THE LABOUR MARKET AND LABOUR LAWS IN FIJI

By

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No. 2006/12(ELMS-4) April, 2006

This is a commissioned paper for the ELMS studies. Comments, criticisms and enquiries should be addressed to the author. Corresponding email address is: ganesh@connect.com.fj

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The Labour Market and Labour Laws in Fiji

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April, 2006
# Contents

## I  Employment and Labour Market

1.1 Background ................................................. 1  
1.2 Macroeconomic Performance ................................. 1  
1.3 Structural Adjustment ...................................... 5  
   1.3.1 Public sector reform .................................. 5  
   1.3.2 Public Finance ........................................ 6  
   1.3.3 Trade Reforms ........................................ 7  
   1.3.4 Labour Market .......................................... 7  
1.4 Population, Labour Force and Employment ............. 8  
   1.4.1 Labour Force .......................................... 8  
   1.4.2 Employment/Unemployment ............................ 10

## II  The National and International Context ............ 14

2.1 Inventory of Labour Laws ................................. 14  
2.2 National Origins ........................................... 15  
   2.2.1 Freedom from Slavery and Forced Labour .......... 15  
   2.2.2 Freedom of Assembly and Trade Unions .......... 15  
   2.2.3 Discrimination ....................................... 16  
   2.2.4 Freedom from cruel or degrading treatment ....... 19  
   2.2.5 Freedom from unreasonable body searches ....... 19  
   2.2.6 Customary Labour Practices ......................... 19  
   2.2.7 Fair Labour Practices ................................ 19  
   2.2.8 Employment in Disciplined Forces ................. 20  
2.3 International Origins ..................................... 20

## III  Primary Legislation: The Employment Act ......... 22

3.1 Application .................................................. 22  
3.2 Exclusion .................................................... 22  
   3.2.1 Private Sector and Public Sector Workers ......... 22  
   3.2.2 Sugar Industry ........................................ 26  
3.3 Advice to Minister ......................................... 26  
3.4 Employment Records and Inspections .................... 26  
3.5 Employment Contracts ...................................... 27  
   3.5.1 Termination of an Oral Contract .................... 28  
   3.5.2 Summary Termination ................................ 28  
   3.5.3 Written Contracts Other than Apprentice Contracts 28  
   3.5.4 Contract Duration .................................... 30  
   3.5.5 Termination of contract ............................. 31  
   3.5.6 Re-engagement ....................................... 31  
   3.5.7 Awareness of Employment Conditions .............. 31  
   3.5.8 Foreign contracts of service ....................... 31  
   3.5.9 Contracts Made Abroad .............................. 32  
3.6 Wages ......................................................... 33  
   3.6.1 Wage Slips ............................................ 34  
   3.6.2 Authorised deductions from wages ................. 34  
   3.6.3 Special Exemptions .................................. 35  
   3.6.4 Remuneration other than wages .................... 35
3.6.5 Priority of wages 36
3.6.6 Vicarious Liability 36
3.6.7 Civil Claims 36

3.7 Child Labour 36
3.7.1 Exceptions to Employment of Children 38

3.8 Female Workers 40
3.8.1 Maternity Protection 40

3.9 Employee Care and Welfare 42
3.9.1 Water 42
3.9.2 Medicine and Medical Treatment 43
3.9.3 Return of employees to place of engagement 43
3.9.4 Repatriation of body of deceased employee 43

3.10 Ministerial Powers 43
3.11 Annual Holidays 44

IV Trade Unions and Industrial Relations 46
4.1 Industrial Associations Act 46
4.1.1 Registration of Industrial Associations 47
4.1.2 Inquiries by Registrar 49
4.1.3 Winding up of industrial association 50
4.1.4 Powers of the Minister 50
4.1.5 Immunities 50
4.1.6 Offences 51

4.2 Trade Unions Act 53
4.2.1 Application 53
4.2.2 Registration of Trade Unions 54
4.2.3 Cancellation or suspension of registration 55
4.2.4 Immunities 57
4.2.5 Union Rules and Constitution 58
4.2.6 Membership 60
4.2.7 Officials 61
4.2.8 Registered office and postal address 62
4.2.9 Amalgamation 62
4.2.10 Dissolution 62
4.2.11 Union Funds 62
4.2.12 Union Funds, property, accounts and annual returns 63
4.2.13 Secret Ballot 64
4.2.14 Freedom of Association 65
4.2.15 Ministerial Powers: Regulations 65
4.2.16 Public Information 65
4.2.17 Offences 66

4.3 Trade Unions (Recognition) Act 67
4.3.1 Recognition 67
4.3.1.a Recognition of Majority Unions 67
4.3.1.b Recognition of Minority Trade Unions 68
4.3.2 Determination of Membership 68
4.3.3 Compulsory recognition order 69
4.3.4 Refusal of Recognition Order 69
4.3.5 Duration of Recognition 69
4.3.6 Exclusion from recognition 70
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.3.7</td>
<td>Strike or lock-out on Recognition</td>
<td>70</td>
</tr>
<tr>
<td>4.3.7.a</td>
<td>Unlawful Strikes / Lock-outs</td>
<td>70</td>
</tr>
<tr>
<td>4.3.8</td>
<td>Offences and Penalties</td>
<td>70</td>
</tr>
<tr>
<td>4.3.9</td>
<td>Regulations</td>
<td>71</td>
</tr>
<tr>
<td>4.4</td>
<td>Trade Disputes Act</td>
<td>72</td>
</tr>
<tr>
<td>4.4.1</td>
<td>Scope</td>
<td>72</td>
</tr>
<tr>
<td>4.4.2</td>
<td>Reporting of Trade Disputes</td>
<td>73</td>
</tr>
<tr>
<td>4.4.3</td>
<td>Disputes of Rights and Disputes Committee</td>
<td>75</td>
</tr>
<tr>
<td>4.4.4</td>
<td>Strike or Lock-outs</td>
<td>76</td>
</tr>
<tr>
<td>4.4.5</td>
<td>Unlawful Strikes</td>
<td>76</td>
</tr>
<tr>
<td>4.4.5.a</td>
<td>Procedures not exhausted</td>
<td>76</td>
</tr>
<tr>
<td>4.4.5.b</td>
<td>Matter Settled</td>
<td>77</td>
</tr>
<tr>
<td>4.4.5.c</td>
<td>Extraneous Objectives</td>
<td>77</td>
</tr>
<tr>
<td>4.4.5.d</td>
<td>No Secret Ballot</td>
<td>77</td>
</tr>
<tr>
<td>4.4.6</td>
<td>Offences and Immunities</td>
<td>77</td>
</tr>
<tr>
<td>4.4.7</td>
<td>Essential Services</td>
<td>78</td>
</tr>
<tr>
<td>4.4.8</td>
<td>Arbitration Tribunal &amp; Consideration of a Trade Dispute</td>
<td>79</td>
</tr>
<tr>
<td>4.4.9</td>
<td>Collective Agreements</td>
<td>80</td>
</tr>
<tr>
<td>4.4.10</td>
<td>Picketing</td>
<td>81</td>
</tr>
<tr>
<td>4.4.11</td>
<td>Ministerial Powers</td>
<td>81</td>
</tr>
</tbody>
</table>

V Work and Pay

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1</td>
<td>Shop (Regulation of Hours and Employment) Act</td>
<td>82</td>
</tr>
<tr>
<td>5.1.1</td>
<td>Work Conditions in Shops</td>
<td>82</td>
</tr>
<tr>
<td>5.1.2</td>
<td>Hours of Employment of Shop Assistants</td>
<td>83</td>
</tr>
<tr>
<td>5.1.3</td>
<td>Seats for Female Staff</td>
<td>84</td>
</tr>
<tr>
<td>5.1.4</td>
<td>Opening and Closing Hours</td>
<td>84</td>
</tr>
<tr>
<td>5.1.5</td>
<td>Enforcement</td>
<td>84</td>
</tr>
<tr>
<td>5.1.6</td>
<td>Ministerial Powers</td>
<td>84</td>
</tr>
<tr>
<td>5.1.7</td>
<td>Exemptions</td>
<td>85</td>
</tr>
<tr>
<td>5.2</td>
<td>Wages Council Legislation</td>
<td>87</td>
</tr>
<tr>
<td>5.2.1</td>
<td>Objective</td>
<td>87</td>
</tr>
<tr>
<td>5.2.2</td>
<td>Commission of Inquiry</td>
<td>88</td>
</tr>
<tr>
<td>5.2.3</td>
<td>Power to fix Remuneration and Holidays</td>
<td>88</td>
</tr>
<tr>
<td>5.2.4</td>
<td>Effect and enforcement of wages regulation orders</td>
<td>89</td>
</tr>
<tr>
<td>5.2.5</td>
<td>Remuneration to infirm and incapacitated persons</td>
<td>89</td>
</tr>
<tr>
<td>5.2.6</td>
<td>Remuneration</td>
<td>89</td>
</tr>
<tr>
<td>5.2.7</td>
<td>Employers not to Receive Premiums</td>
<td>89</td>
</tr>
<tr>
<td>5.2.8</td>
<td>Records and notices</td>
<td>89</td>
</tr>
<tr>
<td>5.2.9</td>
<td>Inspections</td>
<td>90</td>
</tr>
<tr>
<td>5.2.10</td>
<td>Ministerial Powers</td>
<td>90</td>
</tr>
<tr>
<td>5.2.11</td>
<td>Wage Orders</td>
<td>91</td>
</tr>
<tr>
<td>5.3</td>
<td>Public Holidays Act</td>
<td>92</td>
</tr>
<tr>
<td>5.4</td>
<td>Daylight Savings Act</td>
<td>94</td>
</tr>
<tr>
<td>5.5</td>
<td>Social Safety Net, Superannuation and Retirement</td>
<td>95</td>
</tr>
<tr>
<td>5.5.1</td>
<td>Fiji National Provident Fund: Contributions</td>
<td>95</td>
</tr>
<tr>
<td>5.5.2</td>
<td>Fund Management</td>
<td>96</td>
</tr>
<tr>
<td>5.5.3</td>
<td>Fund Earnings</td>
<td>96</td>
</tr>
<tr>
<td>5.5.4</td>
<td>Withdrawals</td>
<td>96</td>
</tr>
<tr>
<td>5.5.5</td>
<td>Offences and Penalties</td>
<td>99</td>
</tr>
</tbody>
</table>
VI  Health, Safety and Training 101

6.1  Health and Safety at Work Act 1996 101
  6.1.1  Objective 101
  6.1.2  Applications 102
  6.1.3  Exceptions 103
    6.1.3.a  Mining Industry 103
    6.1.3.b  National Security 103
    6.1.3.c  Domestic Servants 104
  6.1.4  Duties of Various Parties 104
    6.1.4.a  Duties of Employers to Workers 104
    6.1.4.b  Duties of Employers and Self-Employed Persons to Non-workers 104
    6.1.4.c  Duties of Persons in Control of Workplaces 105
    6.1.4.d  Duties of Manufacturers, Importers, Suppliers, and Installers 105
    6.1.4.e  Duties of Workers 106
    6.1.4.f  Duties Applicable to all Persons 106
  6.1.5  Requirements at Workplace: Training, and Health and Safety Committee and Representatives 106
    6.1.5.a  Health and Safety Representatives 106
    6.1.5.b  Health and Safety Committees 107
    6.1.5.c  Responsibilities of Employers to Health and Safety Representatives and Committees 107
    6.1.5.d  Disqualification of Health and Safety Representatives or Committee Members 108
  6.1.6  Discrimination Against Workers 108
  6.1.7  Immediate threat 108
  6.1.8  Occupational Health and Safety Statistics 109
  6.1.9  Occupational Health and Safety Education and Accident Prevention Fund 110
  6.1.10  National Occupational Health and Safety Advisory Board 110
  6.1.11  Health and Safety Inspectors 110
  6.1.12  Inspections and Notices 112
  6.1.13  Assessment and Control of Chemicals 112
  6.1.14  Regulations and Codes of Practice 113
  6.1.15  Codes of Practice 114
  6.1.16  Immunities: Civil liability not affected by duties on Employer, Employee or Other Persons 114
  6.1.17  Regulations 115
  6.1.18  Regulations in Progress 116

6.2  Factories Act 117
  6.2.1  Exclusions 117
  6.2.2  Machinery, Plant and Equipment 117
  6.2.3  Employee Responsibilities 118
  6.2.4  Administrative Requirements 118
  6.2.5  Welfare regulations 119

6.3  Ionising Radiations Act 120
6.4 Workmen's Compensation Act
  6.4.1 Scope 121
  6.4.2 Compensation for Injury 122
    6.4.2.a General Provision 122
    6.4.2.b Compensation for Death 122
    6.4.2.c Permanent Total Incapacity 122
    6.4.2.d Permanent Partial Incapacity 123
    6.4.2.e Temporary Incapacity 123
    6.4.2.f Diseases 123
  6.4.3 Notice Requirements and Medical Attention 124
  6.4.4 Liability in case of workmen employed by contractors 124
  6.4.5 Minister may by order require employers to insure 124
  6.4.6 Contracting out 124
  6.4.7 Medical expenses 125
  6.4.8 Ministerial Powers and Regulations 125

6.5 Fiji National Training Act
  6.5.1 Funding 126
  6.5.2 Apprenticeship and Training 127
    6.5.2.a Apprenticeship - Minimum remuneration 127
  6.5.3 Trade Testing Regulations 127

VII Concluding Remarks 128

VIII References and Acknowledgements 130

Tables

1.1 Governments in Fiji 1
1.2 Basic Economic Indicators 3
1.3 Government Debt 5
1.4 Daily wages ($F), 1986-2003 8
1.5 Labour Force Participation Rate 9
1.6 Formal Employment 9
1.7 Labor Force by Economic Category, 1976-96 10
1.8 Employment and Unemployment Rates: Official Statistics 11
1.9 Unemployment Rates by Ethnicity, 1966-96 11
1.10 Trend in Informal Sector Employment 13
2.1 Labour-Related Laws in Fiji 14
2.2 ILO Conventions Ratified by Fiji 21
5.1 Wages Council 91
6.1 Exploitative Character of the FNPF Pension Scheme 98
6.2 An Alternative Model of Pension Rates 99
Employment and Labour Market

Fiji’s labour market functions within the context of the overall economy. Labour laws, as with all other laws, reflect the economic structure, policies and trajectories, as well as shape them. While in democratic societies with well-established legal frameworks, rapid changes to laws may not be desirable, Fiji has attempted rapid change in the management of the economy and the institutional environment. Labour laws form one component of the institutional environment. However this has remained largely untouched except for some tempering with specific sections in the early 1990’s aimed at weakening trade unions.

