencies in the Act:

• The Act’s use of “reasonably practicable” in Sections 4 and 5 is too vague and generic. The phrase applies to employers, self-employed and employees to make it their duty to provide a safe working environment and be safety conscious always in carrying out their duties. The prescription of the duties in the form of conducting business in a “reasonably practicable” way is nothing short of giving the liberty to them to operate their business as they like. The phrase is also used extensively in the Act.

What requires in the Act is the prescription of the specific duties of each person in order to limit the existing ambiguity in shouldering responsibilities.

• Sections 8 and 9 of the Act on duty of manufacturers and suppliers to have the duty to ensure the safe use approve its contents and also ensure adequate information is available about the chemicals and other substances they furnish to workplaces.

This provision is also too generic and loose for any impact on the agents of chemicals and substances as most of these things are readily available in shops and other outlets.

• The Safety at Work Act, 1982 is inadequate as it does not cover all areas of economic activity. For example, there is a mine in operation and the country relies on logging as its main revenue earner and the current Act does not contain specific references regulating these two workplaces.

• Other than the legislative detail there are no operating standards for staff involved in the administering safety and health legislation. It leaves the
health and safety inspector of the Labour Division in a no win situation when dealing with general provisions, as it would lead to inconsistent application of legislative provisions and inconsistent performance standards.

- There is a lack of comprehensive policy on OHS in promoting voluntary action at workplaces.

Solomon Islands is yet to accede to the major ILO Conventions, including the Occupational Safety and Health Convention, 1981 (No. 155).

2.23 Workmen’s Compensation Act, 1982

The Workmen’s Compensation Act, 1982 make provisions for compensation to workmen injured at work. It also covers occupational diseases and it is required by the Act for employers to insure workers’ for accidental liability. The Act prescribes the amount of compensation payable in the event of death, permanent total incapacity and temporary incapacity. Four years is taken into consideration as compensation for cases of total incapacity. The amount may vary from time to time as per the Minister’s ruling. In situations where the injured worker needs every day care from another person, additional compensation amount to one quarter of the principal compensation will be paid.

The Act also lays out specified compensation to be paid to survivors, in the case of death resulting from injury, of the sole bread winner. Whole or partial compensation to the equivalent of 36 months’ earnings are stated in the Act. Where there are no dependants, the employer is responsible for death and funeral expenses of the worker. In all cases, the Minister lays down the amount and should not exceed what is set and recommended. Above all, the Workmen’s Compensation Act provides compensation for both male and female workers regardless of proof of negligence on the part of a third party.

The Workmen’s Compensation Act is not without deficiencies. There are several:

- Section 2: a & b clauses of the Act make reference to the … “earnings exceed such sum as the Minister may by Order prescribe”, or “any class of persons whom the Minister may by Order declare not to be workmen for the purposes of this Act”.

These clauses attempt to isolate the manual worker from others in definition and in the process generate confusion as in many circumstances the Ministers responsible for Labour in the past have not prescribed particular amounts as not qualifying to claim compensation nor identification of class of jobs not fitting the manual worker.

- Section 27 allows anyone to lodge a civil claim but also states that the damages claim should take into consideration of compensation already paid under the Act. It seems a commons law claim will obstruct the
lodging of a further statutory claim. If an employer is not responsible for the case brought up against him outside the Act as proven in the proceedings, the court is expressly empowered to determine whether he is liable to pay compensation and if so for what amount. The price of proceedings outside the Act is the incurring of extra costs which can be taken out from the compensation (Care, 1995:2).

Although Section 27 is plausible and technically practical, it creates a duplication of common law and statute law claim allowance for the same case. What creates is discrepancy and confusion amongst claim lodgers as to what avenue they should take refuge in their claim.

- The various provisions in the Act that stipulate the amount ascribed to injury, permanent total incapacity and death are too meager. They do not seem to adequately reflect the magnitude of circumstances of the victim or the pain and suffering endured. Various amounts cater for various types of injuries however for death is established as $60,000.

