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
PAPUA NEW GUINEA

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Abstract

The review of labour laws in Papua New Guinea (PNG) is done with the purpose to identify gaps and deficiencies so that they can reflect the labour standards established by the International Labour Organisation (ILO). Accordingly, the main labour laws regulating employment relationship and workplaces are reviewed and some of the deficiencies in the Acts are identified and consequently appropriate recommendations are suggested. While the current work is one attempt, an extensive review involving the social partners in PNG with ILO assistance is imperative to bring up to date many of the obsolete Acts to harmonise and comply with ILO Conventions.
Part One

1.0 Labour Market and Employment Context

Part One of the Report provides a brief overview of labour market and employment conditions in PNG. The labour market and employment issues are acute compounded by complex structural issues emanating from civil society, government, investors and a host of other areas. This discussion serves as a background to Parts Two and Three of the review of labour laws in PNG.

Yet 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 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.

1.1 The PNG Labour Market

The PNG labour market is challenging an area to undertake any meaningful analysis. This is simply because of the unavailability of regular reliable statistics which makes any proper discussion of salient features of the labour market always extremely difficult. When statistics are available they are either incomplete or some nonexistent in some areas. The nature of the problem has been stated in several works (for example, McGavin, 2001; Hess and Imbun, 2003) which argue that although the employment statistics cover a major part of the major-wage earning employment, they often omit a range of wage earners and self-employed persons in the informal sector. This is often complicated by the application of defining and measuring concepts which are straightforward in developed countries but of less use in a developing country context. Despite the cloudy impact that several of the features of the labour market might have of conventional notions of citizen employment, the formal figures are nonetheless worth stating:

- The 2000 national census recorded a 5.5 million population of which two thirds are under the age of thirty. The labour force was estimated at 1.9 million (or little less than half of the population (NSO, 2001). There is a small presence of non-citizen (15, 000) population employed mainly in the formal
Only 260,561 Papua New Guineans sought wage employment (which is about 13.7 of the total labour).

- The main source of employment is in the informal sector consisting of basically small cash cropping in rural areas. This accounts for 40 per cent of the workforce. The rest of the non-employed population simply live the subsistence life free from any money earning arrangements. However in the urban centres a significant proportion of the population is engaged in informal and black market activities which are uncounted by any conventional employment statistics. This sector continues to act as a sponge to absorb the many who do not find formal employment. (The 2000 census figure was 300,000 formal employees from a total urban population of 500,000).

- Formal sector employment falls into three main categories: first government-associated employment accounted for 59,782 public servants in 2000, also 5000 engaged in two statutory corporations; second, mining, which accounted for just over 10,068; and finally the remaining 152,000 which were engaged in the non-mining sector. This was mainly agriculture (43,050), building and construction (10,606), manufacturing (23,160), and transport (10,172) (Curtain, 2000). See Table 1 (below).

### Table 1 Employment Change by Sector

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Retail</td>
<td>6,000</td>
<td>6,325</td>
<td>5,692</td>
<td>6,925</td>
<td>7,978</td>
</tr>
<tr>
<td>Wholesale</td>
<td>15,343</td>
<td>15,409</td>
<td>14,328</td>
<td>13,713</td>
<td>14,577</td>
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<tr>
<td>Manufacturing</td>
<td>17,700</td>
<td>15,088</td>
<td>17,795</td>
<td>20,816</td>
<td>23,156</td>
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<tr>
<td>Construction</td>
<td>15,000</td>
<td>10,592</td>
<td>10,732</td>
<td>12,021</td>
<td>10,606</td>
</tr>
<tr>
<td>Transportation</td>
<td>11,128</td>
<td>12,080</td>
<td>10,755</td>
<td>11,360</td>
<td>10,172</td>
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<tr>
<td>Agriculture</td>
<td>47,500</td>
<td>45,744</td>
<td>52,479</td>
<td>44,990</td>
<td>43,050</td>
</tr>
<tr>
<td>Financial</td>
<td>9,800</td>
<td>9,500</td>
<td>11,370</td>
<td>13,838</td>
<td>16,457</td>
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<tr>
<td>Mining</td>
<td>8,742</td>
<td>8,019</td>
<td>5,680</td>
<td>6,543</td>
<td>10,068</td>
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<td>Public Utilities</td>
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<td>2,623</td>
<td>2,336</td>
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<td>Communications</td>
<td>4,176</td>
<td>2,904</td>
<td>3,476</td>
<td>4,230</td>
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<td>Community &amp; business services</td>
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<td>3,587</td>
<td>4,293</td>
<td>5,224</td>
<td>6,213</td>
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<td>Amusements Hotels etc</td>
<td>6,958</td>
<td>6,073</td>
<td>7,268</td>
<td>8,845</td>
<td>10,519</td>
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<tr>
<td>Education</td>
<td>16,209</td>
<td>19,089</td>
<td>21,283</td>
<td>25,409</td>
<td>30,000</td>
</tr>
<tr>
<td>Health</td>
<td>7,936</td>
<td>9,532</td>
<td>10,019</td>
<td>10,530</td>
<td>10,741</td>
</tr>
<tr>
<td>Central Government</td>
<td>23,838</td>
<td>25,054</td>
<td>25,305</td>
<td>24,076</td>
<td>23,602</td>
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<tr>
<td>Public authorities &amp; Other</td>
<td>29,020</td>
<td>32,782</td>
<td>36,542</td>
<td>36,907</td>
<td>36,180</td>
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<tr>
<td>TOTAL</td>
<td>225,965</td>
<td>224,402</td>
<td>239,351</td>
<td>247,895</td>
<td>260,561</td>
</tr>
</tbody>
</table>


Note: Table 1 is taken from Curtin’s unpublished attempt at a realistic estimate of change over five year periods. It appears likely to be the most accurate estimate available.
Available data on employment over the period between 1999 and 2004 indicates that there has been little growth in employment in the formal sector. But some growth occurred in the mining industry (6 per cent) which accounted for most of the 10,000 new workers employed. Formal employment growth in Port Moresby between the 1999 and 2004 census was at 2.3 per cent less than population growth (Bank of PNG Quarterly, 2004).

Women are very poorly represented in the formal workforce. According to the 2000 census, men outnumbered women by five to one in urban areas and ten to one in non-village rural employment. In the mining sector women made up 2 per cent of the total workforce in 1998 (Imbun, 2000). However women's contribution to the economy is significant even though they are poorly represented in wage employment statistics. They are more commonly located in subsistence farming. Women generally do most of the human and household work in the rural and even in the urban environment.

Youth unemployment is acute. Between 1995 and 2000 about 300,000 people reached working age. Of these about 50,000 young people each year enter the labour market. A mere 1,000 found employment in their first year of seeking employment (Minimum Wage Board, 2000). The magnitude of the unemployment rate depends in part on the generosity of wantoks (relatives) who often accommodate the unemployed in urban areas where they can register as job seekers and thus are formally entered in the unemployment statistics.

The weak performance of the formal employment sector has been contributed to by the closure of the giant Bougainville copper mine in the late 1980s and stagnating agricultural sector. When in production the Bougainville mine employed some 2,000 workers (excluding contractors). While the agriculture sector in the heydays of the late seventies was the biggest employer of rural workers, it continues to face a down turn in productivity and hence its ability to employ because of the fluctuation in commodity markets overseas.

A high proportion of the unemployed have little or no formal education. One-third of the unemployed in urban areas and just less than one-half in rural areas have had no education: 85 per cent of the unemployed in the urban areas and 90 per cent in rural areas have been educated to grade 6 level or lower. There is an excess supply of upper secondary school leavers and even tertiary-educated manpower (Imbun, 2000).

There is a prominence of non-citizens in the administrative, managerial, professional and technical occupations. A report estimated that 85 per cent of the top jobs in the private sector were occupied by expatriates (AIDAB, 1994:36). This highlights the country's skills shortage. The PNG government is continuously pursuing a program of localisation. Expatriates must seek approval to work through the Department of Industrial Relations (DIR). Once
the designated position has been approved a work permit is issued. Over the last few years stringent guidelines have been in place to limit the recruitment of non-citizens.

- Poor labour market outcomes have been instrumental in recent changes in wage policy in PNG. The central wage fixation system based on the CPI was substituted by productivity based performance in 1992 and reaffirmed in 2000 MWB determination. This substitution was achieved amid some furore from trade unions but its aim was to create employment opportunities for the vast majority of the unemployed).

- Curtin (2000:6-10) recently pointed the relatively low level of public sector employment and poor wages in a number of areas significant to fulfilling the objectives of accelerated economic growth and social development. In particular central government expenditure is found to have fallen faster and, during the 1990s, to have been lower in PNG than other developing countries. There are fewer teachers, police officers and public servants per head of population than in other countries and the amounts being spent on their salaries and activities are lower both absolutely and in percentage terms.

- With respect to employment, estimates of female labour-force participation vary from 40 to 60 percent. This is, however, largely a result of female engagement in subsistence agricultural production. Forty-seven per cent of economic activity undertaken by women is in subsistence or semi-subsistence gardening or fishing. This compares to only two per cent of female economic activity related employment in the formal (cash) sector. A major gender gap also exists in earned income share, with women earning only 16 per cent of total income (Imbun, 2000). These differences are reflected even more starkly in higher level social and economic activity. While no statistics are available it is clear that few women are to be found in the senior ranks of private sector businesses or management. A more equitable situation exists in the public sector with a small number of notable women making their way into senior executive service positions. This is, however, not the case in national level politics with only 4 per cent of current parliamentarians being women (Harden, Fallon, Cunningham, Duncan and Gupta, 2000).

- Given these constraining features of the labour market, the mining sector and the much anticipated PNG to Australia Gas Project is viewed with great optimism by policy makers and the public. The mineral and carbon hydrogen projects are capital intensive and therefore their impact on employment is expected to be moderate. But the current PNG Government is positive of the gains the natural resource industry would bring in the next few years and anticipating use the revenue to beef up the agriculture sector which has been languishing for many decades. In fact, the Government sees this sector as a messiah for the bulk of its population.
1.2 The Economy

PNG economy is showing signs of economic growth after a state of prolonged stagnation since 1990s. The reasons for the country’s poor economic performance are many and complex. The Bougainville civil insurrection, Asian economic crisis, poor commodity prices and a host of other factors have had profound impact on the country which is still being felt. However, current figures show a 2.7 per cent growth recorded in 2003-5 and reserves of foreign exchange rates are high and inflation is down from a high of 15 per cent in the late 1990s to 2.4 per cent in 2005 (Post-Courier, 20th November, 2005). The mining and petroleum sector is gradually returning to its former hey days of the 1990s with many investors coming in droves after the PNG Government had removed some of the rigidities in its mining and petroleum policy framework. This sector alone contributed around 30 per cent of the gross domestic product (GDP) for the past four years and would continue to be the mainstay for a long time. The PNG-Queensland Gas Project worth more than US$ 5 billion is set to further rejuvenate the economy.