1.1 Background

A former colony of Great Britain, Fiji became independent in 1970 and chose a parliamentary system of government. Yet three military coups and a mutiny have established this nation as one of the most politically unstable countries in the Pacific region.

The population of Fiji is almost evenly divided between descendants of Melanesians (who arrived about one thousand years ago) and descendants of indentured labourers brought from India between 1879 and 1916 to work the plantations. The nation is still divided between the conflicting demands of the traditional mode of production (tribalism) and capitalism. Although market mechanism has had a very significant impact on Fiji, the forces of pre-capitalism still dominate many aspects of decision-making. Land, for example, is still communally owned, and a large segment of the population (estimated to be at least 30%) is still significantly affected by the demands of tradition and pre-capitalist institutions. Resource allocation is both market-based and traditional, thereby providing potent ingredients for perpetual conflict and violence.

The national economy has remained largely resource based although the weight of manufacturing has increased over the past decade.

1.2 Macroeconomic performance

Fiji’s economic performance has been erratic over the past two decades. A major reason for this is the rapidly changing institutional environment in which the economy performs.

Since 1986, there have been 13 governments, each lasting an average of just 18 months. The institutional environment has ranged from military dictatorship to democracy. As Table 1.1 shows, Fiji has had only six years of democratically elected government under a democratic constitution over the past 20 years.
### Table 1.1: Governments in Fiji

<table>
<thead>
<tr>
<th>Period</th>
<th>Type of Government</th>
</tr>
</thead>
<tbody>
<tr>
<td>- April 1987</td>
<td>Elected democratic government</td>
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<tr>
<td>April 1987-May 1987</td>
<td>Elected democratic government; deposed in a military coup</td>
</tr>
<tr>
<td>May 1987-Sept 1987</td>
<td>Military appointed government; deposed in another military coup</td>
</tr>
<tr>
<td>Sept 1987-Dec 1987</td>
<td>Military government</td>
</tr>
<tr>
<td>Dec 1987-April 1992</td>
<td>Military appointed government</td>
</tr>
<tr>
<td>May 1992-Feb 1994</td>
<td>Elected government under an undemocratic constitution; loses budget vote and resigns</td>
</tr>
<tr>
<td>Feb 1994-May 1999</td>
<td>Elected government under an undemocratic constitution</td>
</tr>
<tr>
<td>May 1999-May 2000</td>
<td>Elected government under a democratic constitution; deposed in a military-backed terrorist coup</td>
</tr>
<tr>
<td>May 2000-July 2000</td>
<td>Government held hostage by military backed terrorists. No effective government but military claims power.</td>
</tr>
<tr>
<td>July 2000</td>
<td>Military appointed government; in office for only 2 weeks before being dismissed.</td>
</tr>
<tr>
<td>July 2000- March 2001</td>
<td>Military appointed government; resigns after a court decision declared it illegal.</td>
</tr>
<tr>
<td>March 2001-Sept. 2001</td>
<td>Military appointed government re-appointed and backed by the military.</td>
</tr>
<tr>
<td>September 2001-2006</td>
<td>Elected government under a democratic constitution</td>
</tr>
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</table>

In the context of continuously changing governments and changing policies, investor confidence has remained low, and gross domestic product growth rate has fluctuated widely. In addition, unemployment has been rising, currency value has been declining, and real wages falling. Gender and ethnic wage differentials as well as poverty rates have also been rising. Foreign debt levels have generally been high, and public sector debt has been rising.

Basic economic indicators are shown in Table 1.2.

Table 1.2 shows the widely fluctuating GDP growth rates, ranging from –6.4% to 9.6%. Together with four years of negative growth in 20 years, the fluctuations are strong indicators of a highly unstable and vulnerable economy. The major cause of this is lack of investor confidence and declining investment levels. Moody’s credit rating has consistently placed Fiji at the ‘Ba’ rating which means that the country is ‘subject to substantial credit risk’. Positive growth has been sustained by high sugar yields, high mining income, good tourism growth, and increasing wholesale and retail trade. Another reason for the fluctuations is weather and product-concentration vulnerability.

The high growth rates of 8.1% in 1986 and 9.6% in 1999 occurred when faith in democracy was strong. But as democratic institutions were challenged, investor confidence declined significantly, resulting in low and negative growth rates. Fiji is also adversely affected on occasions by extreme weather variations, such as floods and droughts.
Table 1.2a: Basic Economic Indicators

<table>
<thead>
<tr>
<th>Year</th>
<th>Pop (000)</th>
<th>Real GDP Growth (%)</th>
<th>Inflation rate (%)</th>
<th>Formal employment (000)</th>
<th>Manufac-turing % GDP</th>
<th>Manufac-turing empl. as % of total employment</th>
<th>Service % GDP</th>
<th>Exchange rate $1F=US</th>
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<td>714</td>
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Table 1.2b: Basic economic indicators, continued.

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<tr>
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<th>Savings:% of National Disposable Income</th>
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### Table 1.2c: Basic economic indicators, continued.

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<tr>
<th>Year</th>
<th>Fiscal deficit (% of GDP)</th>
<th>Tax on income (% of total tax revenue)</th>
<th>Tax on consumption (%)</th>
<th>Tax on trade (%)</th>
<th>Govt. expenditure on social services (%)</th>
<th>CE:NI (%)</th>
<th>OS:NI (%)</th>
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</table>

(CE – compensation to employees; NI – national income; OS – operating surplus. Government expenditure on social services is the sum of expenditure on social security payments, education, and health. Export products concentration is measured here by the percentage of all commodity export revenue accounted for by the five top commodities (sugar, gold, timber, fish, and garments. Export partner concentration is measured here by the percentage of export earnings accounted for by the top three countries. Import source concentration is measured by the percentage of imports coming from the top three countries.)


Fiji’s economic structure has shown a marked transformation since 1986. The share of GDP from manufacturing increased from around 12% in the late 1980s to about 15% in the 1990s. This transformation was also reflected in the increase of formal employment in the manufacturing sector from about 18% in the late 1980s to 26% in the late 1990s. During the last 5 years, manufacturing sector employment accounted for 26% of total formal employment. However, the recent decline in the garment and sugar industries have reversed the trend; from a peak for 16.3%, the contribution of manufacturing to GDP decline to 14.8% by 2005.

Another notable characteristic is the increase in the service sector’s share of GDP from 60-63% to 66% by 2004.

The structural transformation that characterizes Fiji has been more rapid than similar changes in many other countries. The reason for this is the drastic structural adjustment policies in the 1980s and 1990s when agriculture was neglected while the economy was shuttled toward export-led manufacturing and tourism.

Data show that inflationary pressures have remained low as inflation in Fiji’s major import sources remained low. Inflation in Fiji is significantly affected by inflation in Fiji’s major import partners (Dulare, 2005). For most of the past 20 years, however, monetary policy has been specifically targeted at maintaining inflation rates at acceptable levels. Unfortunately, however, the same measures can potentially lead to depressed consumer demand. There are no reliable statistics on consumer confidence in Fiji. Over the past 5 years, however, the Reserve Bank has expressed concern at rising consumer expenditure, which it has attempted to limit by its interest rate policy. The link between consumer demand and inflation needs further investigation.

The major macroeconomic problem for the country has been the long period of
depressed investment rates. Macro data show that the already low ratio of net investment to GDP ratio had been declining for most of the past 20 years. More recently, however, the trend seems to have reversed, but whether this would be sustained needs to be examined. What is certain is that a net investment rate of around 5% is clearly not conducive to sustaining growth at levels that can improve living standards. The major reason for the low investment rate is depressed investor confidence in the nation. Macro data also shows a rather low savings rate. While one may take this as a prima facie reason for low investment, monetary data show that financial institutions have been relatively flush with funds, suffering from lack of investment opportunities. The largest financial institution, the Fiji National Provident Fund, has responded by investing in numerous real-estate ventures – like the purchase of a major hotel in Suva, and pumping in large sums of money for a tourist development project in Natadola. Whether such a large injection of funds could be sustained, given the cash-inflow situation of the Fund, is a matter for consideration.

Fiji’s fiscal deficit has mostly been on the high side. For 14 of the 20 years, the deficit has surpassed the acceptable level of around 4% of GDP. In many cases, the deficits have been over 5%. A key explanation for this is the inability of governments to look at Fiji’s long-term economic and fiscal stability. The uncertain duration of governments often induce them to introduce fiscal measures with short-term results with the electorate in mind and without any consideration of long-term effects. The natural outcome of this is a large debt. Government debt has remained at over 40% of GDP; as Table 1.3 shows, in more recent years, the ratio has surpassed 50%.

<table>
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<tr>
<th>Year</th>
<th>GDP (at mkt price)</th>
<th>Domestic Debt</th>
<th>Foreign debt</th>
<th>Total Govt Debt</th>
<th>Govt Debt: GDP</th>
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<td>2114.8</td>
<td>165.5</td>
<td>2280.3</td>
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</table>

* Excluding statutory body debt


Foreign reserves have also been declining; the months of import cover has, consequently, also declined from about 5.4 months in 2001 to 4.2 months in 2005.

### 1.3 Structural adjustment

The governments of the mid-1980s and early 1990s adopted major structural adjustment programs. These included trade and tariff reforms, labour market reforms, tax reform, and public sector reform. The effects were felt throughout the economy.

#### 1.3.1 Public sector reform

During the early to mid 1990’s the government began corporatising public enterprises with a view towards selling these to the private sector. Massive protests, however, forced the government to reduce the pace of the reforms. By 1997-98, the government in power made another push to privatisate public enterprises. This was met by stiff opposition because hundreds of jobs in major and strategic industries, such as power,
transportation, and water, were on the line. Strikes almost crippled some of these enterprises.

The new government in 1999 put a halt to the privatizations and instituted numerous measures to improve internal efficiency in the public sector. As monopolies, many public enterprises were historically unresponsive to consumer needs. The new government was in the process of creating a separate Consumer Affairs Ministry, designed to address consumer interests. It was to be in place by June 2000, but a terrorist coup in May halted this process.

Since 2001, the new government re-affirmed the policy of corporatisation and privatisation of state enterprises. It announced to sell off more shares in key and profitable ventures

1.3.2 Public Finance

The introduction of a value-added tax in 1992 marked the rise of reliance on indirect taxes. Taxes on consumption rose from a mere 2% of total tax revenues in the 1980s to 46% by late 1990s. During 2001-2005, taxes on consumption accounted for 58% of all tax revenue. Taxes on income, on the other hand, declined from 52% of all tax revenue collected before VAT was introduced, to 29% during the 2001-2005 periods.

The fact that indirect taxes are regressive, means that the burden of tax reform weighed most heavily on the workers. The new government in 1999 began to reverse reliance on indirect taxes. It exempted seven essential commodities from the VAT and reduced duties on other essential commodities. This effectively put $44m into the hands of consumers. These measures, however, lasted only a year since a post-coup regime reintroduced the VAT on essential items. The government that had originally eliminated the taxes applied for a high court injunction against their re-imposition. The courts decided against the re-imposition of VAT on essential items, on the grounds that it was done by a regime that did not have any legal authority to do so. In September 2001, the same regime won power in an election. On winning the election, the government re-imposed VAT on the essential items. In November 2002, the government raised the VAT rate by 25% from 10% to 12.5%. The increase in the VAT rate was recommended by an IMF team. Only in November 2005, a few months before announcing new elections in 2006, did the government remove VAT from these items.

Government expenditure in Fiji has vacillated between stressing operating expenditures to stressing capital and infrastructural expenditure. Government spending has been especially vulnerable to political and institutional changes. Fiji has seen over a dozen budgets, mini-budgets and supplementary budgets during the past 5 years.

Overall, however, one important feature of government expenditure stands out: the low share of public funds allocated to social services. At less than a third of total expenditure, the social services sector allocation is insufficient for providing an effective social safety net in the country. As such, Fiji does not have a safety net for the unemployed or the elderly. There is only a minimum social security payment for the destitute. The state, however, has been spending a relatively large proportion of its
Budgets on education and health. Welfare payments, education, health, and similar social welfare allocations, account for 32% of all government expenditure. This includes a heavy social welfare budget administration expense component.

1.3.3 Trade Reforms

Under pressure from the World Trade Organization, successive governments in Fiji have reduced tariffs on numerous items. As a result, reliance on tariffs for government revenue declined from 33% of total tax revenue in the mid-1980s to 18% by 2002. In November 2003, however, tariffs were raised by 5% point (from 10% to 15%) on 510 commodities, which included 200 basic consumer items. The tariff increases have continued sporadically. The increases were necessitated by a severe budgetary problem which the government has been encountering. Its cash flow problem is so severe that occasionally the government has had to resort to overnight borrowing from the Reserve Bank of Fiji.

One interesting feature of Fiji’s foreign trade is the heavy reliance on a few export commodities and on a small number of trading partners. Over 60% of all imports to Fiji are from Australia, New Zealand, and Japan. Similarly, over 60% of Fiji’s exports go to only three countries: Australia, the United Kingdom, and the United States. Over 70% of all commodity export revenue comes from four resource-based products (sugar, gold, fish, and timber) and one manufacturing-based product (clothing).

In 2002, the government raised export tax on export of one of its major export commodities, sugar, from 3% to 10%. This measure was vigorously opposed by sugar cane farmers, most of who produce around 150 tonnes of sugar cane on small plots of land averaging 4 hectares. A series of agitation, organized by the sugar and other unions, saw the regime coming with heavy-hand, breaking up meetings and marches, and arresting organizers. The measure also had an adverse impact on the state owned sugar mills since their revenue was also reduced. In November 2003, the tax was reverted to 3%, thereby putting in an estimated $F23m in the hands of cane farmers and $7m in the hands of the struggling sugar milling company.

1.3.4 Labour market

The structural transformation taking place in Fiji has had a significant influence on the position of its workers.