The compensation figure seems to be modest and does not reflect the varying costs of living and customary values attached to compensation.

2.24 National Provident Fund Act, 1976

The National Provident Fund (NPF) Act, 1976 regulates the compulsory superannuation contribution scheme for all workers (irrespective of nationality) who contribute to the Fund. It is designed to make provision for age, invalidity and death. Every employer must make monthly contributions equal to 7.5 per cent of each employee’s wage to this fund. The employee contributes the other five per cent. These responsibilities are required under Sections 27 and 50 of the NPF Act.

Any member of NPF at the age of 40 may withdraw contributions once proving his retirement. All contributions can be withdrawn at the age of 50 regardless of one is full employment or not. An employee is medically uncertified to work may withdraw his contributions.

There is also requirement in the NPF Act for employees to contribute $5.00 a year to the Special Death Benefit Fund. The maximum payout is $2,500 upon one’s death and the balance is shared amongst the deceased’s dependents.

Although the NPF Act is adequate and sound, there is one obvious weakness:

- Foreigners are exempted from contributing to the NPF. Section 27 of the Act may also exempt a worker if a worker is on a contract entered into outside the country and employed by a firm whose headquarters is outside the country. There are also exempt an employee who is contributing to a social security scheme in another country. Or an employee will have
access to comparable benefits under a scheme associated with his employment and he is not a resident of Solomon Islands.
Part Three

3.0 Recommendations

The set of recommendations suggested in this Section ensure each of the labour laws relevance to the international labour standards established by the ILO.


The following recommendations are imperative to rectify the deficiencies in the current Employment Act, which touch on several essential aspects of the regulation of employment relationship.

3.2 Redundancy

- It is recommended that the definition on redundancy under Section 4:1a & 2 of the Act, require amending to reduce awarding of discretion to employers. The phrase “because of redundancy” in the Section implies too much discretion to the employers to dismiss employees at will. The several clauses in the Section do not mention of the “job” or “task” becoming redundant but generally perceive of a ‘struggling economic environment’ in which a firm would be terminating employees on the basis of unhealthy business.

The definition is too generic and presumes that an employee becomes redundant because of the diminishing nature of the job or eventual disappearance of it. Particularly, the point of an employee’s work being “diminished” or expected to “diminish” is so vague which can be exercised by unscrupulous employers to terminate undeserving employees.

The provisions needed to be amended to make the redundancy more certain where an employee is terminated as a result of the employer no longer requires the job being done by the employee to be done by anyone. The work itself might be reallocated to various other employees but the job as such disappears. A redundant employee cannot be replaced by another employee as by definition the job has ceased to exist.

3.3 Dismissals

- It is recommended that Sections 5:1 & 2 of the Employment Act be amended to include the most common grounds of dismissal (incompetence, insubordination, etc) to allow an orderly dismissal to proceed. Although it is legal to provide reasons of dismissal after wards, it is beneficial to both parties to minimize any possibility of dismissal proceedings if reasons for dismissal are adequately explained to the employee in advance.
The current provisions state that an employee getting dismissed under expiry of various modes of contractual and fixed term contract employment. The grounds for termination of employment are largely ignored which is also obvious in the Unfair Dismissal Act, 1992. These provisions imply a straightforward case in employers dismissing employees, which is sometimes not the case.

- It is recommended that the Employment Act be amended to accommodate the employee’s exercise of right to terminate his employment with the employer. A termination of contract of service sometimes can be mutually agreed by employer and employee; the relevant provisions in the Employment Act make no mention of this alternative nor do they prescribe for an employee to exercise his right to terminate his employment with the employer.

- It is recommended that Section 7.1 be amended to include payment of pay to the employee a sum equal to the amount of salary that would have accrued during the period of the notice. What it does, however, cites is the payments to be made to an employee as a result of redundancy.