The agriculture sector had not seen any major progress and in 2004 contributed only 25 per cent of the GDP, which also includes fishing and forestry, despite recording a 3.2 per cent growth in the 2004-5 period buoyed by strong world market prices for primary commodities. This suggests poor rural incomes for some 70 per cent of the strong 5.1 million population of the country who reside in subsistence dwellings. Per capita GDP in 2004 was an estimated US 1,200, which placed PNG near the bottom of the “middle-income” group of countries. The challenge for the PNG Government is how to increase earnings from agriculture and fishing and to construct a more balanced economic structure. However, perhaps the greatest challenge confronting the country is creating of sufficient employment opportunities for the 1.5 million employable persons who are currently unemployed and looking for work. Successive governments have only made snail pace progress in this area and the challenge will not go away for a long time.

1.3 The Informal Sector

PNG has a huge informal sector which is largely rural based and provides incomes and livelihood for 87 percent of the little over 5 million people. An increasing number of people, even formal sector workers and their families, are seeking refuge in the informal sector to augment family income. With the rising cost of living, particularly in urban areas, many workers are turning to the informal sector to avail themselves of lowly priced goods and services. It would be not possible for the country to sustain itself in the current pace of economic and social development without the benefit of the informal sector.

Ironically, despite the immense benefit the informal sector provides to the country, laws have been absent in this area until last year. The current body of laws, including labour laws, only concern the formal sector associated work and employment. They have been inhibiting the progress of the informal sector, particularly in the urban areas.
where hygiene and health and law and order are major concerns. Last year (2005) the “Encouragement of the Informal Sector Act’ became a new law which has overarching power governing any matters related to the informal sector. This law is seen as the vehicle to bring about respectability, order and above all, support to the continued prospering of the sector.

1.4 Sources of Law

The independent PNG in 1975 adopted several sources of laws. They are discussed in order of significance. The Constitution is the supreme law in the country and it requires all other laws to be read and subject to its principles. It provides for the existence of the important organs of government and government instrumentalities in the form of parliament, executive and judiciary. It allows for the establishment and functions of several constitutional offices including the Ombudsman Commission, the Public Prosecutor, the State Solicitor, the Public Solicitor, the Auditor General, and a Leadership Code. The Constitution provides the essential framework under that the country operates, however, it makes no direct or any specific reference to matters pertaining to the employment and labour law.

The organic laws are passed by Parliament as directed by the Constitution and they pertain to matters on provincial government, the electoral process, Ombudsman Commission, and electoral boundaries. They serve no jurisdiction on labour matters, although Acts of Parliament does. The Acts, results from Parliament resolutions, cover diverse areas of social, economic and political significance to the country. Some of the labour laws (see below) have been enacted in this process. The next line of laws is the Provincial Laws and they are products of the various provinces in the country. A provincial government may makes laws which pertain to its particular needs in the context of business development, taxes and culture, however many of them have left labour matters to the national level. Adopted Statues, those laws which severed the country during its colonial phase of development are ‘adopted’ or ‘amended’ to reflect current needs and expectations. Most of the statute labour laws were colonially legislated and they have been revisited in this manner. Further, the common law, are also part of the legal body in the country. Although many of the colonial common laws (in the form of Common Rules) on wage, hours of work, employment and leave have been come exist and superseded by modern PNG made laws, some of the principal underlying elements of employment relationship such as, employer’s liability, workers’ compensation, and contract of employment have been absorbed into the existing labour laws.

country.

Last but, not least, the traditional customary laws also play a huge part in upholding and regulating lives for a lot of Papua New Guineans who live in the informal sector. The Constitution and other laws acknowledge its existence and continue to rely on it for insight. The customary laws and cases are mostly enforced and heard by the village courts. Some of the cases involve labour and employment matters on daily basis.
1.5 Industrial Relations and Labour Laws

PNG has a dynamic labour relations system, which is pluralistic in character. The competing parties produce decisions of industrial and political consensus. Often solutions are offered whenever there is an industrial dispute between unions and employers, which reflects the pluralistic style of government. Despite the existence of this mode of labour relations framework, there are several inherent challenges (weaknesses) facing the operation of workplace relations in the country. Because of those weaknesses the labour relations system is unable to either effectively deal with industrial issues or meet the challenges of economic reform and other broad government policies.

One major issue inherent in PNG labour relations system is the rather mediocre role played by the tripartite partners. The state’s role in the industrial relations system is constrained by various factors ranging from an unreceptive and apathetic civil society to its own inactivity in the area of labour relations. It’s role in labour policy and administration of industrial relations matters has been given low priority and mostly often entertained with a reactive role (Heron, Machida and Salter, 1998:5). The perception of industrial relations matters as a low priority area is reflected in its resource allocation and placement of the DLE in the administrative sector of the national budget. The government has been little proactive and there is a lack of sound policies to guide the work of the labour administration, particularly in the areas of employment, industrial relations and occupational health and safety. Despite the state’s lack of committed approach to the maintenance and consolidation of a viable and effective industrial relations system, its ability to influence industrial relations system has been best demonstrated in the wage tribunals over the years after independence. Although for the last nine years wage earners, particularly many people on the minimum wage levels had to battle stagflation and survive on a meager wage, which the government has shown little enthusiasm until 2000.

Additionally, the individual employers and peak employer organisations in the country are notorious for consistently maintaining a unitarist approach to dealing with employee issues. Over the years a lot of industrial issues have risen out of workplaces that have given little or no attention to the appalling terms and conditions of employment. They have mainly justified their low priority on industrial issues to be matter of managerial prerogative. Their compliance with labour standards is weak particularly amongst small employers in urban areas and rural agricultural estates were workers less unionised. A lack of adequate financial resource and manpower in the DIR seem to have compromised inefficiency in enforcement of labour regulation in those areas. Constant complaints therefore on wages and unfair dismissals are rampant in workplaces everywhere. Particularly, under payment of workers and non compliance with legal minimum wages and non submission of wage deductions to superannuation and retirement funds are also some of the common problems characterise unscrupulous and dishonest employers (ibid, Imbun, 2000). In workplaces where unions are present this has created a situation for employers to maintain a paternalistic view of workplace relations, which offers little avenue for mature interactions between independent organisation of workers and management. Although the peak employer organisations are well resourced, there is very
little presence outside of Port Moresby making them to constantly rely on services provided by provincial labour officers of the DIR.

A seriously flawed legislative and administrative framework also characterizes the PNG industrial relations system. PNG has ten appropriate labour laws pertaining to the regulation of employment relations. They include the following:

- Employment Act, 1978
- Employment of Non-Citizens Act, 1978
- National Provident Fund Act, 1990
- Industrial Relations Act, 1963
- Industrial Organisations Act, 1963
- Public Service Conciliation and Arbitration Act, 1971
- Teaching Service Conciliation and Arbitration Act, 1974
- Industrial Safety Health and Welfare Act, 1965
- Occupational Health Safety Act, 1990
- Workers’ Compensation Act, 1990

The first four Acts establish the framework in which formal procedures for the prevention and settlement of industrial disputes and the making of awards and determinations can be enforced in the courts. The other Acts prescribe appropriate requirements to be met by employers and employees in the allocation and performance of paid work. Finally, deficiencies in resource allocations to the DIR allow irregular inspections of workplaces by officers to enforce these Acts. This type of situation places many workers on the good will of employers of which sweat shop owners and manual workplaces are notorious for under paying workers and failing to comply with labour laws.

1.6 Labour Administration and International Labour Standards

The DIR ensures the proper conduct of labour administration, conditions of employment and international labour standards in PNG. The Department is seen primarily as administrating labour policy and its associated activities. Many components, including industrial relations, labour inspection and employment services characterise the labour administration. Although PNG has not ratified the ILO Convention No. 150 on Labour Administration, it provides a reference point in which all parameters of labour administration can be judged against. However, performance gaps and gaps in labour laws hardly get the appropriate attention as a result of resource deficiencies in the department.

PNG became a member of the ILO in 1976. Upon registration, it ratified 19 ILO Conventions, followed by seven in 2000, totaling 26. Of the ratified, six of them are the core labour standards. Two of them (C 7 Mining Agre (Sea) Convention, 1920 and C 10 Minimum Age (Agriculture) Convention, 1921 were denounced in 2000 (See Table 2).

Table 2: List of Ratifications of International Labour Conventions by PNG
<table>
<thead>
<tr>
<th>No.</th>
<th>Convention</th>
<th>Year Ratified</th>
</tr>
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<tbody>
<tr>
<td>C.2</td>
<td>Unemployment Convention, 1919</td>
<td>1976</td>
</tr>
<tr>
<td>C.7</td>
<td>Minimum Age (Sea) Convention, 1920</td>
<td>1976 (denounced, 2000)</td>
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<td>C.8</td>
<td>Unemployment Indemnity (Shipwreck) Convention, 1920</td>
<td>1976</td>
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<tr>
<td>C.10</td>
<td>Minimum Age (Agriculture) Convention, 1921</td>
<td>1976 (denounced, 2000)</td>
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<td>C.11</td>
<td>Right of Association (Agriculture) Convention, 1921</td>
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<td>C.12</td>
<td>Workmen’s Compensation (Agriculture) Convention, 1921</td>
<td>1976</td>
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<tr>
<td>C.18</td>
<td>Workmen’s Compensation (Occupational Diseases) Convention, 1921</td>
<td>1976</td>
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<tr>
<td>C.19</td>
<td>Equality of Treatment (Accident Compensation) Convention, 1925</td>
<td>1976</td>
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<td>C.22</td>
<td>Seamen’s Articles of Agreement Convention, 1926</td>
<td>1976</td>
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<tr>
<td>C.26</td>
<td>Minimum Wage-Fixing Machinery Convention, 1928</td>
<td>1976</td>
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<td>C.27</td>
<td>Marking of Weight (Packages Transported by Vessel), Convention, 1929</td>
<td>1976</td>
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<td>C.29</td>
<td>Forced Labour Convention, 1930</td>
<td>1976</td>
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<td>C.42</td>
<td>Workmen’s Compensation (Occupational Diseases) Convention, (Revised), 1934</td>
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<td>C.45</td>
<td>Underground Work (Women) Convention, 1935</td>
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<td>C.85</td>
<td>Labour Inspectors (Non-Metropolitan Territories) Convention, 1947</td>
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<td>C.87</td>
<td>Freedom of Association and Protection of the Right to Organise Convention, 1948</td>
<td>2000</td>
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<td>Right to Organise and Collective Bargaining Convention, 1948</td>
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<td>C.99</td>
<td>Minimum Wage Fixing Machinery (Agriculture) Convention, 1951</td>
<td>1976</td>
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<td>C.100</td>
<td>Equal Remuneration Convention, 1951</td>
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<td>C.103</td>
<td>Maternity Protection Convention (Revised), 1952</td>
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<td>C.105</td>
<td>Abolition of Forced Labour Convention, 1957</td>
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<td>C.111</td>
<td>Discrimination (Employment and Occupation) Convention, 1958</td>
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<td>C.122</td>
<td>Employment Policy Convention, 1964</td>
<td>1976</td>
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<td>C.138</td>
<td>Minimum Age Convention, 1973</td>
<td>2000</td>
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<td>C.158</td>
<td>Termination of Employment Convention, 1982</td>
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<tr>
<td>C.182</td>
<td>Worst Forms of Child Labour Convention, 1999</td>
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</tbody>
</table>