Macro data show that the share of national income going to wages and salaries has declined steadily. Employee compensation comprised 48.4% of national income in 1986; by 2001, this figure had fallen by about 15% points to reach 33.8%.

In contrast, the share of profits has been rising. In 1986 operating surplus accounted for 44% of national income; by 2001, this figure had risen to 50.93%.

Another trend, given in Table 1.4, is that the real wages have been generally falling from 1986; the real wage in the manufacturing sector in 2003 was 67% of the real wage in 1986, while overall real wage in 2003 was 79% of the wage in 1986.
Table 1.4: Daily wages ($F), 1986-2003

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</tr>
<tr>
<td>2002</td>
<td>16.1</td>
<td>7.95</td>
<td>19.27</td>
<td>9.51</td>
</tr>
<tr>
<td>2003</td>
<td>16.77</td>
<td>7.95</td>
<td>20.08</td>
<td>9.52</td>
</tr>
<tr>
<td>2004</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>Na</td>
</tr>
<tr>
<td>2005</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>Na</td>
</tr>
</tbody>
</table>


Electricity and mining industries pay the highest wages, followed by (in descending order) transportation, construction, community services, distribution and hotels, manufacturing, and agriculture.

Considering the types of enterprise, the Annual Employment Survey data, which is available only to the year 1999, shows that the highest wages are paid by statutory bodies, followed by public limited-liability companies, the central government, local government, private limited-liability companies, NGOs, partnerships, and individually owned enterprises.

Earnings from jobs and vocations in Fiji are important determinants of the welfare of people. Since social wage in Fiji is negligible, the direct earnings determine the welfare status of each family. A recent study by the Asian Development Bank (2003) calculated the urban poverty line to be at $F138.63 per week. On the basis of official statistics on wages and salaries, it is estimated that 61% of all formally employed people earn below this level of income. This is a significant proportion of the formally employed people. In 1991, Fiji’s poverty rate stood at 25%; this figure had risen to 29% by 2004. The relatively depressed wages, compared to the rising cost of living, contribute to the rising poverty rate in the country.

1.4 Population, Labour Force and Employment

1.4.1 Labour Force

Fiji’s last population census was in 1996, which showed a population of 775,077 of which the labour force was 297,771. The current population estimate is 847,000. The
population growth between 1996 and 2005 averaged 1.05% per annum, while the labour force growth rate averaged an estimated 1.2% during the period. The pre-census government expectation was that the growth of labour force would be ‘much faster’ than the 1988-94 average annual population growth rate of 1.3%.\(^1\)

Following convention one is regarded to be in the labour force if one is actively seeking employment. Table 1.5 shows the labour force participation rate.

<table>
<thead>
<tr>
<th>Year</th>
<th>Active</th>
<th>Inactive</th>
<th>TOTAL</th>
<th>LFPR</th>
</tr>
</thead>
<tbody>
<tr>
<td>1966</td>
<td>125,809</td>
<td>128,519</td>
<td>254,328</td>
<td>49.5%</td>
</tr>
<tr>
<td>1976</td>
<td>175,785</td>
<td>170,306</td>
<td>346,091</td>
<td>50.8%</td>
</tr>
<tr>
<td>1986</td>
<td>241,200</td>
<td>200,712</td>
<td>441,912</td>
<td>54.6%</td>
</tr>
<tr>
<td>1996</td>
<td>297,771</td>
<td>203,141</td>
<td>500,912</td>
<td>59.4%</td>
</tr>
</tbody>
</table>
(Source: ‘Population Census’. The figures here are for population over 15.)

Table 1.5 shows that each census year saw a greater proportion of working age people offering themselves for employment. Formal employment, however, has not kept pace with the growth in the labour force. Table 1.6 shows that formal employment as a ratio of total labour force has declined between 1966 and 1996.

<table>
<thead>
<tr>
<th>Year</th>
<th>Force</th>
<th>Empl-total</th>
<th>Emp-formal</th>
<th>Formal Emp/Lab F</th>
</tr>
</thead>
<tbody>
<tr>
<td>1966</td>
<td>125,809</td>
<td>67,054</td>
<td>53.3%</td>
<td></td>
</tr>
<tr>
<td>1976</td>
<td>175,785</td>
<td>70,174</td>
<td>39.9%</td>
<td></td>
</tr>
<tr>
<td>1986</td>
<td>241,200</td>
<td>79,900</td>
<td>33.1%</td>
<td></td>
</tr>
<tr>
<td>1996</td>
<td>297,771</td>
<td>110,081</td>
<td>37.0%</td>
<td></td>
</tr>
</tbody>
</table>

The number of people employed for 5 or more days at the time of the 1996 census is estimated to be 122,895. This is 41% of the labour force. The rest is either occupied in the informal sector, the subsistence sector, or is self-employed, or unemployed.

While up-to-date data on the subsistence sector is not available, GDP data shows that subsistence production accounted for 5.5% of the GDP in 1995 and 4% in 1994. The census data is more exact. As Table 1.7 shows, in 1996, 21% of the total labour force was engaged in the purely subsistence sector.

In 1986 about 50% of the labour force of about 241,200 was engaged in the non-wage sector. The figure rose to 53% by 1996. The proportion of the labour force engaged in subsistence production has also risen from 16% in 1976 to 21% by 1996.

The striking feature of the labour market in Fiji is that over the past three decades, the proportion of the labour force relying on wage income has risen - from 42% in 1976 to 50% in 1986 to 53% in 1996.

Table 1.7: Labor Force by Economic Category, 1976,-96a
(% of labor force in brackets)

<table>
<thead>
<tr>
<th>Economic Category</th>
<th>1976</th>
<th>1986</th>
<th>% change</th>
<th>1996</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Own Account Worker</td>
<td>30,467</td>
<td>81,000</td>
<td>(34)</td>
<td>96,419</td>
<td>(32)</td>
</tr>
<tr>
<td>Villageb</td>
<td>28,207</td>
<td>61,192</td>
<td>(21)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unpaid Family Labor</td>
<td>13,876</td>
<td>39,231</td>
<td>(16)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL NON-WAGE</td>
<td>72,350</td>
<td>120,231</td>
<td>(50)</td>
<td>157,611</td>
<td>(53%)</td>
</tr>
<tr>
<td>Public Sector Emp.</td>
<td>59,574</td>
<td>38,102</td>
<td>(16)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private Sector Emp.</td>
<td>30,939</td>
<td>63,553</td>
<td>(26)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL WAGE/SAL</td>
<td>90,513</td>
<td>101,655</td>
<td>(42)</td>
<td>122,895</td>
<td>(41)</td>
</tr>
<tr>
<td>Status not indicated</td>
<td>5,233</td>
<td>1,085</td>
<td>(4)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL EMPLOYMENT</td>
<td>168,096</td>
<td>222,971</td>
<td>(92)</td>
<td>280,506</td>
<td>(94)</td>
</tr>
<tr>
<td>TOTAL LABOR FORCE</td>
<td>175,800</td>
<td>241,200</td>
<td>(92)</td>
<td>297,771</td>
<td>(94)</td>
</tr>
<tr>
<td>LABOR FORCE AS % &gt; 15</td>
<td>51</td>
<td>55</td>
<td></td>
<td>59</td>
<td></td>
</tr>
<tr>
<td>TOTAL POPULATION</td>
<td>588,000</td>
<td>715,400</td>
<td>(42)</td>
<td>775,077</td>
<td>(41)</td>
</tr>
</tbody>
</table>

a. 1976, 1986, and 1996 were national census years.
b. This is defined as Melanesians living in villages sharing a communal life and working in agriculture but not as commercial farmers. For 1996, the figure is for purely subsistence employment. (Sources: Central Planning Office, 1985: 3; Government of Fiji, 1990: 5, 6; Bureau or Statistics)

Another feature of the labour market is that about 40% of all employees rely on the public sector for jobs. Public sector employment would acquire greater significance if employment in government owned corporations were included in public sector employment. After 1987, the government 'corporatised' some statutory bodies. Because it itself 'bought' all the shares in these corporations, despite official data showing a relative increase in private sector employment, in essence the significance of public sector employment remains.

Another feature of the labour market is the changing trend in the proportion of salaried employment. From 1975 to 1989, the proportion of salaried employees rose from 35% to 45%, but it fell to 38% by 1998. Wage employment, on the other hand fell from 65% in 1975 to 55% in 1989, but rose to 62% of formal employment by 1998.

1.4.2 Employment/Unemployment

Following convention, an unemployed person is defined as one who does not work at all but who is willing to take up a job if one were available. Thus, subsistence producers, part-time employees, seasonally employed, etc., are regarded as employed. There is no systematic data on unemployment rate in Fiji. Actual Bureau of Statistics data are available for 1966, 1976, 1982, 1986 and 1996 only; for the other years, the official figures are estimates only. Table 1.8 shows the official data on unemployment rate for various years.
Table 1.8: Employment and Unemployment Rates: Official Statistics

<table>
<thead>
<tr>
<th>Years</th>
<th>Population [000]</th>
<th>Growth Rate Population/yr</th>
<th>Lab. force [000]</th>
<th>Employ [000]</th>
<th>Unemployment Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1946 c</td>
<td>260</td>
<td>2.70%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1956 c</td>
<td>343</td>
<td>3.19%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1966 c</td>
<td>477</td>
<td>3.91%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1970</td>
<td>521</td>
<td>2.31%</td>
<td>145.6</td>
<td>4.2</td>
<td></td>
</tr>
<tr>
<td>1971</td>
<td>533</td>
<td>2.30%</td>
<td>150</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1972</td>
<td>544</td>
<td>2.06%</td>
<td>155.1</td>
<td>143.6</td>
<td>7.4*</td>
</tr>
<tr>
<td>1973</td>
<td>556</td>
<td>2.21%</td>
<td>159.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1974</td>
<td>565</td>
<td>1.62%</td>
<td>164.7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1975</td>
<td>576</td>
<td>1.95%</td>
<td>170.4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1976 c</td>
<td>588</td>
<td>2.08%</td>
<td>175.8</td>
<td>164</td>
<td>6.7</td>
</tr>
<tr>
<td>1977</td>
<td>596</td>
<td>1.36%</td>
<td>183</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1978</td>
<td>607</td>
<td>1.85%</td>
<td>190.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1979</td>
<td>621</td>
<td>2.31%</td>
<td>198</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1980</td>
<td>634</td>
<td>2.09%</td>
<td>205.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1981</td>
<td>646</td>
<td>1.90%</td>
<td>212.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1982</td>
<td>658</td>
<td>1.80%</td>
<td>220.4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1983</td>
<td>672</td>
<td>2.10%</td>
<td>221.6</td>
<td>206.2</td>
<td>6.9</td>
</tr>
<tr>
<td>1984</td>
<td>686</td>
<td>2.08%</td>
<td>228</td>
<td>211.2</td>
<td>7.4</td>
</tr>
<tr>
<td>1985</td>
<td>697</td>
<td>1.60%</td>
<td>234.5</td>
<td>215.9</td>
<td>7.9</td>
</tr>
<tr>
<td>1986 c</td>
<td>717</td>
<td>2.67%</td>
<td>241.2</td>
<td>222.9</td>
<td>7.5</td>
</tr>
<tr>
<td>1987</td>
<td>714</td>
<td>-0.42%</td>
<td>247.2</td>
<td>223.7</td>
<td>10.2</td>
</tr>
<tr>
<td>1988</td>
<td>719</td>
<td>0.70%</td>
<td>249.3</td>
<td>225.9</td>
<td>9.4</td>
</tr>
<tr>
<td>1990</td>
<td>724</td>
<td>0.70%</td>
<td>247.8</td>
<td>232.7</td>
<td>6.1</td>
</tr>
<tr>
<td>1991</td>
<td>732</td>
<td>1.10%</td>
<td>252.6</td>
<td>236.4</td>
<td>6.4</td>
</tr>
<tr>
<td>1992</td>
<td>742</td>
<td>1.37%</td>
<td>258.1</td>
<td>242.9</td>
<td>5.9</td>
</tr>
<tr>
<td>1993</td>
<td>753</td>
<td>1.48%</td>
<td>263.6</td>
<td>249.4</td>
<td>5.4</td>
</tr>
<tr>
<td>1994</td>
<td>765</td>
<td>1.59%</td>
<td>268.9</td>
<td>253.1</td>
<td>5.9</td>
</tr>
<tr>
<td>1995(e)</td>
<td>778</td>
<td>1.70%</td>
<td>274.7</td>
<td>258.2</td>
<td>5.9</td>
</tr>
<tr>
<td>1996</td>
<td>790</td>
<td>1.54%</td>
<td>281</td>
<td>265</td>
<td>6</td>
</tr>
<tr>
<td>1996(e)</td>
<td>775</td>
<td>-18.99%</td>
<td>297.8</td>
<td>280.5</td>
<td>5.8</td>
</tr>
</tbody>
</table>

(a - data from an urban survey done in January 1972 by the Prime Minister's Task Force on Unemployment, 1972; c - indicates census year)


Some data on unemployment rate by ethnic groups is also available. Table 1.9 shows that except for 1966, 1982 and 1996, the unemployment rates for the ethnic Fijian and ethnic Indian workers are almost identical.

Table 1.9: Unemployment Rates by Ethnicity, 1966-96

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ethnic Fijians</td>
<td>3.0%</td>
<td>6.65%</td>
<td>4.50%</td>
<td>7.60%</td>
<td>6.3%</td>
</tr>
<tr>
<td>Ethnic Indians</td>
<td>5.0%</td>
<td>6.85%</td>
<td>8.37%</td>
<td>7.60%</td>
<td>5.0%</td>
</tr>
<tr>
<td>Others</td>
<td>na</td>
<td>6.41%</td>
<td>6.25%</td>
<td>6.61%</td>
<td>na</td>
</tr>
<tr>
<td>-Europeans</td>
<td>1.00%</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>-Part-Europeans</td>
<td>3.00%</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>-Chinese</td>
<td>7.00%</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Overall</td>
<td>4.20%</td>
<td>6.72%</td>
<td>6.42%</td>
<td>7.54%</td>
<td>5.80%</td>
</tr>
</tbody>
</table>


The relatively low rate for the ethnic Fijians in 1966 can be explained by the pre-1967/68 native administration policies that had confined most ethnic Fijians to their
Employment and Labour Market

communal lands. The relaxation of these policies led many ethnic Fijians to move to either stay with relatives or to seek cash employment in other areas/towns. This, in part, is responsible for the doubling of the unemployment rate from 1966 to 1976. More recently, there has been considerable discussion on whether the native administration system should be strengthened; in 2001, the Great Council of Chiefs commissioned a special team to investigate this. The report of the team is being scrutinised by a sub-committee of the Great Council of Chiefs. Any re-introduction of the pre-1966 regulations on native administration would have a bearing on the status of the existing labour regulatory mechanisms.