3.4 Notice of Termination of Employment

- It is recommended that Section 5:3 of the Employment Act be amended to differentiate between dismissal of persons present and persons not present. The Act makes no reference to the distinction towards a person present nor not present for acknowledgement purpose and presumes the termination of employment takes effect as soon as the particular date appears on the notice prescribes the requirements for the date of an employee’s dismissal to take effect on which the notice expires and therefore takes effect.

The clauses rely too much on the delivery of the notice of termination taking effect once an employee physically acknowledges it. However, on the same token, there is no clause in the Section stating the notice of termination of employment taking effect on a person not present to receive the notice.

These provisions regulate the heart of the process of dismissal of employment relationship and therefore need to consider notice of termination of employment for both situations; present and not present.

3.5 Contract of Employment

There several omissions obvious in the pronouncements of Section 18:1-7 stating the Contract of Employment in the Employment Act.

- It is recommended that Sections 18:1-7 accommodate a clause to acknowledge “oral contracts” as also modes of employment contract. The current Sections prescribe terms and conditions of employment to be
stated in writing, however, not all employment situations warrant written employment contracts. This provision should be amended to cater for unwritten contract as well.

In a country, such as the Solomon Islands, the near majority of the population is illiterate and therefore there should be numerous cases of “oral contracts” regulating employment practices in existence. It is imperative for this mode of contract to be acknowledged and have equal legal standing to the written contract in the Employment Act.

- It is recommended that Section 18:2 of the Employment Act include “place of work” as one of the requirements of the employment contract. There are instances where some jobs require multiple “place(s) of work” and therefore the Act should recognize this mobility of work engagement.

- It is recommended that Section 18:2:j should be amended to include the most favored-solution-clause “any other matter specified for the purposes of this subsection by the Minister by notice in the Gazette”.

The Minister has to make possible the legal assertion of rights of employees arising from this directive. The Minister may, however, provide for this only after the employee has reminded the employer of his obligation without success. The directive does not include any provision regarding offences committed by the employer incurring fines. This means the employee can only sue for issuing the document.

An insertion of this clause is warranted to make the Minister expressly empowered to enforce rights of employees which may be deliberately overlooked by some employers.

3.6 Employers, Liability Insurance

The employers have collateral duties conventionally designated with the term “liability for personal injury” involving an employee regardless of any fault on his part. This obligation is enshrined in the Employment Act (Section 20:1-4). There are at least three anomalies spotted associated with the operation of this Section which all require attention.

- It is recommended that Section 20:3 (a) be amended to remove the huge discretion of the Minister to exempt certain employers from liability for personal injury or disease.

The criteria for exemption to certain employers and not others are not stated and this may allow the Minister liberty to abuse this discretion. In order to bring credibility to this Section, it is recommended that a criteria or “test” to select certain employers for exemption be inserted to cease the use of discretion by the Minister.
• It is recommended that the ambiguity in Section 20:4 be eliminated in stating the application of the provision to be more apparent in its reference. The ambiguous clause allows “A person who, on any day, is required to be insured in accordance with this section and is not so insured shall be guilty of an offence and liable to a fine of $100”. The “person” it implies more appears to be the employee but does not ascertain who is responsible for his insurance; the employee or the employer.

Similar ambiguities exist in the provisions under these clauses and require attention in fine tuning to expose the real meaning.

• It is recommended that the Employment Act also accommodate the liability for damage to property and liability for violation of the personality right of employee by employer. They are currently not available in the Act.

These two, including the liability for personal injury, make complete the employer liability aspects of an employee in any employment legislation.

Therefore, the legislation ought to be reviewed further to insert relevant liability clauses reflecting the two areas of damage to property and violation of personality rights of an employee whilst in employment relationship situation.