Administration labour in PNG is more complex as it demands a lot of coordination at all levels to achieve the objectives. It is obvious as various ministries of the government, including Departments of Health, Education, Foreign Affairs and Mines and Petroleum also impinge in the area of labour policy. These ministries deal with health of workers, vocational education of the work force, work permit of expatriate workers and safety and health of workers respectively. In addition to these dimensions, labour administration also function at the provincial levels under the Organic Law on Provincial and Local-Level Governments, provisions are made to even decentralise the activities of labour administration to the community levels. PNG is still to ratify the many ILO’s Labour Conventions, including the ones on occupational safety and health and other areas of regulation of place of work and remuneration.
Part Two

2.0 Review of Labour Laws

Some of the labour laws in PNG are currently being overhauled. Initiated by the DIR and ably assisted by the ILO they are, in fact, in the advance stage of becoming revamped laws. The outdated-ness and deficiencies in some of the labour laws highlighted in the previous section is the subject of the DIR-ILO review. The collaborative approach of the two parties have resulted a single Industrial Relations Bill, which have merged the four labour laws regulating the industrial dispute settlement process. They include the Industrial Relations (IR) Act, 1963; Industrial Organisations (IO) Act, 1963; Public Service Conciliation and Arbitration Act, (PSCA) 1971 and Teaching Service Conciliation and Arbitration Act (TSCA), 1974. The first reading of the draft Bill in the Parliament was in 2003 and final passing is scheduled in June, 2006. The next on the list to be reviewed is the Employment Act, 1983 followed by the laws pertaining to safety.

Although the author of this report was briefed of the on-going review of the three Acts by relevant bureaucrats of the DIR and trade unionists, he was not able to get hold of the necessary works which documented this appraisal. This review, therefore, is done in isolation to current project initiated by DIR and the ILO. In the process of this review, the deficiencies identified and recommendations posed to strengthening of the labour laws are based on the actual or prevailing labour Acts.

2.1 Employment Act, 1978

The Employment Act, 1978 (Consolidated up to 31 March 2001) deals with the relationship between employer and employee in PNG. It is one of the most detailed and comprehensive piece of labour laws in PNG. Imported from the Queensland Employment Law, it regulates working conditions and conditions of employment. Some of the issues are described in minute details. For example, provisions regulating hours of work comprise five pages, while the Schedule specifying rations extends for then pages.

Although the lengthy pages imply no support of better workers’ protection as there are many weaknesses in the protections offered under the Act (Heron, Machida and Salter, 1998:11). There are 12 parts which comprise the Employment Act. They include:

- Part One introduces definitions and provisions.
- The provisions relating to administrative aspects of the Act include the appointment of labour officers are detailed in Part Two.
- Part Three governs contracts of employment and establishes the requirements for oral and written contracts. Other provisions include contracts for casual workers and piece-rate work, termination of contracts and for repatriation.
Part Four establishes conditions of employment. Maximum daily hours of work at twelve per day and sets overtime wage rates are established. Regulates rest and leave.

The payment and protection of wages are governed in Part Five. Regulates minimum wage rates, entitlement to wages, methods of payment and deductions. Establishes the priority of payment of wages over all other debts of an employer. Sets procedures and fines for the failure to pay wages.

Part Six governs the employment of females at night and prohibits the employment of females in heavy labour. Provisions exist for maternity and prohibition of employment of young persons under the age of eleven. Allows for the employment of young persons aged between eleven and sixteen provided work does not hinder schooling and permission from parents are given.

- Part Seven governs recruiting and employment agents.
- Regulating worker accommodation is provided in Part Eight.
- Part Nine regulates health and welfare.
- Part Ten establishes penalties for offences.
- Part Eleven provides miscellaneous provisions.
- Part Twelve lay out transitional provisions.

2.2 Working Conditions of Workers

The Employment Act does not cover every aspect of working conditions as urban workers are governed partially by Common Rules which existed before PNG gained independence in 1975. The working conditions under the Common Rules are more favourable than those provided under the Employment Act. This fragmented arrangement of working conditions is centered on a three-tier of system of employment: public sector workers, private sector urban workers (subject to certain provisions) and private sector rural workers. However, little or no formal legislation extends to the informal sector which is by far the largest employment sector in the country.

Several essential aspects of the working conditions of workers can be discussed under the formal employment sectors in the form of public sector and private sector. The essential features of the Employment Act and Common Rules are reviewed in the context of remuneration, hours of work, leave, termination, housing, discrimination, maternity protection and minimum age.

2.3 Working time: Hours of Work; Overtime; Weekly Rest; Leave

The Employment Act provides detailed provisions outlining minimum periods of daily and weekly rest, setting conditions under which overtime may be worked and restricting maximum actual working hours on a weekly basis. According to Section 49 (1) ‘normal’ working hour is 12 for someone in a day subject to variation under a registered award.

2.4 Termination

Managerial prerogative predominates in termination of an employee.
Dismissal of a worker varies from circumstance to circumstance. Dismissal of a public sector worker is quite different from dismissal of a non-award worker. Dismissal of a fixed term contract employee is different from the dismissal of a worker who is engaged from week to week or from month to month. Those variations can be reviewed briefly.

2.5 Public Sector

In the public sector there are two types of workers. Few are officers while the near mere workers. The former are heads of departments and statutory bodies and they occupy positions frequently specifically identified in legislation. Their appointments are endorsed by the Governor General on the advice of the NEC and because of their special status any termination can be subject to the requirements of procedural fairness or natural justice. These high public officers may as of right apply to the National Court for judicial review of any decision to dismiss them. The Court may set aside a decision if it is not satisfied that the requirements of procedural fairness or natural justice have been complied with.

The many awards and contracts of employment in relation to public servants are somewhat confusing but offer similar protection. However, there is one important difference and that account for the status of a public servant whether as a mere worker and not an officer. The former are entitled to natural justice only as a matter of contract and not as a matter of administrative law. The impact of that is that the worker may only be eligible for damages, unless there is some internal review procedure. For the latter, the Court will actually quash a decision to dismiss an officer if the requirements of natural justice have not been complied with. The effect of such a decision is that the officer remains an employee in the public service until he is properly and lawfully dismissed (Young, 2000:2). Other employees can only claim for damages. Most public sector awards give employees a right to natural justice and setting down quite detailed discipline and dismissal procedures. They also provide for quite clear and specific procedures to be followed before an employee can be dismissed.

2.6 Private Sector

The provisions allowing procedural fairness are not really common. The Employment Act maintains a worker may be dismissed immediately without pay if one is guilty of misconduct, for example, if one does not faithfully carry out his duties or is guilty of fraud or dishonesty or he continues to neglect his duties (Section 36:1: a).

Although at Common Law the employer has the right to dismiss the servant without notice for serious misconduct, Section 36:4 of the Employment Act put that the dismissal (or other termination of employment) may be the subject (cause) of an industrial dispute under the IR Act. Accordingly, an Arbitration Tribunal may decide that in the interests of industrial peace, a master should be ordered to re-employ the servant the dismissed for serious misconduct. The effect of this is to take away the employer’s rights of dismissal under the contract of service and in effect to give the Arbitration Tribunal power to “rewrite” the contract.
The worker may still have little in the way of protection if proper notice of termination is not given. The most that the court will order is that the worker be paid damages equal to the amount of notice which he should have been given.

2.7 Unfair Dismissals

The IR Act provides the avenue for unfair dismissal case to be heard under Part III Settlement of Disputes. First the dispute is to be conciliation by the Department (IR Act Section 28) and if unsuccessful it is referred to an industrial tribunal constituted for that purpose (Section 29). The industrial tribunal has power to make orders to resolve the industrial dispute.

An industrial dispute is defined as a dispute between a worker and employer as per termination of the former’s employment and a dispute as to the obligation to re-employer a dismissed worker (IO Act, 1963 Section 1:1).

Although an industrial dispute must be a dispute between employer and worker or employer and union in order to constitute a dispute (IR Act Section 25:1).

However, the IR Act obviously state that a former worker once dismissed can not engage in a dispute with its former worker is not an industrial dispute under the Act if it is not a dispute between employer and worker or employer and union.

The IR Act has relevant provisions to settle industrial disputes if the definition and other characteristics of the dispute meet the expectations of the provisions. The Department and Industrial Tribunal therefore have jurisdiction to deal with the dispute and have a broad discretion to make orders to resolve the dispute. However, it is surprising this avenue of industrial dispute settlement process set out in the IR and IO Acts are rarely used by dismissed employees and unions.

Though, there are inherent difficulties embedded in the dispute resolution jurisdiction as an unfair dismissal jurisdiction. They are:

- it is infrequently and inconsistently applied,
- no clear decisions of the industrial tribunal setting out the procedures to be followed by an employer in dismissing an employee,
- no detailed law stating what must be done in order to fairly dismiss a worker,
- no predictability as to when the Department will act on an alleged unfair dismissal and when it will refuse to act.

2.8 Redundancy

Redundancy, unlike dismissal, occurs when a worker is made redundant as a result of his job ceasing to exist in his workplace. The work itself might be reallocated to various
other employees but the job as such disappears. As the job ceased to exist, another worker can not be replaced by another worker as by definition of the job.

As far as general legislation in PNG is concerned, there is no generally applicable provision in respect of redundancy. However, there are some procedural safeguards exist in the Lae Common Rule, which ensure fairness in selecting the workers to be laid off. While the Employment Act under Section 93:1 ensures protection of workers’ claims in the event of insolvency. It recommends “… a sum of not exceeding four months’ wages has priority over all other debts of an employer”. Although the legislation is unclear of extend to which protection is actually assured.

2.9 Wage

Separate wage policies regulate the public sector and private sector.

2.10 Public Sector

Public Sector terms and conditions of employment are fixed centrally. The Public Service Management Act, 2000 Section 45 and the Public Service General Order (PSGO) 13 provide the prescribed provisions for the general pay scale in the PNG public service. However, some of the statutory bodies and organizations have their own statutes and general provisions for remuneration. The public has adopted the Hay JE Point ranges in alignment of pay. Section 46 of the PSM Act and PSGO 13 each provide that certain officers are entitled to certain allowances.