Employment growth rate in Fiji slowed down considerably since the military coups in 1987 and 2000. The official position is while around 1,000 new jobs are created, about 13,000 new entrants join the labour force. In 1994, ‘slightly less than 1,000’ new paid jobs were created; employment data shows that only 600 new jobs were created in the formal sector. There is no reliable official data on the number of new jobs created in 2005. Fiji National Provident Fund data shows that its membership rose by 10,658 in 2005; this would include new entrants into the labour market, as well as already employed persons and farmers who would have opted for fund membership. Still, however, the number of new job creation seems to be lower than the number of entrants into the labour market.

The rising gap between the number of new formal sector jobs created and the number of entrants into the job market underlines the relatively declining significance of formal sector employment. It also poses significant questions on the credibility of the official estimates of the unemployment rate.

Significantly there have been two incidences over the past 30 years where even the government became sceptical of its unemployment figures. In a government meeting held in preparation for the 1995 National Economic Summit the following discussion is reported to have taken place (as per the minutes of the meeting):

The Statistics on the ‘Population Labour Force Employment and Unemployment 1986-1992 [the official source on unemployment quoted above] were objected to by the meeting because the decrease in unemployment rate over 1986-1992 seemed to contradict the actual situation. [Government official] responded that the statistics he had used came from the Bureau of Statistics (BOS) which he thought needed substantial improvements. Members agreed that the inaccuracy of the data made it meaningless for the purposes of the Sub-Group.

The Sub-Group recommended that the final report include the comment that government data gathering and analysis be upgraded.

This view was confirmed by the Deputy Governor of the Reserve Bank of Fiji during a presentation to the Fiji Trades Union Congress Symposium on the 1998 budget held in October 1997.

There are other evidences that show that the unemployment rates have been understated. In a paper prepared by the Central Monetary Authority in January 1979

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3 This meeting was held on 7 March 1995.
for the Tripartite Forum a 10% unemployment rate, with the acknowledgement that this excluded under-employment in the rural sector, was accepted⁴, yet nowhere else did the government acknowledge an unemployment rate of 10% for 1977.

In Fiji, as Table 1.10 shows, for the years data is available, there is no particular trend in the figures for those regarded as being gainfully employed in the non-formal sector.

Table 1.10: Trend in Informal Sector Employment

<table>
<thead>
<tr>
<th>Year</th>
<th>Labour Force</th>
<th>Total Emp</th>
<th>Formal Empl</th>
<th>Non-Formal Empl</th>
<th>Annual Change in Non-Formal</th>
<th>% Change in non-Formal (Annual)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976</td>
<td>175.8</td>
<td>168.09</td>
<td>70174</td>
<td>97922</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1982</td>
<td>220.4</td>
<td>206.3</td>
<td>78289</td>
<td>128005</td>
<td>5014</td>
<td>5.12%</td>
</tr>
<tr>
<td>1983</td>
<td>221.6</td>
<td>206.2</td>
<td>80000</td>
<td>126200</td>
<td>-1805</td>
<td>-1.4%</td>
</tr>
<tr>
<td>1984</td>
<td>228</td>
<td>211.2</td>
<td>78600</td>
<td>132600</td>
<td>6400</td>
<td>5.10%</td>
</tr>
<tr>
<td>1985</td>
<td>234.5</td>
<td>215.9</td>
<td>81100</td>
<td>134800</td>
<td>2200</td>
<td>1.70%</td>
</tr>
<tr>
<td>1986</td>
<td>241.2</td>
<td>222.9</td>
<td>79900</td>
<td>143000</td>
<td>8200</td>
<td>6.10%</td>
</tr>
<tr>
<td>1987</td>
<td>247.2</td>
<td>223.7</td>
<td>77600</td>
<td>146100</td>
<td>3100</td>
<td>2.20%</td>
</tr>
<tr>
<td>1988</td>
<td>249.3</td>
<td>225.9</td>
<td>77500</td>
<td>148400</td>
<td>2300</td>
<td>1.60%</td>
</tr>
<tr>
<td>1989</td>
<td>247.8</td>
<td>232.7</td>
<td>89900</td>
<td>142800</td>
<td>-5600</td>
<td>-3.8%</td>
</tr>
<tr>
<td>1990</td>
<td>252.6</td>
<td>236.4</td>
<td>89000</td>
<td>147400</td>
<td>4600</td>
<td>3.20%</td>
</tr>
<tr>
<td>1991</td>
<td>258.1</td>
<td>242.9</td>
<td>91500</td>
<td>151400</td>
<td>4000</td>
<td>2.70%</td>
</tr>
<tr>
<td>1992</td>
<td>263.6</td>
<td>249.4</td>
<td>92500</td>
<td>156900</td>
<td>5500</td>
<td>3.60%</td>
</tr>
<tr>
<td>1993</td>
<td>268.9</td>
<td>253.1</td>
<td>94300</td>
<td>158800</td>
<td>1900</td>
<td>1.20%</td>
</tr>
<tr>
<td>1994</td>
<td>274.7</td>
<td>258.2</td>
<td>94900</td>
<td>163300</td>
<td>4500</td>
<td>2.80%</td>
</tr>
<tr>
<td>1996</td>
<td>297.8</td>
<td>280.5</td>
<td>122895</td>
<td>157611</td>
<td>-2844</td>
<td>-1.74%</td>
</tr>
</tbody>
</table>

(First 2 columns are in 000’s)
(Sources: Bureau of Statistics; DP9: 27, 30.)

Informality of a segment of the economy arises because the operators in these sectors are neither registered as businesses nor as employees; the employees are also often not registered in labour statistics, including superannuation schemes. The informality poses significant questions on the applicability of labour legislation in this sector.

The rising labour force participation rate coupled with the stagnating economy of the 1980’s, 1990’s and early this debate, has produced a major crisis for labour absorption. In 1983, the government had commissioned a $0.5m study into the employment situation in the country. The report warned of ‘a severe problem of absorbing its secondary school leavers in productive employment, between [1984] and the end of the century’.⁵ It recommended policies aimed at reducing the labour force participation rate - like increased retention of young people in the formal or vocational educational system, earlier retirement and more effective labour absorption within the domestic setting. These proposals would also need to be placed within the context of existing labour legislations.

⁴ CMA, 1979.
⁵ FEDM: 57.
II

The National and International Context

2.1 Inventory of Labour Laws

Over the past 35 years, Fiji has adopted and/or enacted 14 specific laws which are regarded as labour laws. Table 2.1 lists these laws and provides details on the enactment dates, commencement dates and amendment dates of these laws.

<table>
<thead>
<tr>
<th>Law</th>
<th>Date Enacted</th>
<th>Commencement Date</th>
<th>Amendments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Holidays Act</td>
<td>1931 (O/N: 1/31)</td>
<td>1 Feb 1931</td>
<td>Amdt: 61/91, 14/95, 8/03</td>
</tr>
<tr>
<td>Industrial Associations Act</td>
<td>1941 (O/N: 18/41)</td>
<td>26 August 1942</td>
<td>Amdt: Decree 42/91, 6/94</td>
</tr>
<tr>
<td>Wages Council Act</td>
<td>1957 (O/N: 9/57)</td>
<td>13 May 1957</td>
<td>Only orders, no amendments</td>
</tr>
<tr>
<td>Trade Unions Act</td>
<td>1964 (O/N: 4/64)</td>
<td>1964</td>
<td>Amdt – (Decree 44/91)</td>
</tr>
<tr>
<td>Shop (Regulation of Hours &amp; Employment) Act</td>
<td>1964 (O/N: 11/64)</td>
<td>1 April 1965</td>
<td>No amendment</td>
</tr>
<tr>
<td>Workmen’s Compensation Act</td>
<td>1964 (O/N: 17/64)</td>
<td>1 April 1965</td>
<td>Amdt: 20/94, 20/96, 14/99</td>
</tr>
<tr>
<td>Employment Act</td>
<td>1964 (O/N: 15/64)</td>
<td>15 May 1965</td>
<td>Amdt: 45/91, 6/96</td>
</tr>
<tr>
<td>FNTC Act</td>
<td>1973</td>
<td>1 June 1973</td>
<td>Amdt: 9/93, 24/02</td>
</tr>
<tr>
<td>Ionising Radiation Act</td>
<td>1969 (O/N: 44/69)</td>
<td>1 July 1974</td>
<td>Replaced by health &amp; safety at work act</td>
</tr>
<tr>
<td>Health and Safety at Work Act</td>
<td>1996</td>
<td>Parts 1 &amp; 7-11 on 1 Nov. 1996</td>
<td>Amdt: 18/96, 14/03</td>
</tr>
<tr>
<td>Daylight Savings Act</td>
<td>1998</td>
<td>17 Sept. 1998</td>
<td>No amendment</td>
</tr>
</tbody>
</table>

In addition to these, there are numerous other legislation that impact the labour market and workplace environment; some of these are:

- Citizenship Act
- Community Work Act
- Diplomatic Privileges and Immunities Act
- Immigration Act
- Juveniles Act
- Mining Act
- Parliamentary Powers and Privileges Act
- Pensions Act
- Pesticides Act
- Petroleum Act
- Pilots Act
- Police Act
- Prisons Act
This report discusses only those labour laws that fall under the Ministry of Labour portfolio; these are the 14 laws listed in Table 2.1.

Fiji’s labour laws have both, national and international origins. The international context is important since the foundations for numerous labour laws are either British legislation or international conventions. Domestic enactments and amendments to laws adopted from the UK have taken place. More recently, some locally developed laws have been enacted, but these have been significantly influenced by international conventions and similar laws in other commonwealth nations.

### 2.2 National Origins

Laws in Fiji are generally made by the House of Representatives (HOR). The HOR derives its powers from the nation’s constitution. However, at various junctures, Fiji’s laws have been made/amended by military decrees.

Since independence, Fiji has had three different constitutions. The first constitution applicable in independent Fiji was the 1970 Constitution, promulgated by the British monarch in September 1970 under the Fiji Constitution Order 1970.6 This Constitution was revoked by the military in 1987 after a military coup. Between May 1987 and April 1992, Fiji was ruled by decrees. During this period, laws were promulgated initially by the military and later by the military backed civilian junta. In 1992, a Constitution drafted in 1990 came into effect. The 1990 Constitution was amended substantially in 1997 (by the Constitutional Amendment Act 1997). The 1997 Constitution became effective from 28 July 1998. However, in May 2000, the military claimed to abrogate the Constitution. The abrogation was declared illegal by the High Court in March 2001. Thus, except for the period May 2000-March 2001, the 1997 Constitution has remained in force.

This context is important since during the non-constitutional periods in Fiji, numerous major amendments were made to labour laws. These would be discussed later in this report.

The 1970 Constitution bestowed on the citizens certain fundamental rights relating to work and pay. The second chapter of the Constitution, on fundamental rights and freedoms of individuals, bestowed the right to life, liberty, security of the person and the protection of the law; freedom of conscience, of expression and of assembly and association; and protection for the privacy of his home and other property and from deprivation of property without compensation. These rights, however, were limited,

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6 Fiji’s pre-independence Constitutions were: The Fiji (Constitution) Order 1966, the Fiji (Constitution) (Amendment) Order 1967, and the Fiji (Constitution) (Amendment) Order 1970
with the limitations being designed to ensure public interest, and that the enjoyment of the said rights and freedoms by any person did not prejudice the rights and freedoms of others.

2.2.1 Freedom from Slavery and Forced Labour

Chapter II of the 1970 Constitution provided for freedom from slavery: ‘No person shall be held in slavery or servitude’. It also provided for freedom from forced labour: ‘No person shall be required to perform forced labour’. These provisions have remained in all of Fiji’s constitution. In the current constitution, s24(1) states: ‘A person must not be held in slavery or servitude and must not be required to perform forced labour’.

Forced labour, however, does not include labour required in consequence of a sentence or order of a court and ‘labour reasonably required of a person serving a term of imprisonment, whether or not required for the hygiene or maintenance of the prison’.

Constitutionally, therefore, prisoners can be required to work as long as such work is reasonable. There is no mention of remuneration for such work in the Constitution.\(^7\)

2.2.2 Freedom of Assembly and Trade Unions

Chapter II of the 1970 Constitution provided for the freedom of assembly and association:

> Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

Exceptions provided for include those that are in the interests of defence, public safety, public order, public morality or public health; or for the purpose of protecting the rights or freedoms of other persons.

This constitutional provision provided the overall context within which laws relating to labour were to function.

These provisions remained in force until May 1987. Between May 1987 and April 1992, numerous labour rights, till then protected, were breached by the state and employers, the primary ones being those relating to freedom of assembly and freedom of association. The rights, however were restored when the 1990 Constitution was empowered by the election of a Parliament in April1992. The 1990 Constitution retained these rights. It, however, provided for discrimination. The 1997 Constitution (s31; s32) also retained these rights but provided for discrimination in a more subtle form than the 1990 Constitution.

\(^7\) The Prisons Act contains detailed provisions on the treatment of prisoners.
2.2.3 Discrimination

Chapter 2 of the 1990 Constitution allowed for discrimination on the basis of race. Discrimination was defined as:

affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, sex, place of origin, political opinions, colour, religion or creed, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

Clause 16 of the constitution stated that subject to the provisions of the Constitution, no law was to make any provision that is discriminatory either of itself or in its effect; and no person was to be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority. C16(4) stated that the non-discrimination provision 'shall not apply to.. anything that is expressly or by necessary implication authorised to be done by any provision of law…'

Clause 16(9) specifically stated that nothing contained in or done under the authority of the third chapter of the Constitution was to be held to be inconsistent with or in contravention of the non-discrimination provision of the Constitution.