3.7 Notice of Redundancy

• It is recommended that Part V of the Employment Act require a critical review to eliminate what appear to be some unnecessary clauses. They serve little purpose but require compliance from employers which are not really necessary and time consuming. For instance, Section 21:1-3 of the Act require an employer to notify the Commissioner of Labour of the intention to dismiss an employee because of redundancy before or after the end of the period of 28 days. Although the acknowledgement by the Commissioner may be for administrative purpose to ensure the Act is properly implemented, it is really not necessary to inform the Commissioner unless the redundancy exercise confronts problems which would allow the intervention of the Commissioner for arbitration or otherwise.

Unless necessary, which the provisions fail to state, the notification of the Commissioner is time consuming and employer should consult the employee to initiate the redundancy. This provision and similar clauses in the notice of redundancy of the Act need to be refined to set clear instructions for effective compliance by employers in notifying employees promptly.
3.8 Unfair Dismissal Act, 1982

It is recommended that the following changes should occur in the Unfair Dismissal Act, 1982 and also in the Employment Act.

- The insertion of grounds for dismissal should be done in the Unfair Dismissal Act, 1982. It is probably presumed by the Act (Sections 2-4) that dismissal is occurring because of “a substantial reason of a kind such as to justify the dismissal of an employee holding his position” (Section 4:1a) and “in all the circumstances, the employer acted reasonably in treating that reason as sufficient for dismissing the employee” (Section 4:1b).

The statement of dismissal on the basis of plausible or possible reasons such as serious misconduct and poor performance should be stated to justify the dismissal of an employee. The absence of such grounds favour employers to make use of the managerial prerogative in dismissal of workers at will is embedded with the ambiguous provisions of Sections 2 & 3.

However, the purported reasons of dismissals only become apparent when a disgruntled employee brings his complaint in the “trade dispute” (Section 6) against the employer. In most cases, an employee would know the reason(s) for his dismissal however the possible reasons should match those stated in the Unfair Dismissal Act, 1982.

- Section 3 of the Act should be amended to make an employee leaving employment on his own accord for a variety of reasons than being implied as done because of “employer’s conduct” (Clause a).

- There are many possible reasons employees leave employment on their own accord and the provisions should reflect that rather singling out “employer’s conduct” as conclusive. Such provisions should also include “on any other ground on which he would be entitled to terminate the contract without notice at common law”, to be conclusive of all possible reasons.

- The definition of “fair” and “unfair” dismissals in the outset of the Act should be revisited to give a more direct meaning as the current application is too vague and too short for crucial terminologies on employment relationship.

- There is no name of the court in Section 7:3 & 2 of the Act which is going to determinate compensation resulting from unfair dismissal cases. Usually, National Courts (or the second highest court) in many Pacific Island Countries sit through such unfair dismissal cases. The name of the court should be stated to be exact for effective application of procedural process in gain redress of unfair dismissals.
3.9 Trade Disputes Act, 1981

Two recommendations pertain to industrial dispute settlement

- It is recommended that members appointed to the TDP should serve for a five year period as required period of two years under Section 2:5a is too brief. The Act should be amended to allow for a five year interval for a Panel to serve and a possibility of extension on the basis of performance for each member.

The five year period would allow panel members sufficient time to accumulate knowledge and expertise to deliberate on employment disputes with confidence and authority.

- the term ends; or
- the person attains the age of 60; or
- the person dies, resigns, or is removed from office in accordance with the Act, whichever happens first.

It should be further provided that a member is eligible for re-appointment at the end of his or her term of office and that no person shall be appointed for a term which will end after the person has attained the age 60. (Note: public servant retirement age is 55 in Solomon Islands however with current workplace practices elsewhere for example in PNG it should be extended to 60.

- Section 3:1 of the Act should be refined to reduce current confusion it creates for an appointment of a three member Panel for trade dispute settlement process. While in the outset of the Act it prescribes a five member composition of the Panel including the Chairman. This confusion is the lack of identification of the two appointed member’s origin of representation; employers or union. There seem to be however tacit understanding that each will represent one of the two parties.