The established pay scales are subject to the Salaries and Conditions Monitoring Committee (SCMC) Act, 1988 (as amended up to 1993) which ensures equity, consistency and appropriateness are present in the application of specific pay rates to certain jobs. That is the function of the Committee is to coordinate and monitor wages policy of NEC and to ensure that wages policy of Council is implemented. It also advises the Council on measures that may be taken to further wages policy.

2.11 Private Sector

Legislation concerning fixation of wage in the private sector is dealt with by the MWB provided for in the Industrial Relations Act. The MWB convenes on triennial basis, however, the recent 2000 MWB decision eventuated after an eight year wait after the 1992 determination. There has not been a new Board yet and the timing of such meetings is left to the discretion of the Government.

Sections 10-17 of the IR Act stipulate that an industrial dispute representing matters of national importance are more likely to be dealt with by the MWB. Only the Government has power to refer and it may refer any question about the minimum wage and conditions of employment (other than apprentices) including –

- minimum rates of pay;
• allowable deductions for –
  o food, accommodation or issues of goods supplied by employers; and
  o recruitment and repatriation costs;
• deferred wages;
• allowances;
• penalties and overtime rates, hours of work and leave.

The MWB consists of a permanent chairman and an equal number of employer and employee representatives appointed by the Government ad hoc basis (for the particular reference). The Board has a duty to make proper inquiries and to give a fair hearing to any person who has a substantial (important) interest in the matter referred, if he wishes to give evidence, but, in general, it may determine (decide) its own procedure.

2.12 Equal Pay

The Employment Act, 1978 is surprisingly silent on the issue of equal pay, despite its detailed emphasis on other areas of employment regulating in the economy. Even though there is lack of statistics available, widespread discrimination in wages is evident in private sector employment. This particularly impacts on women and young employees. In the public service, administrative regulations have long established the practice of equal pay for women and men doing the same work (Hess and Imbun, 2003:319).

A major area of inequality concerns the significantly higher wages, salaries and benefits available to expatriate employees. The rationale for this historical practice is that the foreign employees need to be sufficiently well paid to attract them to living and working in PNG where the skills they may bring are in short supply. Nonetheless it is quite common in private and public sectors to find foreign employees being paid much more than their PNG colleagues doing similar work.

The issue of equal pay is well entrenched in the employment relations spectrum in PNG. Regularly the issue is raised as an industrial issue by both public sector and private sector unions. For example, there is a prolonging case involving national academics at the University of PNG who have demanded, since the early 1980s, to be paid on par with expatriate academics at the institution, however to no avail. Various governments have identified the country’s incapacity to pay and would-be-adverse implications on the rest of the economic as two possible reasons for the continuous decline in approving the principle. The stand, however, is in complete contract to the country’s ratification of the ILO Equal Remuneration Convention (100), 1951 in 2000.

2.13 Overtime

Overtime payments have been traditionally provided for in both PSGO and private sector industrial awards. The actual rates for overtime have traditionally been applied from the general employment awards and common rules at time and one-half for the first three hours and double time thereafter. In both sectors, overtime payments have been eroded in
recent years. In the private sector, the development of directly negotiated industrial agreements in place of arbitrated awards has led to some ‘flexibility’ in relation to overtime payments. Some agreements have bargained away overtime.

In the Employment Act, 1978 the provisions regulating overtime are Sections 51 & 52. However, they are detailed and over time rates are reasonable except the ambiguity of this clause:

- Section 51:1 – Subject to this Division, an employer may require an employee to work a reasonable amount. The “reasonable amount” leaves much to abuse and requires specification of actual hours to be accorded with “reasonable amount”.

2.14 Minimum Age

The Employment Act sets the minimum age for employment at 18 years. But children between the age of 14 and 15 may work in family businesses and other business establishment provided they sought parental permission, a medical clearance, and a work permit from the IRD. The Constitution prohibits forced labour. The Summary Offences Act bans child prostitution and the Criminal Code 1988 prohibits procuring or abducting women or girls for sexual relation.

PNG has ratified ILO Minimum Age (Sea) Convention and Minimum Age (Agriculture) Conventions Nos. 7 and 10 respectively. It has also ratified ILO Convention 138 on Minimum Age and ILO Convention 182 on Worst Forms of Child Labour in 2000.

However, there is an obvious gap in the compliance aspects of Employment Act as it contradicts with the Convention. Section 103:4 allows employment of a child between the age of 14 or 15 if the employer is aware that the child is no longer attending school.

2.15 Maternity Protection

There are adequate provisions in the Employment Act allowing maternity protection. In the Private Sector Section 100:3 of the Employment Act prescribes maternity leave to be six weeks taking into consideration confinement and the period necessary for hospitalization prior to childbirth. While Section 100:1 of the Employment Act provides benefit for those employees who have worked for an employer for not less than 108 days within the period of 12 months or less than 90 days within the period of six months.

The ILO Maternity Protection Convention (Revised), 1952 (No. 103) prescribes 12 weeks for maternity leave including compulsory leave of six weeks after confinement of which the Public Sector in PNG conforms. Maternity leave in both public and private sectors is without pay; however workers can use their recreation or sick leave credits into paid maternity leave.

Typically, female employees are eligible for maternity leave of six weeks before and six weeks after giving birth. This is the provision that applies in the public sector and has
generally been adopted by reputable private sector employers. At present, this leave is unpaid but both women’s groups and unions have demanded full adherence to the ILO standard of 12 weeks’ paid leave. Paternity leave is not well established in PNG employment. There is no legal entitlement and even well-financed public organizations rarely grant more than one day’s leave to new fathers.

2.16 Discrimination in Employment

Discrimination is outlawed in the Constitution and it advocates for equal treatment of persons under the law irrespective of race, tribe, and place of origin, political opinion, color, creed, religion, or sex. Similarly, Section 96:1 of the Employment Act prohibits discrimination only on the basis of sex and particularly acknowledges prohibiting employers from discriminating against women.

However, the Act makes no reference to the other forms of discriminatory practices present in the current workplaces. For example, discrimination on the basis of HIV status should be seen as a discouraged basis of discrimination.

The Act partially meets the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and need to be amended to acknowledge provisions of Conventions in its entirety.

2.17 Work Related Amenities

The provision of work-related facilities and amenities at workplaces is allowed by the OHS Act. The level of attention given to ensure essential work-related facilities such as safe drinking water, clean toilets, lockers, change rooms, canteens, eating areas, transport facilities, etc vary from employer to employer. However, it is obvious the large employers provide most of these facilities while some small employers either lack resources or simply ignorant of the significance of providing conducive workplace for workers. Some employers provide credit and loan schemes for their workers and medical services at minimal cost to workers and dependents.

2.18 Leave

Most leave provisions are part of the Employment Act, 1978 or the PSGO. Few awards or agreements go beyond these general entitlements. In the private sector paid annual leave is provided for at the rate of three weeks per annum. Public sector employees have the same entitlement and also receive a return airfare to their home province every two years. The latter was a particular response to demands by Papua New Guinean public sector employees for the same rights as their expatriate fellow workers.

Sections 61-65 of the Act prescribe for entitlements to recreation leave, sick leave and long-service leave. For sick leave a minimum of six working days applies to all workplaces. In theory, access to these provisions is only possible on production of a doctor’s certificate of illness. Public servants have slightly more generous provisions.
Long-service leave of six months is granted on completion of 15 years’ continuous service with the same employer. There is also an entitlement to compassionate leave of some 14 days in any one year of continuous service.

2.19 Housing

Basic living and working conditions vary between employers in PNG. The Employment Act (Section 120:1 &2) prescribes for employers to provide “adequate housing” for their employees in both urban and rural areas. An employer is not required to provide accommodation if an employee has his own house, in receipt of a wage equivalent to or more than a qualified tradesman; or an employee who has written permission of the owner of a house to occupy the house, within reach of the workplace (Section 120 (b).

Although it is obvious employers have a responsibility to ensure workers have adequate and affordable housing, given their own financial constraints and also unavailability of cost effective housing particularly in the urban areas have compounded the problem for both parties. It is also serious in rural towns but the rapid rise of shanty quarters adjacent to towns seems to relieve the housing problem. For some large employers provision of housing to their senior workers occurs while bulk of workers is housed in single unit quarters. Many employers who avoid the responsibility of housing of workers are met with low morale at work and recruitment problems. In many cases, however the land tenure problem and chronic delays in getting approvals of land for housing with government departments contribute towards the very slow progress in both provision of housing and generally increase in urbanization in PNG. Such problems are sometimes used as excuses for many employers for not complying with the Employment Act in provision of accommodation for their workers.

2.20 Deficiencies in the Employment Act, 1978

Despite the Employment Act being so detailed and comprehensive it is beget with huge problems. Some of them are:

- it does not respond to the current needs of the manufacturing sector, in providing flexibility,
- the detailed provisions of the Act does not reflect employers and workers particularly in small-scale and micro workplaces,
- it is quite long and complex and regulates some issues (i.e. work) in minute detail.
- No mention of piece rate workers who excluded from the working time provisions. They are mainly in the agricultural sector.
- The acknowledged exemptions in the maximum daily working time level are spread rather widely, particularly for those who work in public utilities related services.
- The Act predicts that workers engaged in overtime will be paid however there is no provision for completed overtime compensated with time off. This arrangement not in place to reduce working hours should payment be considered,
- Calculations for overtime in the provisions are rigid.
• The Act and Common Rules assume that everyone is working fulltime and therefore there is no mention of part-time workers. Part-time work in PNG is increasing and the legislation need to consider making relevant provisions available in the Act to consider this omission. PNG has not yet

• PNG has not yet ratified the ILO’s Part-Time Work Convention, 1994 (No. 175) and recommendation (No. 182) set out relevant principles). There is at the moment no policy in place to ensure such protection.

• Provisions dealing with holiday with pay and sick leave are more generous under the Common Rules of the main urban centers than those provided under the Employment Act. As a result this has bred discrepancies and confusion particularly in areas where workers have migrated from urban areas to rural settings.

• In PNG the Employment Act is notably weak in safeguarding workers from being unfairly dismissed. Safeguards are even lacking in the dismissal of workers in the event of engaging in trade union activity and also the unavailability of requirement for notice and provision of procedural safeguards and redundancy benefits. The country is yet to ratify the ILO’s Termination of Employment Convention, 1982 (No. 158) and it’s accompanying Recommendation.