Chapter 3 of the Constitution, titled 'Fijian and Rotuman Interests' enabled the Parliament to enact laws for promoting and safeguarding the economic, social, educational, cultural, traditional and other interests of the Fijian and Rotuman people. It also empowered the state, on authorisation of the Parliament, to adopt any programme or activity for the attainment of the objective of promoting and safeguarding the interests of Fijians and Rotumans. It further empowered the Cabinet to

(a) give directions to any department of Government, Commission or authority for the reservation of such proportions as it may deem reasonable of scholarships, training privileges or other special facilities provided by Government;

(b) when any permit or licence for the operation of any trade or business is required by law, give such direction as may be required for the purpose of assisting Fijians and Rotumans to venture into business; and

(c) may give directions to any department of Government, Commission or authority for the purpose of the attainment of any of the objects specified under subsection

These provisions effectively made ethnic discrimination, including discrimination in the labour market, lawful. The Parliament had an absolute majority provision for the election of ethnic Fijians (37 members out of 70).

The 1990 Constitution was amended in 1997. The current constitution has provisions for, inter alia, equality, fair labour practices, state employment, and affirmative action (social justice).

S38 of the current Constitution provides for equality of every citizen before the law. It also states that a person must not be ‘unfairly discriminated against’, directly or
indirectly, on the ground of his or her:

- actual or supposed personal characteristics or circumstances, including race, ethnic origin, colour, place of origin, gender, sexual orientation, birth, primary language, economic status, age or disability; or
- opinions or beliefs, except to the extent that those opinions or beliefs involve harm to others or the diminution of the rights or freedoms of others;
- or on any other ground prohibited by this Constitution.

S44(8), however, states that a law or an administrative action taken under a law, may limit a right or freedom from discrimination if it is for the purpose of, inter alia, providing for the application of the customs of Fijians or Rotumans or of the Banaban community to, inter alia, the holding, use or transmission of, or to the distribution of the produce of, land or fishing rights. ‘Holding, use, transmission or distribution of produce of land or fishing rights’, is directly linked to employment and remuneration within the agricultural and fisheries sectors. As long as these have a bearing on the application of Fijian and Rotuman customs, the right to equality could be breached lawfully. S44(9) specifically states that a law, or an administrative action taken under a law, may limit a right to equality for the purpose of providing for the governance of Fijians or Rotumans or of the Banaban community (and of other persons living as members of a Fijian, Rotuman or Banaban community). Discrimination on the grounds of race or ethnic origin is specified as acceptable as long as the objective of the law is to provide for the governance of Fijians, Rotumans or Banabans.

Furthermore, s140 of the constitution specifies that in the recruitment of persons to a state service, their promotions therein, and in the management of state services, appointments and promotions should be on the basis of merit; men and women equally, and the members of all ethnic groups, should have adequate and equal opportunities for training and advancement; and the composition of the state service at all levels should reflect as closely as possible the ethnic composition of the population, taking account, when appropriate, of occupational preferences.

While these set the parameters for employment within the state sector, an earlier section (s44) empowers Parliament to make provisions designed to achieve for all groups or categories of persons who are disadvantaged effective equality of access to, inter alia, education and training, participation in commerce, and participation in all levels and branches of service of the State. It also empowers a person to ‘take special measures … for the purpose of achieving substantial equality between different groups or different categories of persons’ (s44(3)), without being unlawful under the provisions of equality provided for in the Constitution (c38).

While the Constitution places certain requirements to go with discrimination – for example for the administering agency to monitor the efficacy of a discriminatory program, the provision of annual reports to the Parliament on discriminatory policies in the state sector, etc. - the fact is that under the Constitution, discrimination on the basis of ethnicity or race is permitted. The objective of such discrimination as permitted by the Constitution is to gain effective equality of access to state services by different races. Effective equality of access to a level or branch of service of the State is defined as the situation where the number of people in state service is ‘broadly proportionate to its number in the adult population as a whole, unless its under-representation is due solely to its particular occupational preferences’. State service
includes the office of the President, Ministers, Cabinet, public office, local authority, and any office created by a resolution of the Parliament.

2.2.4 Freedom from cruel or degrading treatment

The rights of every person, including employees, to freedom from torture, cruel, inhumane or degrading treatment are protected by c25 of the Constitution. Workplace abuse of employees, which may amount to inhumane or cruel or degrading treatment, therefore, is disallowed.

2.2.5 Freedom from unreasonable body searches

The Constitution (c26) also protects the rights of employees against unreasonable body searches at workplaces.

2.2.6 Customary Labour Practices

Customary practices have an impact on the expansion of human labour and remuneration. Over the past 2 decades the issue of the applicability of customary practices and laws has been debated in the country. The 1990 Constitution allowed for making of laws that concern customary practices. C16(3)(d) allowed for making of laws that are for the ‘application of customary law with respect to any matter in the case of persons who, under that law, are subject to that law. Customary practices involve labour practices. The state could, therefore, make provisions for application of customary laws, including those that would regulate labour practices, of all ethnic Fijians.

Similar provisions on customary laws and practices are present in the 1997 Constitution. However, to date no specific legislation has been made on customary laws and practices. The Great Council of Chiefs has for some time deliberated on the need to more strictly enforce customs and practices. But again, no specific measure directly impacting on labour practices, has so far been put in place.

By the Constitution, people required to perform communal labour, as part of reasonable and normal communal or civic obligations, are not regarded as performing forced labour.

2.2.7 Fair Labour Practices

The 1997 Constitution also retained the provisions of fair labour practices. However, it provides for new provisions on fair labour practices. It gives workers the right to form trade unions and employers to form employers’ organisations, and to bargain collectively. It also provides the right to every person of fair labour practices, including humane treatment and proper working conditions. Clause 33 titled ‘Labour Relations’ states:

(1) Workers have the right to form and join trade unions, and employers have the right to form and join employers’ organisations.
(2) Workers and employers have the right to organise and bargain collectively.
(3) Every person has the right to fair labour practices, including humane treatment and proper working conditions.
(4) A law may limit, or may authorise the limitation of, the rights set out in this section:
(a) in the interests of national security, public safety, public order, public morality or public health;
(b) for the purpose of protecting the rights and freedoms of others; or
(c) for the purpose of imposing reasonable restrictions on members of a disciplined Force;
but only to the extent that the limitation is reasonable and justifiable in a free and democratic society.

2.2.8 Employment in Disciplined Forces

In Fiji’s context, disciplined forces are generally taken to refer to the officers of the Fiji Military Forces, the Fiji Police Force and the Fiji Prisons Service. Employment in these areas is regulated by the Republic of Fiji Military Forces Act, the Police Act, and the Prisons Act, respectively. As such, most labour laws of general application specify that they are not applicable to those employed in the disciplined forces. One notable exception to this rule is the Workmen’s Compensation Act, which was amended in 1996 to include those in the disciplined services, including those from in the military forces serving abroad.

In the Constitution, there are certain exceptions to fundamental rights bestowed on citizens. One concerns the freedom of a person from being required to perform forced labour. Forced labor is so defined as to exclude labour required of a member of a disciplined force as part of his or her duties or, in the case of a person who has a conscientious objection to military service, labour that the person is required by law to perform in place of that service.

The right of an employee of disciplined forces to seek the audience of a court of law on the same basis as other employees is also restricted. S29 of the Constitution provides for the right of every person charged with an offence to a fair trial before a court of law. Courts of law are normally open to the public. However, the Constitution allows the military courts to remain closed to the public.

S33 of the constitution provides for the rights of an employee to form and/or join trade unions. However, a law may limit, or may authorise the limitation to this right, inter alia, for the purpose of imposing reasonable restrictions on members of a disciplined force to the extent that the limitation is reasonable and justifiable in a free and democratic society.

These constitutional provisions provide the context within which labour laws treat employees in the disciplined forces.

2.3 International Origins

There are four international sources of labour laws and practices in Fiji. These are the UK legislations, UK (and Commonwealth) common law, the International Labour Organisation, and the UN’s declarations on racial and gender discrimination.
Eight of the 14 labour laws have their origin in the UK. These laws, put in place in colonial Fiji with the earliest one being promulgated in 1931, are:

- Employment Act
- Industrial Associations Act
- Ionising Radiation Act
- Public Holidays Act
- Shop (Regulation of Hours & Employment) Act
- Trade Unions Act
- Wages Council Act
- Workmen’s Compensation Act

After independence these laws were adopted as Acts of the Parliament of Fiji.

The second influence on Fiji’s labour laws comes from the decisions and judgments of the courts in Britain and Commonwealth nations. Known as common law, these judgments are applicable to Fiji as long as no legislation in Fiji contains a different provision on the matter. Any matter that is taken up to the courts, or the Arbitration Tribunal by employers, employees, unions, or indeed any party which has a bearing on labour matters, will be decided upon within the context of the legislations provided in Fiji, and common law (precedents) if there is no legislation on the matter.

The current report does not discuss the common law on employment and earnings.

The third international influence on labour laws and practices in the country emerges from the International Labour Organisation. The ILO has numerous conventions relating to labour practices. Table 2.2 lists the conventions that Fiji has ratified:

<table>
<thead>
<tr>
<th>C/No</th>
<th>Convention</th>
<th>Ratification date</th>
<th>Subject Matter</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Minimum Age (Industry), 1919</td>
<td>19:04:1974*</td>
<td>Employment of children. (Chose under the age of fourteen years are disallowed from being employed in any public or private industrial undertaking other than an undertaking in which only members of the same family are employed.)</td>
</tr>
<tr>
<td>8</td>
<td>Unemployment Indemnity (Shipwreck), 1920</td>
<td>19:04:1974</td>
<td>In case of loss of any vessel, the person with whom the seaman is contracted shall pay the seaman employed thereon an indemnity against unemployment resulting from such loss</td>
</tr>
<tr>
<td>11</td>
<td>Right of Association (Agriculture), 1921</td>
<td>19:04:1974</td>
<td>Secures to all those engaged in agriculture the same rights of association and combination as industrial workers.</td>
</tr>
<tr>
<td>12</td>
<td>Workmen’s Compensation (Agriculture), 1921</td>
<td>19:04:1974</td>
<td>All agricultural wage-earners are to be provided compensation for personal injury by accident arising out of or in the course of their employment</td>
</tr>
<tr>
<td>19</td>
<td>Equality of Treatment Accident Compensation, 1925</td>
<td>19:04:1974</td>
<td>Foreign workers and their dependants should receive same treatment in respect of workmen's compensation as the home country's nationals would receive</td>
</tr>
<tr>
<td>26</td>
<td>Minimum Wage – Fixing Machinery, 1928</td>
<td>19:04:1974</td>
<td>Minimum wage rates can be fixed for workers employed in certain trade with no arrangements for effective regulation of wages by collective agreement</td>
</tr>
<tr>
<td>29</td>
<td>Forced Labour, 1930**</td>
<td>19:04:1974</td>
<td>Work done by any person under the menace of any penalty and for which the person did not work voluntarily</td>
</tr>
<tr>
<td>45</td>
<td>Recruiting of Indigenous Workers, 1936</td>
<td>19:04:1974</td>
<td>Recruiting indigenous workers in each of its territories in which such recruiting exists or may hereafter exist.</td>
</tr>
<tr>
<td>No.</td>
<td>Convention Title</td>
<td>Date of Adoption</td>
<td>Effective Date</td>
</tr>
<tr>
<td>-----</td>
<td>----------------------------------------------------------------------</td>
<td>-----------------</td>
<td>---------------</td>
</tr>
<tr>
<td>58</td>
<td>Minimum Age (Sea) Revised, 1936</td>
<td>19:04:1974</td>
<td>Children under the age of 15 years not permitted to work on vessels, other than vessels upon which only members of the same family are employed.</td>
</tr>
<tr>
<td>59</td>
<td>Minimum Age (Industry) Revised, 1937</td>
<td>19:04:1974</td>
<td>Children under the age of fifteen years not permitted to be employed or work in any public or private industrial undertaking.</td>
</tr>
<tr>
<td>64</td>
<td>Contracts of Employment (Indigenous Workers), 1939</td>
<td>19:04:1974</td>
<td>Contracts of employment by which a worker enters the service of an employer as a manual worker for remuneration in cash or in any other form whatsoever.</td>
</tr>
<tr>
<td>65</td>
<td>Penal Sanctions (Indigenous Workers), 1939</td>
<td>19:04:1974</td>
<td>Contracts by which a worker belonging to or assimilated to the indigenous population of a dependent territory of a Member of the ILO, or belonging to or assimilated to the dependent indigenous population of the home territory of a Member of the ILO, enters the service of any public authority, individual, company or association, whether non-indigenous or not.</td>
</tr>
<tr>
<td>87</td>
<td>Freedom of Association, 1948**</td>
<td>17:04:2002</td>
<td>Workers and employers have the right to join organisations of their own choosing.</td>
</tr>
<tr>
<td>100</td>
<td>Equal Remuneration, 1951**</td>
<td>17:04:2002</td>
<td>Rates of remuneration established for men and women workers without discrimination based on sex.</td>
</tr>
<tr>
<td>108</td>
<td>Seafarers Identity Documents, 1958</td>
<td>19:04:1974</td>
<td>Issuing a seafarer's identity document to any other seafarer either serving on board a vessel registered in its territory or registered at an employment office within its territory who applies for such a document.</td>
</tr>
<tr>
<td>111</td>
<td>Discrimination Employment and Occupation, 1958**</td>
<td>17:04:2002</td>
<td>Preferences are not to be given on the basis of race, colour, sex, religion, political opinion, national extraction or social origin in regards to employment &amp; occupation.</td>
</tr>
<tr>
<td>138</td>
<td>Minimum Age, 1973**</td>
<td>03:01:2003</td>
<td>Establishes minimum age for employment at 15 years.</td>
</tr>
<tr>
<td>159</td>
<td>Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983</td>
<td>01:12:2004</td>
<td>Each ILO Member required to, in accordance with national conditions, practice and possibilities, formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons.</td>
</tr>
<tr>
<td>169</td>
<td>Indigenous and Tribal People in Independent Countries, 1989</td>
<td>03:03:1998</td>
<td>Government’s responsibility to protect the rights of indigenous people and to guarantee respect for their integrity.</td>
</tr>
<tr>
<td>182</td>
<td>Worst Forms of Child Labour**, 1999</td>
<td>17:04:2002</td>
<td>Effective measures should be taken to secure the prohibition and elimination of the worst forms of child labour in regards to a child below the age of 18 years.</td>
</tr>
</tbody>
</table>

* These conventions were denounced on 03:01:2003; they were revised and consolidated as Convention No. 138.