What is not clear in these provisions is the difference between the Panel initiated in the outset (with three members) to assess the initial dispute registered and the actual Panel which conciliates and arbitrates on the case. The member composition of the latter is not clear however it is implied the same three members sit through the case. This seems to be the case so the question is what is the role of the remaining two members of the full five member Panel established by the Minister. These discrepancies in the composition of the membership require review to differentiate the “mini” Panel from the “full” Panel if that is what implied in the provisions. If the same three members Panel sit through out the initial registration of the dispute through the conclusion, a line has to be inserted to explain the role of the other two members of the Panel five membership.
3.10 Trade Union Membership (Trade Union Act, 1966)

The following recommendations are suggested for the Trade Union Act, 1966.

- Sections 7.4 and 11 do not seem to confirm to the principles of association as outlined in the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87). Sections 7:4, 11 and 13.1 imply huge discretion for the Registrar to exercise in approving and disapproving the registration of trade unions. The refusal to registration for not meeting any one or more of the requirements identified under Section 13:1 are obvious, however, the use of discretion as per se should be amended in the provisions to only make decisions on the basis of criteria set out in the Act.

- The outright refusal to allow non-Solomon Islanders to join trade unions as per Section 2 and 28 of the Act is in complete contradiction to Chapter 2 of the Solomon Islands Constitution, which states everyone, including non-nationals are equal before the law without regard to their origin, social status, nationality, sex, education, language, religion or political opinion. It is also discriminatory in line with ILO Conventions which underpin universal trade union rights of workers. Therefore, the relevant provisions should be amended to make trade union membership applicable to all workers, particularly workers from other South Pacific Island Countries.

The refusal to registration for not meeting any one or more of the requirements identified under Section 13:1 are obvious, however, the use of discretion as per se should be amended in the provisions to only make decisions on the basis of criteria set out in the Act.

The provisions should be amended to accommodate principles of equality and non-discrimination enshrined in the ILO Conventions which underpin universal trade union rights of workers.

3.11 Right to Organize and Bargain

- It is recommended that the huge discretions specified for the Registrar in several Sections (7:4, 11, 13:1) of the Trade Unions Act be amended as it would lead to inconsistency in decision making as a result of arbitrary exercise of power.

The provisions allow the Industrial Registrar to extend time for a registration of trade union, demand further information “for the purpose of satisfying himself” and deny registration if to his knowledge the proposed trade union does not meet the requirements of the Act.
The provisions imply huge discretion for the Registrar to exercise in approving and disapproving the registration of trade unions. The refusal to registration for not meeting any one or more of the requirements identified under Section 13:1 are obvious, however the use of discretion as per se should be amended in the provisions to only make decisions on the basis of criteria set out in the Act.

3.12 Labour Act, 1982

There are several recommendations emerge from examining the Labour Act, 1982, one of the pillar Acts regulating employment relationship in the Solomon Islands. They are stated accordingly:

3.13 Minimum Wage

- Although the minimum wage fixation machinery is soundly established, it lacks a comprehensive monitoring system to police the implementation of wages emanate from the Board.

The meager resources in the Labour Division of DCEL does not allow for the adequate policing of the minimum wage applications in the country. Although some trade unions have the capacity to monitor their employers, those workplaces which are not unionized are powerless when an employer breaches the Act and pay wages below the minimum.

The Act should be amended to cater for the monitoring employer compliance with legal minimum wage in the country. If the Labour Division lacks the necessary resources to effectively inspect workplaces for compliance, at least the prescription of monitoring system should be stated in the appropriate Sections of the Act.

- In the Act, a test clause outlining the eligibility of employers’ capacity to pay minimum wage should be inserted for fairness and also for compliance purposes.

The current practice occurs with the MWB takes into account the basic commodities thought important for the workers and their families when considering the minimum wage. However, in practice the most important factor influencing the fixation of minimum wage is capacity of employers to pay the suggested minimum wage. In most cases, the suggested minimum wage in the MWB sittings are abandoned in favour of a much reduced wage which is in reality not reasonable to the workers.