2.21 Employment of Non-Citizen Act, 1978

The Employment of Non-Citizen (ENC) Act provides the necessary steps for potential employers to comply before the Department grant a work visa for an application. The Act is divided into 21 brief parts and basically outlines the procedure and guidelines prescribing penalties of non-compliance by companies. One of the major requirements is for the employer to prepare and have approved a training and localization program in accordance with the Act. This program is to monitor the entry of all expatriates into the country and the approved positions in which they can work and ensure that there is a program for the transfer of skills to Papua New Guinean citizens.

This Act regulates the employment of expatriates in PNG however there are fundamental weaknesses or omissions:

• Although the Act is excluded from other legislations such as the IR and IO Acts, various benefits to the expatriates such as a higher minimum wage are contrary to the right to equality;

• Another omission is the absence of provisions relating to the inspection of workplaces where earlier work permits were granted to ascertain training and location of nationals have in deed occurred or progressing in the specified period of the work permit holder.

Section 14 (1- 4) mentions of the Secretary or an authorized officer from the Department inspecting work premises to check on employer’s register but the provisions are vague as to what the register would hold as per training and localization is concerned.
2.22 Recruitment Law

Public sector recruitment and selection is governed by a set of General Orders, which establish specific procedures and owe much to the Australian and British models of civil service staffing. Actual conditions of service are determined by the government SCMC. Private sector recruitment and selection is not subject to such detailed regulation, but is legally governed by British common law concepts of the contracts of employment.

2.23 National Superannuation Act, 2001

Historically, both private and public sector employment has had superannuation and pension schemes. The Public Officers Superannuation Fund is applicable to all public servants and is almost identical to Australian public sector schemes in design and operation. However, benefits are much lower, reflecting the lower salary scales. In addition, the disciplined forces and some departments, agencies and authorities operate their own schemes.

In the private sector, the National Provident Fund (NPF) requires a contribution of seven per cent of salary from employees with a five per cent contribution by employers. The management of this scheme has come under close public scrutiny in 2000 with a resultant Commission of Inquiry beginning to look at the operation of the fund early in 2001. Preliminary findings point to some very dubious investment decisions having been taken without the knowledge of the board of directors. Public disquiet with the security of both superannuation schemes and the NPF has led to the establishment of a number of smaller funds in the last decade. Generally, these relate to a particular industry or even employer, and often they have been established at the initiative of representative organizations.

2.24 The Industrial Relations Act, 1963

The IR, 1963 is one of the two significant planks of PNG labour legislation framework (the other, IO Act) providing machinery for the orderly settlement of industrial disputes. Applies only to the private sector, it is obsolete and therefore flaw prone. It accommodates the necessary framework for the prevention and settlement of industrial disputes and for the making of awards and determinations which can be enforced in the courts. There is very strong resemblance to the Australian Conciliation and Arbitration Act, 1904; however, it operates on a voluntary arbitration system rather than compulsory (legal) arbitration. The whole tenet of the Act is bi-partite collective bargaining between the parties involved.

The Act was extensively amended over the decades, first in 1972 to provide for the MWB as the wage fixing authority. Subsequent amendments were done in 1978 to allow for the appointments of Boards of Reference in dispute settlement and recently in 1991 to pave way for workplace agreements.
Several core paragraphs of the IR Act establish the parameters of the industrial dispute settlement process. The salient elements of the Act can be identified such as prescription for industrial disputes, industrial dispute settlement, awards and inspection of the operation of the Act.

2.25 Industrial Disputes

Section 25:1&2 of the IR Act state that once an industrial dispute is detected an interested person or an employer may report the dispute to the Secretary of the DIR. Within 14 days of the dispute, the Secretary is empowered to write to both parties to enter into negotiations for the settlement of the dispute (Section 25:3). Either party can request the Secretary to assist in the negotiation. If the initial negotiations at the workplace do not resolve anything, the Secretary may ask both parties to attend a compulsory conference (Section 28).

In circumstances where the dispute can not be settled by the intervention of the Secretary, the dispute is referred to the Minister. Section 29 of the Act allows the dispute to an Arbitration Tribunal for decision and then making of an award.

The apprehension of an industrial dispute or an existence of an established dispute can also allow the Head of State, acting on advice (may assess the possible adverse implications of the dispute on the economic and industrial conditions of the country), direct the Secretary to refer the case to the Board of Inquiry Section (Section 24:2). The Board upon accepting the responsibility to settle the dispute must send a report to the Minister for IR without delay, and may make an interim report if it thinks fit (Section 7). Section 9 may allow the Minister to publicise such a report in part or whole for public consumption.

2.26 Industrial Dispute Settlement

The IR Act provides the machinery for industrial dispute settlement between employers and individual employee and/or unions. The Act makes provision for several Authorities to achieve its objectives. They are:

- Industrial Councils
- Boards of Inquiry
- Minimum Wages Board
- Arbitration Tribunals
- Boards of Reference
- Inspectors

Section 6 of the IR Act establishes the appointment of Boards of Inquiry and Section 18 establishes the Arbitration Tribunals, however on an ad hoc basis. The Head of State is responsible for appointing the Boards of Inquiry, acting on advice. The membership of the Tribunal must consist of a Chairman and not less than three other members, at least one of whom must not be an officer of the public service (Section 6). Each dispute
accounts for a different tribunal membership except for the Permanent Chairman and Deputy Chairman.

There is provision also made for the appointment of Boards of Reference with the function of dealing with matters arising under awards. A Board of Reference may be appointed by the Secretary of the Department with the consent of the parties to an industrial dispute, or by an Arbitration Tribunal or the MWB (Section 32).

2.6 Award Making

Section 32 of the Act prescribes for an award made by an Arbitration Tribunal to be lodged with the Industrial Registrar for registration. The Award must be registered and then advertised by notice in the National Gazette to have any bidding effect on workplaces in the country (Section 44). If the Industrial Registrar considers that an award is inconsistent with a law, is contrary to public policy or is not in the best interests of PNG, it must be referred without the approval of the Head of State, acting on advice (S.41:2).

The implications of these provisions are that an approval to register such an award must be given for any practical impact to take place. However, any voluntary agreement between the parties at their workplaces must also be formally registered (Section 33:1). However, the Registrar has all the power to deny registration to any award which he may consider it to be contrary to the principles of the MWB. If such a case eventuates, approval has to be sought from Head of State. (Section 32:2&3).

Section 42 of the Act put that an award may be disallowed, including a registered award on the condition that it is in contradiction to public policy or does not meet the best interests of PNG.

A registered award may be declared a common rule in relation to such employers, or classes of employers and employees, or employment in such area as the Head of State, acting on advice, declares by notice published in the national gazette (Section 46).

2.27 Inspectors

Several provisions exist to allow industrial officers to inspect places of employment to make sure awards and provisions of the Act are observed (Section 23).

2.28 Deficiencies in the IR Act, 1963

The legislation is fairly basic and has had little or no major review done since its inception some 42 years ago. Therefore, it is probably obsolete and many of the provisions do not reflect the current reality in which industrial disputes tend to emerge in an ever changing employment situation. Several of these weaknesses were also identified by an ILO Review Team several years ago (ILO External Collaborator, 1996).
Several weaknesses in the Industrial Relations Act are apparent:

- The lack of continuity in appointment of industrial tribunals is one of the major inherent concerns, apart from the Chairman. As a result, there is no continuity for the tribunal membership, which often result no pooling of knowledge and resources to aid expertise in making decisions. In the absence of continuity, what had emerged is lack of consistency and predictability in decisions of tribunals.

- The relative basic legislatory framework is a bonus, yet it is also a weakness. The legislation lacks rigour and sophistication and leaves much to discretion of chief bureaucrats and politicians in the operations of industrial relations. This is despite its implicit and direct discouragement of undue political interference; the vague provisions invariably encourage such interference.

- There is unnecessary delay inadvertently caused by the legislation before an award becomes registered to have legal standing. The requirement for an award to be registered causes delay in the bureaucratic process it awaits scrutiny from stakeholders to decide on its unsuitability. This wait can be expected to more than a year when there is lack of response forthcoming. Therefore, there is lack of specified timeframe for reviews that awards seem to go to a limbo before being resurrected.

- There are also other unnecessary steps and delays in the procedures for dealing with industrial disputes. As an example, Section 29 of the IR Act, states that a dispute unable to be resolved by the Secretary of the DIR may refer it to the Minister. The Head of State gets involved in this stage and he or she, on advice, can refer the matter back to the Secretary to refer the dispute to an Arbitration Tribunal. The route to the Arbitration Tribunal can be shorter if the Secretary does it in the first instance upon his or her in capacity to resolve the dispute rather than have to refer it to the Minister and also getting the Head of the State getting involved in the process.

- Some provisions in the IR Act remain ambiguous and do not appear to be of any purpose. For example, the provision for Boards of Inquiry in the Industrial Relations Act and the PSCA and TSCA Acts do not specify their real purpose. The Boards are powerless but exist only to report findings to the Minister. The legislation implies the Minister can exercise his discretion to reveal whole or any part of such report, however does not specify the consequences of that report to be.

- The consultation process for the National Tripartite Consultative Council (NTCC) in the provision is not regular. Since established in 1992, it only meets twice each year however at times they get postponed as the Ministers are unable to attend because of other commitments. There is no provision for Alternative Members for the Ministers on the Council. An amendment to the Act would allow this problem
to be resolved in making allowance for the appointment of an Alternate Member for each Minister.

2.29 Deficiencies in Minimum Wage Fixation

Similarly, there are several sticking points which make the implementation of the MWB problematic and warrant urgent attention in rectifying the relevant provisions. They include:

- The legislation does not establish any criteria or guidelines for the preparation of such a reference;
- There is no legislative guarantee that a reference will include all matters that, in fairness and justice to workers receiving minimum wages and conditions, should be considered by the Board;
- The inevitability of delay occurring in registering of a MWB determination is obvious in the legislation (Section 24 of the IR Act). It appears that in at least several cases awards had not been registered more than six months after it had been presented for registration. As it appears there is no point in registering an award, other than to enable it to be scrutinized for the purpose of determining whether it should be disallowed.

2.30 The Public Service Conciliation and Arbitration Act, 1971

The PSA Act, 1971 caters for public service employers and public service employees as defined, other than members of the TSCA, 1974 (Section 12). The PSA Act is similar to the IR Act, in the appointment of ad hoc Boards of Inquiry (PSA Act, Section 19). There is also provision for permanent PSCA Tribunal consisting of a permanent Chairman and two other persons appointed, respectively, from a panel of names sent to the Minister by the Head of the Department of Personnel Management (DPM) and the public service organizations. Section 3 also allows for the appointment of assistant members from lists provided by DPM and the public service organizations. Provision is also made for the appointment of a Registrar, whose duties are as prescribed by the Act and as directed by the Chairman of the Tribunal.