** These are the fundamental ILO Conventions.

ILO’s International labour standards are legal instruments adopted by the ILO’s constituents, which are governments, employers and workers of member nations. These instruments establish the basic principles and rights at work. The instruments come either as conventions, which are legally binding international treaties that may be ratified by member states, or recommendations, which serve as non-binding guidelines.

Normally, once adopted by the ILO’s annual conference, the ILO expects the member states to submit the standards to their parliaments for consideration, endorsement, and
application in their laws and practices. In Fiji’s case, however, none of the Conventions were ever endorsed by the Parliament; instead the ruling governments took it upon themselves to accept and ratify the conventions.

The ILO regards eight conventions as ‘fundamental’ as they cover subjects that are considered as fundamental principles and rights at work. These principles and rights - covered by the ILO’s Declaration on Fundamental Principles and Rights at Work (1998) - are grouped in four categories. These are Freedom of Association and Collective Bargaining (C/No: 87 & 98), Elimination of Forced and Compulsory Labour (C/No: 29 & 105) Elimination of Discrimination in Respect of Employment and Occupation (C/No: 100 & 111), and Abolition of Child Labour (C/No: 138 & 182). Fiji has ratified all these fundamental conventions.

The fourth impact on labour laws and practices in Fiji emerge from UN’s declarations on racial and gender discrimination. The following UN declarations have some impact of labour practices here:

- Universal Declaration of Human Rights.

The European Union’s Declaration on Fundamental Human Rights, and the provisions of the Cotonoue Agreement, also have some potential impact on labour practices in the country.
III

Primary Legislation: The Employment Act

3.1 Application

Initially promulgated as Ordinance No. 15 of 1964, the Employment Act (EA) is regarded as the primary legislation around which other labour legislation now revolve. While the Industrial Associations Act, the Wages Council Act, the Trade Unions Act, the Shop (Regulation of Hours & Employment) Act, and Workmen’s Compensation Act precede the Employment Act, the EA, as now interpreted, contains the most basic working conditions in one legislation. It aims to provide for the control of conditions of employment in certain sectors in the country. Clause 1(2) of the Act specifies that the act applies to ‘the Government of Fiji and to all the persons in the service of that Government’ except persons in the naval, military or air services of the Crown (other than locally engaged civilian employees); members of the Royal Fiji Police Force, and members of the Fiji Prisons Service.’

3.2 Exclusion

3.2.1 Private Sector and Public Sector Workers

A strict interpretation of the Employment Act would show that it applies only to public sector workers and to the government as the employer. It, therefore, does not specifically include workers outside the employment of the state. Adding to the view that the Act was meant for the public sector workers only, was the wording of s1(3) of the Act, which makes specific reference to ministerial powers to exclude ‘any person or class of persons or any public authority or class of public authorities or any contract or transaction or class of contracts or transactions from the operation of all or any of the provisions of this Act’. The specific reference to ‘public authority’ and ‘class of public authorities’, to the exclusion of ‘private employers’ and ‘class of private employers’, lends weight to the view that the Act was meant only for application to public sector workers.

However, the Act defines an employer as:

any person or any firm, corporation or company, public authority or body of persons who or which has entered into a contract of service to employ any person and includes any agent, foreman, manager or factor of such person, firm, corporation, company, public authority or body of persons who is placed in authority over such person employed, and where an employee has entered into a contract of service with the Government or with any officer on behalf of the Government, any Government officer under whom such employee is working shall be deemed to be his employer, provided that no Government officer shall be personally liable under this Act for anything done by him as an officer of the Government in good faith.

The definition of ‘employer’, therefore, suggests that the act covers all categories of
employers. But there is nothing specific in the Act that states that the Act applies to all employers and all employees.

The content of the legislation is such that it has not distinguished between public sector and private sector employees. An example is s13(1), which states that no person shall employ any employee and no employee shall be employed under any contract of service except in accordance with the provisions of the Employment Act. ‘Person’, according to the Interpretation Act, includes ‘any company or association or body of persons, corporate or unincorporate’.

The issue of interpretation is whether the wording and the intent of the wording of s1(2) is that private sector workers were to be excluded. One view, upon which the Ministry of Labour has been operating, is that unless specifically excluded by any specific law, labour laws are to apply to all workers and all workplaces. In this case, the only exemption given in the original legislation are for members of the disciplined forces. The Labour Ministry view, however, has not been challenged by employers in the private sector, who have continued to accept the Employment Act as covering employment in the private sector as well.

Complicating the matter further is the Employment (Application) Order (1976). This Order, which came into force in December 1975, states that persons employed in the service of the Government and who are subject to the General Orders for the Public Service of Fiji, other than persons employed by way of manual labour or domestic service, whose terms and conditions of service are prescribed by or under any Act, are excluded from the provisions of this Act. Persons covered by the General Orders are the salaried employees in the public sector.

If, therefore, the view that the Act applies only the state sector is valid, then the Order further narrows the application of the Act to only wage workers in the public sector.

**Recommendation:** That the application of the Act be clarified to avoid any doubt.

[The confusion was being resolved by the proposed Employment Relations Bill, which stated that if enacted, the Act applied to all employers and workers in workplaces in the Fiji Islands, including the Government.]

Under the Act, for workers with a contract of service with the Government, or with any officer on behalf of the Government, any Government officer under whom such employee is working is deemed to be his employer. While the person deemed to be the employer is exempt from personal liability, the practice in Fiji has been that the Public Service Commission has been signing contracts on behalf of the government for government employees. By deeming the person under whom the employee works as the employer raises the legal confusion on who should the employee sue in cases of breach of contract – the Public Service Commission or the immediate supervisor. While this confusion was eradicated in 1976 when persons employed in the service of the Government under the General Orders for the Public Service of Fiji were excluded from the ambit of the Employment Act, the confusion still remains for persons employed by way of manual labour.

**Recommendation:** The definition of ‘employer’ needs to be clarified.
3.2.2 Sugar Industry

S3 of the Employment Act empowers the Minister responsible for Labour to order exclusion of ‘any person or class of persons or any public authority or class of public authorities or any contract or transaction or class of contracts or transactions from the operation of all or any of the provisions’ of the Act.

In 1976, by the Employment (Exclusion) Order a contract of service for the harvesting of sugar cane, was excluded from the provisions of this Act. No explanation was provided for this exclusion.

In 1984, all matters of industrial relations concerning the sugar industry were brought under the provisions of the Sugar Industry Act.

3.3 Advice to Minister

The EA creates a Labour Advisory Board, consisting of such government officers and representatives of employers and employees and such other persons as the Minister may appoint, whose primary role is to consider and advise the Minister for Labour on matters connected with employment and labour, and on any question referred to it by the Minister.

3.4 Employment Records and Inspections

The CEO for Labour is empowered by the EA to call for any record of employment from employers, for example, the number of employees employed by him in any particular employment, the rates of remuneration, and the conditions generally affecting such employment. The power of the CEO can be delegated to any labour officer, medical officer, health inspector or labour inspector. These officers are empowered, at all reasonable times, to:

- enter, inspect and examine any land, building, camp, wharf, vessel or vehicle, or any place whatsoever where or about which any employee is housed or employed or where there is reason to believe that any employee is housed or employed;
- enter, inspect and examine any hospital or dispensary, or any latrines or other sanitary arrangements used or intended to be used by employees in any place or building or any water supply available for the use of employees, and take samples from the said water supply, and inquire and ascertain whether in any such hospital, dispensary or place of employment suitable medicines and remedies are provided for the use of employees;
- inspect and examine kitchens and places in which food provided for the use of employees is stored, prepared or eaten, and inspect, examine and take samples of all such food;
- require any employer to produce any employee employed by him and any

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8 This report uses the terminology ‘CEO for Labour’, or ‘CEO’ to refer to the Permanent Secretary for Labour, which is the terminology used in this and other legislation; the latter category of officers were replaced by the former from 2004. It also uses the term ‘he’ as a neutral gender that includes male and female persons. Where the reference is specifically to female workers, ‘she’ is used.
documents or records which the employer is required to keep under the provisions of this Act or the Fiji National Provident Fund Act or any other documents or records relating to the employment of such employee,

- take or remove for the purposes of analysis samples of material and substances used or handled, subject to the employer or any person acting on his behalf being notified of any samples or substances taken or removed for this purpose;
- interrogate, alone or in the presence of witnesses, the employer or any person employed by him on any matter connected with the employment of any person or the carrying out of the provisions of this Act, and may make application for information to any other person whose evidence is considered to be necessary;
- inquire from any employer or any person acting on his behalf regarding any matters connected with the carrying out of any of the provisions of this Act.

The inspectors are empowered with the widest of powers to ensure that the minimum required standards of employment are maintained at workplaces.

3.5 Employment Contracts

All employment of workers is presumed to be made under a contract. The legal requirements for the formation of a contract, therefore, is presumed to apply to all employment contracts.

Employment contracts are of two types: contracts of service and contracts for service. Contracts of service are contracts to employ or to serve as an employee for any period of time or number of days to be worked, or to execute any task or piece-work or to perform for wages any journey. Contracts for service are contracts between persons but where an employer-employee relationship is not created, and the payment for the job done is not a wage.

The Employment Act does not apply to contracts for service.

Contracts of service could be oral or in writing (s15). Employers are required to allocate work to employees according to the provisions in the contract, and pay accordingly (s16). Only when workers breach the contract, or the performance of a contract is prevented by an act of God, are employers permitted to deviate from the terms of the contract.

Employees, however, are not protected in terms of their ability to perform work according to contract either on account of employers breaching the terms of the contract, or on account of acts of God.

While oral contracts of service may be made, it is presumed that unless the period of the contract is specified, an oral contract is deemed to be a contract for the period by reference to which wages are payable under the contract. However, such contracts cannot extend for a period longer than one month from the date it is made. After the end of the month (unless a notice of termination of employment is given by either party, or if a contract was specifically expressed to be terminable without notice, or if a contract were expressed to be for one period of fixed duration and non-renewable, or if it was a daily contract), it is presumed that the parties entered into a new oral contract of service for the same period upon the same terms and conditions as those of
the contract then terminated. Even where a notice of termination has been given but
the employee remains on the job without the expressed dissent of the employer, the
termination notice is deemed to have been withdrawn and the parties deemed to have
entered into a new contract of the same period under the same terms and conditions.

3.5.1 Termination of an Oral Contract

An oral contract is, subject to any specific agreement to the contrary that may be
made between the parties, terminable by either party where the:

- contract period is less than one week and wages are paid at intervals of less
  than one week, at the close of any day without notice;
- contract period is one week or more but less than a fortnight or where wages
  are paid weekly or at intervals of more than a week but less than a fortnight,
  by not less than seven days' notice before the expiration of such period;
- contract period is a fortnight or more but less than a month or where wages are
  paid fortnightly or at intervals of more than a fortnight but less than a month,
  by not less than fourteen days' notice before the expiration of such period;
- contract period is one month, by not less than one month's notice before the
  expiration of such period.

The termination notice may be given orally or in writing.

Upon termination, employers are required to pay all wages and benefits due to the
workers. If termination is prior to the last date by which the minimum notice may be
given, the employer is required to pay to the employee all wages (though not the
benefits) that would have been due to the employee had he continued to work until the
end of the contract period. If it were a contract that may be terminated without notice,
then the worker is to be paid a sum equal to all wages that would have been due to the
employee had he continued to work until the end of the contract period.

3.5.2 Summary Termination

Summary termination of an oral contract for lawful cause, however, is permitted. But
if the contract is summarily terminated, it does not prejudice any accrued rights or
liabilities of either party under the contract. An employer can not dismiss an employee
summarily except in the following circumstances:

- where an employee is guilty of misconduct inconsistent with the fulfillment of
  the express or implied conditions of his contract of service;
- for wilful disobedience to lawful orders given by the employer;
- for lack of the skill which the employee expressly or by implication warrants
  himself to possess;
- for habitual or substantial neglect of his duties; and
- for continual absence from work without the permission of the employer and
  without other reasonable excuse.

Where an employee is summarily dismissed for lawful cause, he shall be paid on
dismissal the wages due to him up to the time of his dismissal.

3.5.3 Written Contracts other than Apprenticeship Contracts

The Employment Act requires that certain contracts be in writing. These are those
where a contract
- is made for a period of or exceeding six months or a number of working days equivalent to six months; or
- stipulates conditions of employment which differ materially from those customary in the district of employment for similar work; or
- is a foreign contract of service (i.e. a contract of service made in Fiji but to be performed, wholly or in part, outside Fiji, and contracts of service made with foreign states).

The details to be included in any such contract are provided for in the Employment Regulations taken out by the Minister.

It is a requirement that every contract is to be presented for attestation to a district officer, labour officer or other authorised officers. A contract that has not been attested is not enforceable.

The attesting officer, who could be a district officer, or any other officer authorized for this purpose by the CEO of Labour, is required to ascertain that the employee has freely consented to the contract, and that his consent has not been obtained by coercion or undue influence, or as the result of misrepresentation or mistake. Before attestation, the officer must also satisfy himself that:
- the contract is in due legal form;
- the terms of the contract are in accordance with the requirements of Employment Act;
- the employee has fully understood the terms of the contract before signing it or otherwise indicating his assent;
- the provisions relating to medical examination that are contained in the Employment Act have been complied with; and
- the employee declares himself not bound by any previous engagement.

One copy of the attested contract is to be delivered to the employer, one to the employee, or in the case of a batch of employees to one of their number, and one to the CEO of the Ministry of Labour. The Act requires that the original of every attested contract be deposited with and preserved by the attesting officer.