What is required in the provisions is the institution of capacity test clauses for employers so that those who have the capacity can pay the initially suggested amount.

- The review of the minimum wage should be regular rather than the current practice of allowing the Minister for DCEL to initiate commencement at no set interval. The Act should be amended to set a timeframe for the
operation of the determined minimum wage and commencement of the MWB to determine the new wage after the expiry of the last wage.

The suggested period for operation until the next one should become a standard practice for the MWB determination. For example, in PNG, the MWB meets on a three yearly basis.

### 3.14 Hours of Work and Weekly Rest

- The standard working week of 45 hours (Section 13 of the Labour Act) should be amended to 40 per week as it contradicts the ILO Reduction of Hours of Work Recommendation, 1962 (No. 116) and Forty-Hour Week Convention, 1935 (No. 47), both establish the principle of the 40-workweek.

- The 30 minutes break is too short for lunch for most workers and should be amended to the standard one hour break which is seen as adequate; and

- The overtime rates of 1.5 times the regular hourly rates for the weekend is low and should be amended to two times as it does not meet ILO standard on overtime.

### 3.15 Protection of Children

- It is recommended that Section 46 of the Labour Act be amended to increase the age of child employment from the current age of 12 allowable in light or domestic work in the company of parents to age 15 as stipulated under the ILO Minimum Age Convention, 1973 (No. 138).

What may happen is the likelihood of abuse of this Section allowing employment of children at the age of 12 in certain light industry by other places of work, such as the commercial sector.

There is an absence of a comprehensive policy for the elimination of such abuses. There are no regulations defining the worst forms of child labour. However, the Government has not yet ratified ILO Convention 182 on the worst forms of child labour. There should be a concerted effort put in by the Government to come up with an all embracing child policy not only on employment but also on other aspects of the rights of the child.

### 3.16 Maternity Leave

The maternity provisions in the Labour Act, 1981 seem to be well respected in public sector and private sector in the country. They are quite generous to the female worker than those found in PNG. A female worker upon producing of a medical certificate proving the details of her anticipated date of her confinement is entitled to 12 weeks’ leave from her employer (Section 42:1). Six weeks compulsory leave after confinement is
also respected in which the employer is barred from displacing her employment in the period of absence.

Despite the current practices regarding maternity leave being adequate, a couple of recommendations posed for maternity leave.

- The 25 per cent of wage paid during time of leave is too low (Section 42:3). It is recommended that an increase be made to 50 per cent which would be respectable by ILO standards.
- The Act should be amended to allow the conversion of recreation or sick leave credits into paid maternity leave for prolonged cases.

3.17 Holidays, Sick Leave and Passages Rules (Section 80)

The following recommendations are necessary to rectify the gaps in Section 80 of the Labour Act, 1981.

- The calculation of the rate of not less than 1.25 working days for each complete calendar month of employment in determining a worker’s leave should read the following: A worker is entitled for each year of continuous service to a period of 14 consecutive days paid leave.

There should be a clause to acknowledge non-working days occurring within the period of leave, and where any public holiday falls within an employee’s period of paid leave and is observed on a day that, there shall be added to that leave period one extra day being an ordinary working day, for each day or that public holiday;

- The minimum of 26 weeks in a job required for a worker before he is granted sick is too excessive (Section 7:1:a).

It should be amended to read an employee who has served an employer for a period of not less than six then six months to comply with ILO standards;

- Section 8 establishes only two recruitment passages for the employer to pay worker:
  
  (a) from the place of recruitment of the worker to the place of employment at the start of the contract of employment;
  (b) unless the worker is taking a holiday passage in accordance with rule 5, from the place of employment to the place of recruitment on the termination of the contract of employment; and
  (c) on termination due to redundancy.