Part IV of the PSCA Act requires for the settlement of claims for changes in the conditions of public employment. Where a claim is not agreed to, it may be reported to the Registrar, who is required to advise the Chairman of the Tribunal without delay. In some circumstances, the Registrar may, decline to publicise such a report unless satisfied that a period of 28 days (or some other period agreed to by the parties) has elapsed since the claim was made and all reasonable attempts by the claimant to settle the matter have been unsuccessful, or there is no real likelihood of the matter being settled without action under the Act (Section 15).

Section 16:a& b of the Act prescribes that where the Chairman of the Tribunal has been advised of a claim, the Chairman must inquire into the matter. He may then direct the parties in writing to enter into negotiations within 14 days, or such other date as is
specified in the notice. At any time during negotiations for the settlement of a claim a party may apply to the Chairman for assistance in the negotiations (Section 17). According to Section 18:1, the Chairman has power to convene a compulsory conference where, within 28 days of a notice requiring the parties to negotiate. This occurs when a party has refused to do so, or the parties consent to a conference or, at the expiration of 28 days from the date of such a notice, no settlement has been reached. Where the parties have agreed to procedures for the settlement of disputes between them, the Chairman may not call a compulsory conference unless a period of 28 days from the issuing of a notice to negotiate has expired, a party has refused to proceed, or to proceed further, under the agreed procedures, or the parties consent or request such a conference (Section 18:2). Despite those restrictions, the Chairman may convene a compulsory conference where the Chairman considers it desirable to do so in the public interest (Section 18:3).

Where the Chairman is unable to effect a settlement by negotiation or conciliation, the Chairman may refer the matter to the Tribunal. That should eventuate if it is a unanimous agreement of both parties (Section 19). The Tribunal is to consist of the Chairman and two members and assistant members selected by the Chairman in accordance with Section 3. Although, the Head of State, acting on advice, may direct that for the purpose of a particular claim, a particular assistant member be selected, or not be selected, to sit on the Tribunal (Section 20). The Tribunal may decide that a particular claim may properly be dealt with by the Chairman sitting alone (Section 20:4).

Section 30 of the PSA Act allows that where the Tribunal considers that a claim with which it is dealing involves issues of general public importance it may request the Head of State to refer the claim, or any aspect of the claim, to a Board of Inquiry and adjourn the proceedings for that purpose. A Board of Inquiry is required to inquiry into and report on matters referred to it under the Act and to report to the Minister without delay (Section 11). The Head of State, acting on advice, may cause or permit the publication of such a report in whole or in part (Section 14).

The intentions or determinations of the Tribunal must be filed with the Registrar for registration (Section 44). The Tribunal may not make a determination that is not in accordance with the law, other than the law relating to salaries, wages, rates of pay or other terms and conditions of service or employment of public employees. Section 43 of the Act obligates that where the Chairman is of the opinion that a determination is not, or may not be, in accordance with such a law it is to be sent to the Minister for presentation to the National Executive Council (NEC). When a determination has been registered the Registrar is required to provide the Minister with a copy of the determination. The Minister is required to cause each such determination to be submitted to the NEC. Within 14 days of a determination being submitted to the NEC the Head of State, acting on advice, may disallow the determination in whole or in part (Section 52). The effect of disallowance is that the determination or that part of it was disallowed, does not come into operation and has no force or effect (Section 52:4).

2.31 The Teaching Services Conciliation and Arbitration Act, 1974
The TSCA Act, 1974 establishes a Teaching Service Tribunal which is similar in structure to the Tribunal established by the PSCA Act (TSCA Act, Section 3). Otherwise, the PSCA Act applies to the Teaching Service *mutatis mutandis*. The result is that the requirements and procedures established by the PSCA also apply to the teaching service.

2.32 The Industrial Organisations Act, 1963

The IO Act, 1963 is one of the several labour Acts which regulate the establishment and operation of industrial organisations. The Act amended only once in 1978 to oblige employers to deduct union contributions from money paid to employees and for related purpose. In general, it is rudimentarily sound in warranting legal recognition to registered organisations. The Act prescribes amongst others two essential facets of industrial organisations requirements: freedom of association and right to organise and compulsory registration.

2.33 Freedom of Association and Right to Organize

The right to association and right to organize are allowed for in the IO Act, 1963. PNG has accordingly ratified the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and Right to Organize and Collective Bargaining Convention, 1949 (No. 98). The IO Act therefore gives credence to the formation and existence of employer and employee groups in relation to industrial matters. Although registration of an industrial organisation in PNG is not mandatory, it safeguards them from common law actions for hindrance of business.

A prescriptive piece, the Act allows democratic control of financial resources, election of office barriers and efficient management of the organisations. The issue of compliance with the requirements of the Act is particularly acute for trade unions where a lot of them had been de-registered for lacking effectiveness. Of the 142 trade unions registered between 1963 and 1996 only a handful are in operation (Imbun, 2000:52. Although the PNG Trade Union Congress (TUC), peak union body, recognises this predicament, it recognizes the requirements of the Act as appropriate. It also realises that there is a need to increase the operational capacity of the trade unions to comply.

2.34 Compulsory Registration

The right to organize under the IO Act allows trade unions to have compulsory registration to have any impact at all on their relationship with their employer. Despite the Act’s significance, several provisions exist contrary to the principles of freedom of association. Several contradictions are obvious in some provisions:

- Section 8, which provides that an organisation of 20 or more members must become registered under the Act or dissolve;
- Section 22:2 which provides that where registration under the Act is refused the organisation is dissolved;
- Section 24, which provides that one of the consequences of the cancellation of registration is that the organisation concerned is dissolve;
- Section 25, which with some exceptions, make it an offence for a person to act on behalf of an unregistered industrial association to which Section 8 of the Act applies (i.e. an organisation with 20 or more members;
- Section 39 provides that certain persons cannot be officers of industrial organisations, and empowers the Registrar to remove from office the secretary or treasurer of an organisation that is, in the Registrar’s opinion, not capable of performing effectively the duties of the office (ILO External Collaborator, 1996:6).

Apparently there are contradictory implications arise of the first four stated provisions. The purpose of the provisions is to view registration as prerequisite and therefore provide legal impetus to operations of employer and trade unions as industrial organisations with the minimum of 20 members. The set criteria in the Act must be complied for the registration of an organisation and therefore there is no discretion involved in recognition. A refusal to recognise an organisation is to refer to the National Court for interpretation of the Act. In a way, the statements and further endorsements of the provisions above exist to provide relevance to the principles of freedom of association.

Section 39 restricts persons from holding the position of influence in an industrial organisation of not directly employed in the industry or occupation. Only the Industrial Registrar can exercise his or her discretion to endorse an appointment of someone who is not a member of an organisation, or for one’s removal on the basis of not competency. This section apparently hinders the right of industrial organisations, enshrined in Article 3 of ILO Convention No. 87, to freely elect their officials to oversee its affairs.

While the stakeholder approval of the IO Act in its current form is unanimous, this is despite the shortfalls. The Employers Federation and the PNGTUC maintain that persons who represent and advocate for members of an organisation are those who are genuine spokespersons. Therefore, due registration allows that discretion where as in PNG a lot of people can claim to speak on behalf organisations whose bona fides are questionable.

2.35 Trade Unions

For a developing country, trade unions in PNG exist freely in a pluralistic industrial relations environment. The IO Act mandates the existence of trade unions and the IR Act provides the machinery for them to resolve their industrial issues.

Currently, the trade union movement is particularly weak and fragmented, more evident in the private sector. The peak trade union body, PNGTUC has a membership of 35,000 members. Recently, the large public sector unions, Public Employees Association and Teachers Union have decided to join the peak union and it is estimated that membership would rise to be around 80,000. If this affiliation of large public sector unions occurs, it would be a feat for the PNGTUC which had been deprived of even the basic resources to
represent workers’ interest in the country. For a strengthened trade union movement, it is imperative for small unions to amalgamate to achieve efficiency to improve effectiveness in delivery of services to members.

2.36 Trade union activity

However, the PNG trade unions also exist in a subdued industrial environment. Their failure to effectively engage in industrial activity to promote their interest is caused by numerous problems emanating from poor leadership, lack of resources, ‘misconceptions’ from members, in effectiveness in the DIR and a host of other reasons. However, the need for strikes to be approved by secret ballot and be notified in advance to the DIR has put a major brake on industrial activity (IR Act, Section 2). This poor level of union development and union activity has undermined the industrial relations system’s potential for dispute resolution and wage fixing (Imbun, 2000). However, there are some exceptional organisations with capacity for effective operation within the system of compulsory conciliation and arbitration includes the PNG Teachers’ Association, Public Employees Association and the PNG Waterside Workers Union.

However, of the 142 PNG unions registered between 1963 and 1996 only a third of them have remained viable in the industrial relations system. A large number of them became de-registered generally attributable to a host of factors including extremely small size of the unions, cessation of workplaces and ineffective leadership and lack of resources, although a few of the de-registrations were done to amalgamations. This is often a sign of success rather than failure (ibid).

More than two decades after political independence, PNG unions remained general weak and unable to use the industrial relations processes of conciliation and arbitration to their full advantage. Out of the total number of 1,278 disputes recorded between 1963 and 1982, only 18 per cent went to arbitration while most were merely ‘ignored’ by the various employers and a few cases were solved at conciliation (Daley, 1983:85). The same pattern continued, in which a total of 55 disputes between 1989 and 1992, saw a third of the disputes were terminated without successful negotiation and the rest were settled with the frequent involvement of DIR industrial relations officers (DIR Industrial Dispute Statistics, 1993:12). Though the medium of third party intervention proved useful, the outcomes were a mere fraction on some of the unions’ wage demands mainly in the plantation sector. The picture was the same in the subsequent years.

2.37 Industrial Safety Health and Welfare Act, 1965

The workplaces in PNG are regulated by the Industrial Safety Health and Welfare Act (ISHW), 1965. The latest consolidation to the Act was in 2001. The current law is a polished product and makes allowance for a comprehensive range of stipulations to be considered in the management of OHS in workplaces. In 1992 the Occupational Health
and Safety (OHS) Act was passed but it did not repeal the 1965 Act. Only the mining industry is regulated by the Mining (Safety) Act. This Act is administered by the Inspection and Engineering Branch of the Mines Division of Mining Department. Several other legislations also have some impact on OHS includes the Public Health Act, the Employment Act, the Maritime Act, the Inflammable Liquids Act and the Explosives Act.