It is also a requirement (c36) that every employee who enters into a contract be examined by a medical officer. This should be done before the attestation of the contract, but where this has not been possible the employee is to be examined at the earliest possible opportunity. The CEO of Labour may, however, exempt from the requirement of medical examination employees entering into contracts for employment in any agricultural undertaking not employing more than twenty-five employees; and for employment in the vicinity of the employee's home on work which is not of a dangerous character or likely to be injurious to the health of the employees. The costs of medical examination are to be borne by the employer.

These requirements are extremely onerous on employers, employees and the attesting officers as the sheer volume of contracts made annually are overwhelming. In any case, the requirements for attestation are extremely detailed, calling for significant legal expertise which is normally beyond the qualifications of the attesting officers. It is known that in practice, the attestation requirements are not followed except in cases
where the employers or the employees willingly submit contracts for attestation.

In practice, attestation of contracts has not been a norm in Fiji. The Ministry of Labour also does not have any stock of attested contracts other than some that involve seafarers and contracts for work abroad. It is possible that the Ministry was not enforcing the attestation provision since independence as it was concerned only with workers in the public sector, where contracts of service were attested by the government officers. Institutional memory on this matter is non-existent in the country. What is clear, however, is that if the Employment Act were to apply to workers in the non-state sectors, then as of now, most contracts of service in these sectors would not be strictly enforceable. However, under s35(4), each party to the contract is entitled to have the contract presented for attestation at any time prior to the expiry of the period for which it was made. This means that a claim for the non-enforceability of a contract on grounds that it has not been attested, can be frustrated by the party that can present it for attestation. In addition, employees could plead a lack of full understanding of the contract, in order to frustrate enforcement of contracts or even getting any order for specific performance of the contract.

Another problem is that the Act does not create any specific offence if any party breaches the attestation requirement. The Act was amended in 1975 to provide for a penalty on a person who commits an offence against the Act (s99). However, it is not clear whether any breach of the attestation requirement is an offence itself.

**Recommendation:** The provision on attestation of contracts be clarified, and if considered an unnecessary burden on commerce, it should be repealed. If, however, it was considered desirable to maintain the attestation requirement, then the provisions be enforced, and an offence created for its breach.

### 3.5.4 Contract Duration

The Employment Act (c38) provides the maximum period of service that may be stipulated in any contract of service as one year if the employee is not accompanied by his family, which may be extended to two years if the employee is accompanied by his family.

The practicability of this requirement is highly doubtful. Not only would each new contract, made annually or biennially, be burdensome in terms of the attestation and medical examination requirements, but the paperwork and administrative requirements would prove to be too onerous for the employers as well as employee. For employees, annual or biennial contracts tend to be too uncertain as these fall far short of the condition for job certainty and security. The requirement provides for neither stability at the job place nor cost efficiency. In practice, neither any statutory organization in Fiji, nor major employers like commercial banks, nor even tertiary institutions, follow this provision of the law.

**Recommendation:** The contract duration provision of the EA be evaluated and amended to suit the growing demands of modern business and employment certainty for employees.

S39 provides for the transfer of employees from one employer to another. Such
transfer requires the consent of the employee and the endorsement of the transfer upon the contract by an attesting officer. Before endorsing the transfer upon the contract such officer is required to ascertain that the employee has freely consented to the transfer and that his consent has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake.

3.5.5 Termination of contract

A written contract is terminated by the expiry of the term for which it is made, or by the death of the employee before the expiry of the term for which it is made. If the employer is unable to fulfill the contract, or if owing to sickness or accident the employee is unable to fulfill the contract, the contract may be terminated with the consent of a district officer or labour officer. In this case the employees’ rights to any wages earned, compensation due to him in respect of accident or disease, and his right to repatriation are to be safeguarded.

A contract may be terminated by agreement between the parties with the consent of a district officer or labour officer, subject to safeguarding the employee from the loss of his right to repatriation, unless the agreement for the termination of the contract otherwise provides. In this case, the officer should satisfy himself that the employee has freely consented to the agreement and that his consent has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake, and that all monetary liabilities between the parties have been settled. Finally, a contract may be terminated on the application of either party to a court.

3.5.6 Re-engagement

S45 of the EA states that the maximum period of service that may be stipulated in any re-engagement contract made on the expiry of a contract shall be twelve months, except in the case where an employee is accompanied by his wife and children, where the maximum period is to be two years.

If with the expired contract, the employee was separated from his family for more than 12 months, the employee shall not begin the service stipulated in the re-engagement contract until he has had the opportunity to return home at the employer's expense.

3.5.7 Awareness of Employment Conditions

Under s46 of the Act, the CEO of Labour is required to cause concise summaries of the EA provisions on written contracts to be printed in English and in a language known to the employees and is required to make such summaries available to the employers and employees concerned. The employer may also be directed by the CEO to post such summaries in a language known to the employees in conspicuous places.

3.5.8 Foreign contracts of service

A foreign contract of service is a contract made within Fiji but which relates to employment in another territory. Such contracts require the following conditions to be met:
• the contract should be attested before the employee leaves Fiji;
• the copy of the contract to be sent to the CEO is to be sent to the Government of the territory of employment for transmission to the appropriate officers in that territory;
• medical examination shall take place before the departure of the employee from Fiji;
• a minor, defined as someone who is under sixteen years (or the minimum age of capacity for entering into contracts prescribed by the law of the territory of employment if this age is higher than sixteen years), shall not be capable of entering into such a contract;
• the period of service stipulated in the contract is not to exceed two years in the case of an employee accompanied by his family, or, in other cases, one year, or the maximum period prescribed by the law of the territory of employment if such maximum period is less than two years, or one year, as the case may be;
• the conditions under which the contract is subject to termination shall be determined by the law of the territory of employment; and
• the CEO is to co-operate with the authorities in the territory of employment and ensure that the vehicles or vessels used for transport of employees are suitable for such transport, are in good sanitary condition and are not overcrowded, and that when it is necessary to break the journey for the night, suitable accommodation is provided to the employees.

When the employer in a foreign contract of service does not reside or carry on business within Fiji, the employer (or his agent) is required to give security by bond of an amount determined by the district officer or labour officer. Any money recovered under the bond is to be applied towards satisfaction of the claims of the employees employed under the contract. Any balance remaining after satisfaction of such claims shall be returned to the employer.

There is a penalty for those who induce or attempt to induce any person to proceed beyond Fiji with a view to being employed or continuing his employment outside Fiji without a foreign contract of service and on terms and conditions contrary to the provisions in the EA, or for those who knowingly aid in the engagement or transfer of any such person.

These requirements are quite impractical. The requirement on the copy of the contract to be sent to the Government of the territory of employment for transmission to the appropriate officers in that territory, seems to presume that the governments of the respective territories have the same or similar labour laws. It is likely that the relevance of this provision was limited to the colonial period only.

Recommendation: The provisions on foreign contracts of service be examined in light of the needs of cross-border movements of labour.

3.5.9 Contracts Made Abroad

Contracts of service can be made abroad. For contracts made within another territory relating to employment in Fiji, the attesting officer in Fiji should consent to the contract and establish that the employee freely consented to work in Fiji without any misrepresentation. The CEO is also required to co-operate with the authorities of the
other territory to ensure that proper transportation is provided to the employee, and that accommodation is provided during breaks in the journey.\(^9\)

This provision also seems to presume that the respective governing authorities fall under one larger authority, like a colonial power. Seeking to establish whether an employee freely consents to employment in each and every contract made abroad, is highly impractical. So is the requirement that the CEO co-operate with the authorities of the other territories to ensure proper transportation and accommodation to the employee.

The provisions of the Act relating to contracts made abroad, and others relating to foreign contracts of service seem to be drafted with the conditions of labour movements under the indenture system.

**Recommendation:** Provisions on foreign contracts of service and contracts made abroad be reviewed in light of the modern commercial and trans-border labour movement realities.

### 3.6 Wages

Part 7 of the *Employment Act* deals with protection of employees’ wages. S50 provides that an employer faces a fine of a maximum of two hundred dollars or a period of imprisonment not exceeding six months or both the fine and imprisonment if he:

- fails to pay an employee’s wages due to him, within 7 days of a demand made by the employee, to the CEO or any labour officer or inspector. The only exceptions to this are in cases where the contract provides for payment of wages at the end of the contract period, or where the contract is terminated, in which case the wages need to be paid within 24 hours of termination of contract.
- pays (or causes any wage payment to be made to), an employee on any premises licensed for the sale of liquor, except where such wages are paid to the employees of the licensee;
- pays or agrees to pay the wages of an employee otherwise than in currency which is legal tender, except where the employer and the employee agree in writing that the wages of an employee may be paid by means of a cheque made payable to the bearer on demand and which is drawn on a bank in Fiji, or that the payment be into a bank account or credit union account of the employee.
- makes or agrees to make any deduction from the wages of an employee in the nature of a fine, or on account of bad or negligent work;
- imposes any conditions on the employee upon the expenditure of his wages;
- sells provisions to his employees or establishes a shop for the sale of articles to his employees unless permitted in writing by the CEO, except for the employees employed about or in any shop;

\(^9\) It seems this provision was made largely with ‘foreign’ being interpreted as other British territories, i.e., where the UK had authority and influence.
makes any deduction or makes any agreement or contract with any employee for any deduction from the wages, or for any payment to the employer by the employee, except where this is expressly permitted by the provisions of the EA or any other law.

3.6.1 Wage Slips

Every employer, except for employers of domestic servants, or where the contract of service provides for wage payment at intervals of no more than 26 per year (i.e. fortnightly or monthly paid employees), is required to provide such employee with a written statement (wage slip) containing:

- the employee's name and Fiji National Provident Fund membership number;
- the nature of employment or job classification;
- the days or hours worked at normal rates of pay;
- the rate of wages;
- the type of wage period;
- the amount of overtime worked during any wage period and the rate of wages payable for such overtime;
- the total earnings of the employee;
- any allowances or other sundry payments due to the employee;
- any deductions made from the total earnings of the employee;
- the total amount due to the employee after all deductions have been made in respect of each wage period.

For employees where the contract provides for wage payment on the basis of an annual amount payable monthly or fortnightly, the employer shall provide a written statement only on the conclusion of the first full wage period after the commencement of service, on any change in any wage particulars, and on termination of the contract of service.

Employers may pay an employee’s wages to an employee's family if it is duly authorised by such employee in writing.

Employers may also enter into agreements with employees for the deduction from their wages of an agreed amount for specified periods of absence.

3.6.2 Authorised deductions from wages

An employer may make the following deductions from the wages of an employee:

- any amount due by such employee in respect of any tax or rate imposed by law, and which shall, on behalf of such employee, be so deducted and paid to the person empowered to collect such tax or rate;
- a sum in respect of loss of or damage to any tools or other property of an employer caused by the neglect or default of such employee, provided that such deductions do not reduce the total take-home wages of the worker to less than 50% of the wages due;
- an amount equal to any over-payment made during the immediately preceding three months by the employer to the employee by the employer's mistake.
With the written consent of an employee, the employer may deduct any amount due by such employee as a contribution to any provident fund, school fund, pension fund, sports fund, superannuation scheme, life insurance scheme, trade union or co-operative society of which the employee is a member. Such deduction is to be paid, on behalf of such employee, to the person entrusted with the management of such fund, scheme, trade union or co-operative society;

With a written request from the employee, the employer may deduct from an employee's wages:
- a sum in respect of articles/provisions purchased on credit by him from the employer, provided that in no circumstances should the price which the employer charges an employee for these items exceed the lowest price at which he would sell them retail to a member of the public;
- a sum, not exceeding 15% of the total wages of the employee during the wage period, in respect of charges for the cost of accommodation, fuel or light supplied by the employer and used by an employee; and
- a sum in respect of food or victuals cooked, prepared and eaten on the employer's premises.

Where an employer makes a loan to an employee (in cash or by cheque) and if such a loan is documented and signed by the employer and the employee providing for the repayment of the loan by one or more installments, the employer may deduct from the wages due to the employee such installments at such times as are set out in the agreement.

The total of all deductions made during a wage period is not to exceed fifty per cent of the employee's wages due to him/her during the wage period.

3.6.3 Special Exemptions

By the Employment (Application) Order, the Minister has allowed for deductions to be made from the wages of any of its employees by the Emperor Gold Mining Company Limited arising out of any agreement, approved by the CEO Labour with such an employee.

Deductions by employers for the purpose of repaying any loan owing by an employee to the Housing Authority or the Home Finance Company Limited under a contract of loan, or for the purpose of repaying any monies due by such employee to the Housing Authority in respect of the purchase of either a house built or land sold by the Housing Authority, or in respect of rent owing to the Housing Authority, are also allowed.

However, the total of any such deduction is not to exceed twenty-five per cent of the employee's wages in respect of any wage period.

3.6.4 Remuneration other than wages

Employers are permitted to provide an employee with food, a dwelling place, or other allowances or privileges, in addition to money wages, as remuneration for his service. The provision of any intoxicating liquor by way of such remuneration is, however, not permitted.
If an employer provides an employee a wage advance, he is not permitted to make any deduction by way of discount, interest or any similar charge on account of the advance of wages.

### 3.6.5 Priority of wages

If an order has been issued against the property of an employer, the proceeds realized from such an order can not be paid by any court to any person until any order obtained against such employer in respect of an employee's wages has been satisfied to the extent of a sum not exceeding four month's wages of such employee, and the court has paid to the CEO such sum as the employer should have paid to the employee as wages due to the employee. The employee may proceed further to recover any balance due by ordinary processes of law.

### 3.6.6 Vicarious Liability

Due diligence is a defense for an employer charged with an offence under any of the provisions on wage payments, if the employer can show that some other person was responsible for the offence without his knowledge, consent or connivance. In this case, the labour officer/inspector may lay charges against such other person.

### 3.6.7 Civil Claims

Apart from any court order for payment of a sum due to employees from the employer pursuant to an action by a labour inspector or office, employees can issue civil claims to recover any sum due to them from the employers, provided that employers are protected from paying twice in respect of the same cause of action.

### 3.7 Child Labour

The *Employment Act* has several provisions on employment of children and young persons. The Act defines a *child* as a person who has not attained the age of fifteen years. Those between the ages of 15 and 18 are defined as *young persons*.

The overriding law is that no child or young person is to be employed in any employment which in the opinion of proper authority is injurious to health, dangerous, or is otherwise unsuitable (s61(1)).