Point “c” is not mentioned and it should be inserted to make the passage rule complete in recruiting and repatriating of workers.
3.18 Care of Workers, Housing and Medical Treatment

- It is recommended that the monitoring aspects of the Labour Act need to be tightened up to oversee the physical conditions under which work is undertaken. The current provisions outlining the obligations of the employer for care of workers, housing and medical treatment are adequate.

However, interviews undertaken with Labour Division Officers and trade unionists indicate that workplaces are rarely inspected by the Division to ensure compliance with the labour laws.

There should be a monitoring section responsible for inspecting workplaces established to cater for this function. Resources should be allocated to this section to make it practical for at least an office or two officers to inspect workplaces annually.

3.19 The Safety at Work Act, 1982

The following recommendations need attention concerning the Safety at Work Act, 1982.

- It is recommended that the use of “reasonably practicable” in Sections 4 & 5 be substituted with prescription of the specific duties of each person to limit the existing ambiguity in shoudering responsibilities. This is because the Act’s use of “reasonably practicable” in Sections 4 and 5 is too vague and generic.

- It is recommended that Sections 8 & 9 of the Act be tightened to have direct and specific in reference to common industrial chemicals and substances used in workplaces such as mining, plantations, etc. This would have implications for manufacturers and suppliers of chemicals to have the duty to ensure the safe use of its contents and also ensure adequate information is available about the chemicals and other substances they furnish to workplaces.

- The Safety at Work Act, 1982 is inadequate as it does not cover all areas of economic activity. For example, there is a mine in operation and the country relies on logging as its main revenue earner and the current Act does not contain more specific references regulating these two workplaces.

It is imperative that the Act be amended to reflect logging and mining as the two industries are more prone to injuries and accidents than other workplaces.

- Other than the legislative detail there are no operating standards for staff involved in the administering safety and health legislation. As a minimum,
operational standards and procedures must cover advice on power of inspectors, inspections, accident/complaint investigation.

- There is a lack of comprehensive policy on OHS in promoting voluntary action at workplaces. It is recommended that the Division of Labour come up with a comprehensive policy on OHS in promoting voluntary action at workplaces.

Currently, there is a lack of it and the country relies entirely on the Safety Act which is not inclusive to cover the none technical aspects.

3.20 Workmen’s Compensation Act, 1982

The following recommendations are posed for the Workmen’s Compensation Act, 1982.

- An explicit definitional outline of who is eligible and who is not eligible to claim compensation should be stated in the outset of the Workmen’s Compensation Act to rectify deficiencies and confusion in the definitions of the current provisions (Section 2: a & b).

The current practice of allowing the liberty to the Minister to declare by Order who is a “workman” and “who is not” would sometimes lead to arbitrary and unfettered use of power.

- Section 27 needs to be rectified to make the implications more apparent on all aspects, including penalties for loss of case.

The Act is plausible and technically practical; however it creates duplication of common law and statute law claim allowance for the same case. What creates is discrepancy and confusion amongst claim lodgers as to what avenue they should take refuge in their claim.

- The various provisions in the Act that stipulate the amount ascribed to injury, permanent total incapacity and death are too meager and does not seem to reflect varying costs of living and customary values attached to compensation. The $60,000 in Solomon Islands for death and lesser amount for various types of injuries is too a modest figure and requires critical review.

3.21 National Provident Fund Act, 1976

The NPF Act is adequate and sound as it is. However, Section 27 of the Act which exempt a worker on contract and also an expatriate worker from contributing to the Fund.

- The Section is discriminatory and does not resemble the ILO Conventions on discrimination. It should be amended to allow all workers to contribute to the Fund unless otherwise other arrangements prevent those workers from contributing to the Fund.
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- Trade Disputes Act, 1981
- The Trade Union Act, 1966
- The Labour Act, 1982
- Safety at Work Act 1982
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II: Other Supplementary Works

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III: Interviews

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