The ISHW Act has been the subject of number of studies (ILO, 1991, 1998; Reddie, 1996; Kalinoe, 1998) which generally agree on its many shortcomings and point out as obsolete and does not seem to reflect the current needs of the country. The Act maintains a traditional regulatory approach of prescribing minimum standards to limit hazard levels at workplaces and since its inception in 1961 it reflected the regulatory environment of the time. Several orders or codes are provided for in the Act which further regulates OHS which acknowledge industry specific. They include: Industrial Safety (Building Works) Order, Industrial Safety (Chemical Treatment of Timber) Order, Industrial Safety (Excavation Works, Shafts and Tunnels) Order; Industrial Safety (Explosive-powered Tools) Order; Industrial Safety (Lifts) Order; Industrial Safety (Monocrotophos) Order; and Industrial Safety (Tractors and Earthmoving and Mobile Construction Equipment) Order.

A closer look at the IHSW Act reveals that the primary focus is on the regulation of OHS in factories and other industrial establishments. Some lengthy discussions (under Part IV and V) are devoted to elaborating the prescribed minimum conditions of work in factories which the proprietor is obligated to observe. However, the irony is obvious as the legislation primarily pertains to safety requirements in manufacturing which employs an insignificant of number of workers and in the process does not cover adequately the primary sector where bulk, of employment is concentrated.

The IHSW Act emphasizes heavily on enforcement through inspection of workplaces. The apparent impression is that a reasonable availability of resources is necessary to administrator the inspection regime to practically oversee the compliance of the Act.

2.38 Deficiencies in the Industrial Safety Health and Welfare Act, 1965

Although the IHSW, 1965 compliments the OHS Act, 1985, there are numerous weaknesses which cloud the effective regulation of the Act (s). They include:

- The ISHW Act is inappropriate and not relevant to reflect the current needs posed by an ever changing physical and legal work environment. The provisions attempt to cover many contingencies in detail and therefore become very complex, technical and cumbersome. The legislation poses difficulty for employers and employees to apply the provisions as detailed requirements are narrow in scope and have limited application while the enforcement tend to deal with only specific machinery safety provisions.
• The Act is too complex and does not provide simply worded general duty of care provisions and it is silent on the requirement for employers and employees to establish systems in the workplace to deal with OHS issues. Further, there is lack of mention on the human and organizational factors affecting safety management while emphasis on the control of the physical work environment is too extensive. The Act therefore provides little or no incentive to employers and employees to attend to these issues to further the cause of OHS at the workplaces.

• The legislation is externally imposed and there are no provisions which encourage consultation between employers and employees and therefore it is increasingly seen as a “government’s responsibility”.

• There are justified concerns in the inspection and enforcement aspects of the ISHW Act. The Act gives the mandate to the Department to inspect and enforce OHS in industrial workplaces. The Department has shifted this authority to external parties to conduct inspections could be because of resource constraint and other reasons. A number of inspectors have been identified however their mandate is unclear as to which work sites they should inspect either their own or others. Instructions are not clear on the regularity and the inspections are less surprisingly less regular. There is no system in place to coordinate external inspection practices and similarly no functioning system of reporting on safety and health inspections.

• There is lack of professional management of accident data collection and analysis. The ISHW Act provides provision for the accumulation of appropriate data however the report system is ineffective and no readily available data exists. The only available data pertaining to accidents originates from the Workers’ Compensation Office however the statistics are confined to accidents which resulted in permanent disabilities.

• The activities of employers’ and workers’ organizations and NGOs to improve OHS through awareness training are the ideal way to go, although such initiatives are not common. There is limited communication between the social partners and government authorities on OHS aspects. Worker awareness on OHS through their peak union body, the PNGTUC is none existent. The PNG Occupational Safety and Health Society is one professional association whose membership is from industry and government run occasional activities includes annual conferences, awareness campaigns and first aid courses.

• The ISHW Act relies heavily on enforcement through inspection, in contrast to current practice of establishing the legal mechanisms to promote voluntary action at work places.

• PNG is yet to ratify many of the ILO Conventions on OSH and the country seem to be missing out on a lot of useful insights into how workplaces are currently managed in relation to OHS. Most of these conventions are products of tripartite
meetings and their recommendations have huge benefit to offer practical guidance in the event of reviewing national laws and regulations.

Relevant Conventions worth considering for adoption are: Occupational Safety and Health Convention 1981 (No. 155), the Occupational Health Services Convention 1985 (No. 161) and the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148, 164, 171 and 156 respectively). Other relevant standards include the Radiation Protection Convention, 1960 (No. 115), the Guarding of Machinery Convention, 1990 (No. 170) and the Prevention of Major Industrial Accidents Convention, 1993 (No. 174, 114, 118 and 177 respectively).

2.39 Occupational Health and Safety Act, 1992

The OHS Act, 1992 provides a complex arrangement of prescriptive and open, specific and general, requirements of safety management in workplaces. The provisions are so detailed that it requires a well trained and experienced person to administer the provisions adequately. Similarly, the provisions are open that effective compliance enforcement would be avoided.

The OHS Act can be read and administered in parallel with the ISHW Act. However, in the event of any inconsistency between this Act and other previous Acts provisions of the former will prevail (Section 66 (2). Another difference is that the OHS Act departs from the traditional regulatory approach of prescribing minimum standards for operational standards and machinery and equipment design and instead calls for a cooperative approach to safety management between employers and workers. Kalinoe (1998:13) labeled the Act, the “Robens-style legislation’ which provides for employees to participate in OHS through OHS committees and OHS employee representatives and therefore acknowledging them as initiators as well as observers of safety.

The legislation resulted of a Private Members Bill and therefore the Department does not seem to take full ownership in administration. The legislation is centered on eight major areas of OHS management. They include:

- The establishment of Health and Safety Committees/Representatives in the workplace;
- The issuing of provisional improvement notices;
- The establishment of an OHS Council;
- Responsibilities in respect to Employers, Self-Employed, Contractors
- Employees, Designers, Manufactures, Importers and Sellers;
- Inspectors and Inspections;
- Improvement/Prohibition Notices;
- Offences and Prosecutions;
- The Creation of Regulation and Codes of Practice.
The OHS Act allows parties in the workplaces to get engaged in the management of safety and health which would ultimately produce and support good work practices. This Act outlines particular responsibilities for the inspector to be of performance monitoring, inspecting/investigating, advising and educating.

There is a regulatory arrangement in place which caters for the enforcement of prescriptive minimum safety measures and also requires a collective workplace scrutiny of safety issues. The Mining (Safety) Act is effectively regulated and there is high degree of compliance by the industry. While the OHS Act is not prescriptive concerning specific safety aspects and because of its general applicability it will not be outdated by technology.

An avenue exists for discussing and addressing matters concerning OHS between the stakeholders in PNG. The National Safety Council and the OSH Association is a tripartite initiative and with their limited resources do undertake safety awareness campaigns however they are not frequent.

2.40 Deficiencies in Occupational Health and Safety Act, 1992

The following weaknesses are detected in the Act:

- There is no direct link between the OHS Council and the Department in the OHS management. There is obvious lack of emphasis on the role Government must play in ensuring the compliance of safety health and welfare standards. For example, Section 18 of the OHS Act directs the Minister to appoint inspectors on the advice of the Council. This discretion can be abused at times and what really warrants is the appointment of an inspector must result from consultations held between the direct employer and the government agency responsible for OHS regime. This will remove the likelihood of unbiased functionality and nullify confusion of responsibility connections.

- The duty lists stated in Section 2 to 10 provide specific duty requirements for the position of Senior Labour Officer who is responsible for labour inspection, industrial relations, apprenticeship, technical and safety and employment placement. However, there is no reference to technical safety and health aspects. There are similar discrepancies found in duty lists of Principal Technical Officer and Senior Technical Officer where person specifications do not adequately meet the job specifications.

- Apart from the legislation there is an absence of operating standards for staff in the Department in administration the OHS regime. Effecting from this there is a possibility for use of discretion and inconsistency in application of legislative provisions which would set inconsistent performance standards.

- Administratively, the Department is gravely under resourced to carry out safety inspections and would require sufficient funds to implement the provisions in the
Acts. This partly results from OHS as a low priority area as well as the Department seen as “middle level” service agency.

2.41 Workers Compensation Act, 1984

The Workers Compensation Act, 1984 regulates terms and conditions under which workers compensation is payable in PNG. The Act prescribes that where there is an injury or illness arising out of and in course of their employment compensation should be paid to workers and/or their dependents. It is administered by the Office of Workers’ Compensation where funding is sourced from a levy on the income from premiums received by recognized insurance companies. The 1984 Compensation Act repealed the 1958 Compensation Act.

The Act is essay read, understand and neatly divided into 10 parts: definition of key concepts, administration of Office of Workers’ Compensation, Workers’ Compensation Fund, Claims, Right to Compensation, Amount of Compensation, Payment and Investment of Workers’ Compensation, Alternative Remedies, Compulsory Workers’ Compensation Insurance and Miscellaneous.

It covers all employees including the State. Domestic servants are also covered and any other persons employed contract of employment or apprenticeship or otherwise with an employer. Only outworkers and casual workers are not covered by the Act. The system is administered by the Office of Workers Compensation which is a division of the DIR. The Office is headed by a Chief Commissioner.

Tribunals are appointed under the Workers Compensation Act which gives them the exclusive jurisdiction to examine, hear and determine all matters arising under the Act. There are prescribed maximums which limit the total amount of compensation payable and compensation is payable to an injured worker for loss of earnings (weekly) and for specified injuries (lump sum) plus medical and related expenses. Dependants can claim compensation in any case involving the death of a worker.

The Act is a sound piece of legislation which provides comprehensive coverage for workers engaged under the contract of employment. Many people interviewed agree the Act is appropriate and it serves its purpose well. Another review by an ILO team (1997:4) found that “there was no comment or criticism that revealed a need for any substantive changes to the system itself”. Although there were concerns raised which centered on the administration of the compensation system’s ability to deal with back log of claims.

2.42 Deficiencies in the Workers’ Compensation Act, 1984

Although the legislation is soundly written and understood by stakeholders, several inherent deficiencies exist.

- One of the grave concerns of workers is the Workers Compensation system’s ability to clear the backlog of the claims. There is multitude of factors associated
with assessing, processing and settlement of a compensation claim. Sections 73 to 75 of the Act appear to allow reasonable flexibility to facilitate industry assistance in settling straightforward cases.

- There is no provision in the Workers Compensation Act, 1984 for the establishment and appointment of a management committee (or board) to oversee the management of the workers compensation system on behalf of government and other interested parties.

- The Act is ominously silent on the lack of enforcement pertaining to such matters as: uninsured employers, failure to give notice of injury, to give notice of injury within the prescribed time, to make weekly payments and to keep records of wages etc.

- Section 90 and Section 92 of the Act respectively requires an employer to have a policy of insurance or indemnity in relation to any worker and keep a record of wages. Since inspections are rarely done by officers many unscrupulous employers go unchecked and unpunished.
Part Three

3.0 Recommendations

A set of recommendations is suggested to rectify the gaps and deficiencies identified in the labour laws in PNG. Some of the recommendations suggested may be already included in the on-going DIR-ILO led review of some Acts.

3.1 Industrial Relations Act, 1963

The following recommendations result from the review of the IR Act, 1963.

- It is recommended that Section 11 be amended to allow continuity in appointment of industrial tribunals. The lack of continuity in the industrial tribunals is one of the major inherent concerns, apart from the Chairman. As a result, there is no continuity for the tribunal membership, which often result no pooling of knowledge and resources to aid expertise in making decisions. In the absence of continuity, what had emerged is lack of consistency and predictability in decisions of tribunals.

- It is recommended that Sections 17 be refined to limit political interference on the basis of “national interest” or “public interest” and the concept(s) should be defined so that the Minister and Head of State do not use their power arbitrarily. There are too many vague provisions in the Act which allow discretion to senior bureaucrats and politicians to make bidding decisions on industrial matters. The contradictory stances are evident in this example. The Head of State, acting on advice, may establish a tribunal under section 18 of the Act to deal with an industrial dispute. However, the Head of State may also revoke this tribunal and establish another if he or she wishes to deal with the dispute. Under Section 24, the Head of State, acting on advice, at any time, disallow an award made by a tribunal or MWB because of it’s perceived contrary to public policy and best interest of PNG. Several awards been nullified on this basis of this provision and this have resulted disharmony and controversy amongst stakeholders and in the country.

- The IR Act should be entirely reviewed to rectify the unnecessary delay inadvertently caused by the legislation before an award becomes registered to have legal standing. The requirement for an award to be registered causes delay in the bureaucratic process it awaits scrutiny from stakeholders to decide on its unsuitability. This wait can be expected to more than a year when there is lack of response forthcoming. Therefore, there is lack of specified timeframe for reviews that awards seem to go to a limbo before being resurrected.

- It is recommended that Section 29 of the Act be amended to remove the unnecessary steps and delays in the procedures for dealing with industrial disputes. The provision states that a dispute unable to be resolved by the Secretary
of the Department may refer it to the Minister. The Head of State gets involved in this stage and he or she, on advice, can refer the matter back to the Secretary to refer the dispute to an Arbitration Tribunal. The route to the Arbitration Tribunal can be shorter if the Secretary does it in the first instance upon his or her in capacity to resolve the dispute rather than have to refer it to the Minister and also getting the Head of the State getting involved in the process.

- It is recommended that some of the provisions (e.g. 20) in the Act should be reviewed to remove the ambiguity as they do not appear to be of any purpose. For example, the provision for Boards of Inquiry in the IR Act and the public services and TSCA Acts do not specify their real purpose. The Boards are powerless but exist only to report findings to the Minister. The legislation implies the Minister can exercise his discretion to reveal whole or any part of such report, however does not specify the consequences of that report to be.

- The consultation process for the NTCC in the provision is not regular. Since established in 1992, it only meets twice each year however at times they get postponed as the Ministers are unable to attend because of other commitments. There is no provision for Alternative Members for the Ministers on the Council. It is recommended that an amendment to the Act be allowed to make allowance for the appointment of an Alternate Member for each Minister.

3. **2 Industrial Organisations Act, 1963**

Two recommendations arise of the IO Act:

- The four Sections (8, 22:2, 24, 25 and 39) of the IO Act pertaining to compulsory registration of trade unions accommodate contradictory implications. The provisions prescribe registration of industrial organizations as prerequisite; however on the other hand, they also prescribe the recognition of those organizations to be on the discretion of the Industrial Registrar.

It is therefore recommended that these provisions be reviewed to remove the inherent contradictory implications posed pertaining to the existence of the industrial organizations.

- Section 39 provides that certain persons cannot be officers of industrial organisations, and empowers the Registrar to remove from office the secretary or treasure of an organisation that is, in the Registrar’s opinion, not capable of performing effectively the duties of the office.

- Section 39 hinders responsible persons for holding the position of influence in industrial organisations. The provision states that one has to be directly employed or involved in the industry to represent an organization. And the Industrial Registrar can have the discretion to endorse an appointment of someone who is
not a member of an organization, or for one’s removal on the basis of incompetence.

It is recommended that this provision be amended as it apparently hinders the right of industrial organizations (as enshrined in Article 3 of ILO Convention No. 87) to freely elect their officials to oversee its affairs.

3.3 The Public Service Conciliation and Arbitration Act, 1971

The current Act is sound and adequate in provision of the dispute settlement machinery to address issues in the public service sector.

3.4 The Teaching Service Conciliation and Arbitration Act, 1974

The current Act is sound and adequate in provision of the dispute settlement machinery to address issues in the teaching services sector.

3.5 Industrial Safety Health and Welfare Act, 1964

The following recommendations must be undertaken to consolidate the current system of safety management to achieve its desired objective of well regulated safety conscious workplaces in the country. They are directly related to the Inspectorate to operate adequately.

- Some of the provisions pertaining to hazardous processes and others in the ISHW Act should be converted to the OHS Act to reflect current practices in safety enforcement and compliance.

- The duty list of the officers involved in administration and inspection of the work sites should be revisited and refined to be clear enough to remove any ambiguity.

- There should be an information gathering section headed by a competent officer in the Department to identify trends and developments on the accumulation of accident and other data from workplaces.

3.6 Occupational Health and Safety Act, 1985

The OHS Act, 1985 compliments the ISHW Act, 1964 quite fairly but there are weaknesses which cloud the effective regulation of the Acts.

The following recommendations warrant attention to rectify deficiencies in the OHS Act.

- The DIR must ownership of the OHS Act 1992 and become the primary enforcer of its provisions.
• The Secretary of the DIR should be the right person to appoint senior and junior officers responsible for carrying out safety administration and inspection. The OHS Act should be amended to effect this change and will remove the duplication of responsibility which now rests with the Minister.

• The Department must be beefed up in officer capacity and physical and financial capacity to administer the OHS legislation.

• The ISHW Act should be repealed after a through conversion of the provisions.

• The Operating Standards in the OHS legislation spelling out inspector activities have to be reworked to make it plain as possible to state: when, why, how the safety inspection should be undertaken successfully.

• The Department should develop selection criteria and match it to person specification (for compatibility between officer and jobs identified for OHS administration).

• The appointment of an inspector must result from consultations held between the direct employer and the government agency responsible for OHS regime. This will remove the likelihood of unbiased functionality and nullify confusion of responsibility connections.

3.7 Workers Compensation Act, 1984

The following recommendations are proposed for the Workers’ Compensation Act, 1984.

• Sections 90 and 92 of the Workers Compensation Act be amended to authorize insures to pay compensation direct to claimants in certain cases with appropriate safeguards.

• The legislation should be amended to provide provisions for the establishment and appointment of a management committee (or board) to oversee the management of the workers compensation system on behalf of government and other interested parties.

• A proactive inspection program be instituted in the workers compensation management system to make employers produce their insurance policies and record of wages on regular basis and inspectors would be required to follow-up any failure to comply with the request to produce.

• The Workers Compensation Act, ISHW Act and OHS Act, need to be closely coordinated to ensure the most effective use of available resources. As a result of lack of resources, this cooperation does not seem to take place at the moment.

3.8 Employment Act, 1978
The Employment Act, 1978 had outlived its usefulness and requires a wholesale revamp to bring it in line with ILO Conventions in both law and practice. The following recommendations are posed to assist with this review.

- Section 103:4 of the Employment Act contradicts the ILO Minimum Age Convention, 1973 (No. 138). This Section prescribes for a child of at the ages of 14 or 15 to be employed during school hours if the employer is satisfied that the child is no longer attending school.

This provision needs to be amended to increase the age of child employment from the current age of 14 to 15 as stipulated under the ILO Minimum Age Convention, 1973 (No.138).

- Section 100:3 of the Employment Act provides that the period of maternity leave includes the period necessary for hospitalization prior to confinement. Section 100:1 provides that only employees, who have worked for the employer for not less than 108 days within the period of 12 months or for not less than 90 days within the period of six months immediately preceding the grant of leave, benefit from this right.

No provision is made for compulsory maternity for Public Service women officials of at least six weeks following confinement.

The ILO Convention on Maternity Protection Convention (Revised), 1952 (No. 103) provides for 12 weeks maternity leave, as well as compulsory leave of six weeks after confinement, and no qualifying period may be imposed.

This provision needs to be amended to comply with the ILO Convention requirements.

- The Employment Act prohibits discrimination only on the basis of sex, and should be amended to expand the ground of discrimination.

Discrimination on the basis of HIV status (actual or perceived) should also be reflected as a prohibited ground of discrimination. The Act requires amendment to comply with the ILO Convention on Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

- The current provisions (33-39) of the Act are notably weak in safeguarding workers from being unfairly dismissed. Safeguards are even lacking in the dismissal of workers in the event of engaging in trade union activity and also the unavailability of requirement for notice and provision of procedural safeguards and redundancy benefits.

These provisions need to be rectified to reflect ILO Termination of Employment Convention, 1982 (No. 158).
• Provisions 27-32 of the Act on piece-rate work, and more importantly on calculations for overtime in the provisions, are rigid. The details on overtime done on weekends and other matters concerning overtime should be the subject of negotiations or enterprise bargaining in particular workplaces.

It is recommended that the legislation should only point out the principles and leaves the details to be sorted out in varying workplaces.

• As there are no provisions accommodating the part-time work as a mode of employment, the Act needs to be amended to reflect the current part-time arrangements in workplaces.

• Section 51:1 of the Act refers to overtime and an employer may require an employee to work a reasonable amount. The “reasonable amount” leaves much to abuse and requires specified of actual hours to be accorded with “reasonable amount”.

It is recommended that there should be figure stated to quantify “reasonable amount” to limit employers from over using workers.

It is also recommended the revamped Act should look taking into account of the following factors which are currently not included in the current provisions:

• provision to reflect employers and workers particularly in small-scale and micro workplaces.
• provision to include piece rate workers working time mainly the agricultural sector.
• provision to include completed overtime compensated for time off.
• provisions to respond to the current needs of the manufacturing sector, in providing flexibility.

Above all, the Employment Act should be reviewed to bring it up to date with current workplace environment. The review should define the levels of protection which workers want for an improved quality of work and life and for the employer’s desire for improved competitiveness.

The provisions enacted should be easily understood and applicable to all workplaces. They should have practical implications easily to be implemented.

3.9 Employment of Non-Citizen, Act 1978

This amendment is needed in the ENC Act, 1978 to comply with ILO Convention Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
• There are particular rules for employment of foreigners, and exclusion from the IR Act. Various provisions in the Act are considered to be discriminatory, for example wage determinations that provide a higher minimum wage for non-citizens contravene the right to equality.

3.10 National Superannuation Act, 2001

The current National Superannuation Act, 2001 is sound and practical.
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