A child is deemed not capable of entering into a contract (s37). A young person is deemed as not capable of entering into a contract except for employment in an occupation approved by a district officer or labour officer as not being injurious to the moral or physical development of non-adults.

The EA (s59) disallows children under 12 years from being employed in any capacity whatsoever, except for a child employed in light work suitable to his capacity in an agricultural undertaking that is owned and operated by the family of which he is a member.
The Act allows a child between 12 and 15 years to work if it is not injurious to his health, dangerous or unsuitable. In such a case, the child shall be paid a daily wage on a day to day basis, and he ought to return each night to the place of residence of his parent or guardian. No child shall be employed in any industrial undertaking, or in an employment requiring attendance on machinery. Those over 15 could work in industrial undertakings or attend to machinery. But no child or young person can be employed in any employment which in the opinion of the proper authority is injurious to health, dangerous, or is otherwise unsuitable.

A parent’s objection to the employment of a child or young person is given prominence. No employer is allowed to employ a child or a young person after receiving notice, either orally or in writing, from the parent, guardian or proper authority, that the child or young person is employed against the wishes of such parent or guardian.

Where child labour (12 to 15 years) is permitted, no child can be employed or permitted to be employed for more than six hours in a day, nor for more than two hours without a period of leisure of not less than thirty minutes. If such a child is attending school the total time spent in employment and at school shall not exceed seven hours in a day.

No young person (15-18 years old) can be employed or permitted to be employed, except as an apprentice under any law, for more than five hours without a period of leisure of not less than thirty minutes, nor for more than eight hours in a day. If the young person is attending school the total time spent by him in employment and at school shall not exceed nine hours a day.

No young person is permitted to be employed underground in any mine unless a certificate, signed by a medical officer, that he is fit for such work has been given.

Prior to 1996, no young person below 16 years could be employed at night between the hours of 8 p.m. and 6 a.m. in any industrial undertaking. Young persons between 16 and 18 years old could, however, be employed in selected industrial undertakings on work which was required to be carried on continuously day and night. The permitted list included manufacture of iron and steel (processes in which reverbertory or regenerative furnaces are used, and galvanizing of sheet metal or wire); glass works; manufacture of paper; manufacture of raw sugar; and mining, reduction, extraction or preparation of minerals.

In 1996, this provision was repealed and the Minister for Labour given the power, in consultation with the Labour Advisory Board, to prescribe conditions for the employment of young persons on night work in any industrial undertaking. The amendment also amended the definition of night work to mean any work performed in the interval between 6 o’clock in the evening of any day and 6 o’clock in the morning of the following day.

Recommendation: The Minister for Labour should, as a matter of priority, prescribe the conditions of employment of young persons on night work.

Until 1996, another exception was for young persons over 16 working in cases of
emergency which could not have been controlled or foreseen, which interfere with the normal working of the industrial undertaking and which are not of a periodical nature. The CEO of Labour could, after consultation with the employers’ and workers’ organizations concerned, suspend the restrictions on hours of work in cases of any serious emergency when public interest demands it. In 1996, this provision was repealed altogether.

No child is permitted to be employed on any ship except on a ship approved by the CEO for Education as a school or training ship. However, the CEO for Labour may, subject to such conditions as he may think fit, give written approval to the employment of a child over the age of fourteen years in any other ship, if he is satisfied, having regard to the health and physical condition of the child and to the prospective as well as to the immediate benefit to the child of the employment proposed that such employment will be beneficial to the child. The restriction on a child working on a ship does not apply in the case of a child over the age of twelve years who is employed in a ship operated by members of the child's family if the child is under the care of a relative who is a member of the crew of such ship, and is in the opinion of the CEO for Labour, a fit and proper person to have charge of such child.

No child or young person is permitted to be employed or work as a trimmer or stoker on any ship provided that a young person may with the approval of the CEO Labour be employed on such work on a ship approved by the CEO for Education as a school or on a training ship, if such work is supervised by such authority as may be approved by the CEO for Labour.

In all cases, no child or young person can be employed in any ship unless he is in possession of a certificate signed by a medical officer to the effect that he is fit for such employment.

Employers of children and young persons are required to keep a register of all children and young persons in their employment. They are also required to include in such register particulars of the ages or apparent ages of the children or young persons, the date of commencement and termination of their employment, the conditions and nature of their employment and such other particulars as may be required by the Ministry of Labour. Employers are under obligation to produce the register for inspection when required by the proper authority. This register is a separate register, and needs to be maintained apart from any other register.

Parents and/or guardians have a legal obligation to protect employment of a child or a young person in contravention of the laws on such labour. Any parent or guardian of a child or young person who permits such child or young person to be employed in contravention of any of the provisions on employment of persons between 12 and 18 years commits an offence against this Act.

3.7.1 Exceptions to Employment of Children

The following categories of work are excluded from the law on employment of children:

- industrial, other undertakings, or any ship in which only members of the same family are employed, unless such employment, by its nature and the
circumstances in which it is carried on, is dangerous to the life, health or morals of the persons employed therein,

- any school, institution or training ship which is for the time being approved and supervised by the CEO for Education or some person appointed by him in pursuance of any Act in force relating to education,
- if, having regard to the nature of the work involved in any occupation which forms part of an industrial undertaking, the Minister for Labour considers that such occupation should be excluded from the provisions prohibiting children from work.

Other than the Employment Act, the Factories Act also refers to child labour. A chief factory inspector is empowered to serve a notice on a factory operator requiring the employment of a child or young person to be discontinued if he is of the opinion that the employment of any child or young person in a factory or in any particular process or kind of work in factory is prejudicial to his health or the health of any other person (s73(3)).

The Factories Act also creates an offence for the employment of a child in contravention to the provisions of the Factories Act. However, the offence is on the parent/guardian of the child rather than the employer (s83).

Employment of children in Fiji is a matter which has not attracted any public attention of significance. The state has also kept its silence on child labour. While the Employment Act provides for some guidelines on work by children, other legislation in Fiji are in conflict with the definition of a child in the Employment Act. The Interpretation Act, for example, defines ‘child’ as a person under the age of fourteen years. The Factories Act defines a ‘child’ as a person who has not attained the age of fifteen. The Fiji National Provident Fund Act defines an employee as someone who has reached the age of 16.

Recommendation: There is a need to standardize the definition of child labour.

While standardizing provisions on child labour is one part of the equation, Fiji has ratified two important ILO conventions on child labour (C182 Worst Forms of Child Labour Convention, 1999, and C138 Minimum Age Convention, 1973). C182 treats a child as a person under the age of 18. The Convention also defines the term ‘worst forms of child labour’ as comprising, inter alia, work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. C138, on the other hand, specifies the minimum age for employment as not less than the age of completion of compulsory schooling and, in any case, not less than 15 years. It also defines the minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons as not less than 18 years.

Recommendation: As Fiji has ratified the ILO conventions on child labour, the Employment Act (and other legislation relating to child labour) be amended to make it consistent with the provisions of ILO’s Conventions 138 and 182.
3.8 Female Workers

The Employment Act has certain restrictions on employment of females.

Until 1996, no woman was permitted to be employed at night between the hours of 8 p.m. and 6 a.m. in any industrial undertaking. Three exceptions were provided for this. First, they could work between 8pm and 6am in cases of emergency which could not have been controlled or foreseen, and which interfered with the normal working of the industrial undertaking and which were not of a periodical nature. Second, they could work during these hours if the work was connected with raw materials or materials in the course of treatment and which were subject to rapid deterioration, and work during such hours as was necessary to preserve any such materials from certain loss. Third, they could work during these hours if they held responsible positions and were not engaged in manual work.

In 1996, this provision was repealed and the Minister for Labour given the power, in consultation with the Labour Advisory Board, to prescribe conditions for the employment of women on night work in any industrial undertaking.

The amendment also amended the definition of night work to mean any work performed in the interval between 6 o'clock in the evening of any day and 6 o'clock in the morning of the following day. To date, however, no condition for the employment of women has been prescribed. The net effect of the amendment is that s65 has been repealed while no prescription of their work put in place. This means that the restraints on female employees have in effect been eliminated.

Recommendation: The Minister prescribe the conditions of employment of women on night work.

Until 1996, another exception was for women in cases of emergency which could not have been controlled or foreseen, which interfered with the normal working of the industrial undertaking and which were not of a periodical nature. The CEO of Labour could, after consultation with the employers’ and workers’ organizations concerned, suspend the restrictions on hours of work in cases of any serious emergency when public interest demands it. In 1996, this provision was repealed altogether.

Second, no female is permitted to be employed in underground work in any mine except in the following circumstances:
- the woman who holds management position and who does not perform manual work;
- a woman who is engaged in health or welfare services;
- a woman who in the course of her studies spends a period of training in the underground parts of a mine; or
- a woman who may for any other reason occasionally have to enter the underground parts of a mine for the purposes of non-manual occupation.

3.8.1 Maternity Protection

The Employment Act makes very specific provisions on maternity leave. It allows for female employee’s rights to abstain from work before and after confinements as well
as payment of allowances during these periods. Key features of the Act are:

- provision of a right to abstain from work before and after confinement;
- provision for payment of a maternity allowance
- conditions for the entitlement of a maternity allowance
- restriction on dismissal of female workers during the maternity period, and
- employer obligation to keep a register of maternity allowance payments.

The right to a maternity leave is provided by s74(1) of the Employment Act:

Where a female employed in any undertaking expects to be confined, she shall, subject to furnishing her employer with a certificate from a registered medical practitioner or registered nurse specifying the possible date of confinement, be entitled to abstain from work for a period of forty-two consecutive days … before, and for a further period of forty-two consecutive days … immediately after her confinement and shall, subject to the, provisions of this, Act, be entitled to an allowance … in respect of such abstention from work:

The leave and allowance payment provisions, however, are only applicable for workers who worked for four months before the birth of a child, or for not less than one hundred and fifty days during the nine months preceding an applicant’s confinement. S74(2) states that every female at any time during the four months immediately preceding her confinement was employed by an employer by whom she had been employed for a period of, or periods amounting in the aggregate to, not less than one hundred and fifty days during the nine months preceding her confinement shall be entitled, in respect of the pre-confinement allowance period and the post-confinement allowance period, to receive from such employer a maternity allowance of one dollar fifty cents per day payable at such intervals as relates to the intervals at which the wages of the female were normally paid by the employer.

This provision was amended in 1991 and the allowance quantum raised to $5 per day (Employment Act (Amendment) Decree 1991). Since November 1991, therefore, workers on maternity leave have been entitled to an allowance of $210 before delivery and $210 after delivery for all childbirths while employed. The burden of payment of the allowance is on the employer(s).

The legislation prevents employees from claiming maternity allowance from more than one employer. It also provides for an employer to claim a contribution from another (previous) employer of the person the proportion to the allowance as the number of days on which she worked for such other employer during the period of nine months immediately preceding her confinement. In all cases, the allowances are only claimable for days during the period the employee is not at work; there is no entitlement for days on which the employee works during the pre-confinement or post-confinement period except for 7 days immediately preceding her confinement, irrespective of whether she worked or not. For post-confinement period, if the employee works on any one day, her entitlement to a post-confinement allowance for all remaining days after the day she worked ceases.

The legislation also makes provision for the payment dates of the allowances. For the
pre-confinement period, the allowance shall be paid by the employer within seven days from the date upon which the employer knows or has notice of the confinement. The post-confinement allowance shall be paid within seven days from the expiration of the post-confinement allowance period.

The legislation also makes provision for the payment of the allowances to nominees or personal representatives of the employee in cases of death of the employee from any cause before her confinement. The maximum payment for pre-confinement period in case of death is for a period of forty-two days. If the death occurs after confinement, the allowance shall be paid to the day preceding the day of her death.

Employees, however, are required to inform the employer of the pregnancy. An employee who abstains from work because she expects to be confined within forty-two days, shall within seven days from the date upon which she abstains from work notify her employer of her expected confinement. On failure to do this she loses up to 7 days of her pre-confinement allowance. An employee who has been confined ought to inform her employer within fourteen days of her confinement of her confinement. A failure to do this terminates any right to maternity allowance in respect of the post-confinement allowance period. Notices could be given in writing or verbally. A labour officer or a labour inspector may also give notice on behalf of any female.

An employee who intends to resign from their jobs within four months of the confinement period ought to inform the employer about her pregnancy. A failure to do so terminates the entitlement of the employee.

Employers are restricted from terminating workers who remain absent from work after the maternity leave as a result of illness certified by a registered medical practitioner as arising from her pregnancy and which renders her unfit for work until such absence exceeds 3 months including the maternity leave.

The right of the female to maternity leave is preserved even in cases where she is dismissed with wages in lieu of notice at any time during the four months immediately preceding her confinement.

Employers are also required to keep a register showing all maternity leave payments made to females.

### 3.9 Employee Care and Welfare

The EA contains provisions on care of employees in certain circumstances.

#### 3.9.1 Water

For employees living on the employer’s property with the consent of the employer, and where no public water supply is readily available to the employees, the employer is required to, at his own expense, provide for such employees and members of their families living with them, an adequate and easily accessible supply of wholesome water for drinking, washing and other domestic purposes to the satisfaction of the proper authority and shall take all such measures as are necessary and practicable and
as the proper authority may require to maintain such supply, and to protect it from pollution.

3.9.2 Medicine and Medical Treatment

Employers are required to, at their own expense, provide for their employees’ medical aid in accordance with such scale as may be prescribed. Employers are also required, at their own expense, to provide medical aid for the members of the employees’ families living with such employees on the employers’ properties with the employer’s consent and knowledge.

An employer, however, is not liable for providing medical aid in any case where any illness or incapacity is occasioned by the neglect or fault of the employee (or the members of his family), or where the employee (or the members of his family) refuse or fail to make use of the medical aid provided by the employer.

By the Employment (Medical Treatment) Regulations the Minister made detailed provisions on medical aid and treatment to employees.

3.9.3 Return of employees to place of engagement

Where an employee is brought to the place of employment by the employer (or by any agent of the employer), the employer is required to, at the termination of the contract of service, pay the expenses of repatriating the employee by reasonable means to the place from which he was brought. Employers are exempt from this obligation for employees who have not completed a period of service of at least three months' duration. The expenses of repatriation are to include the cost of traveling and subsistence to the place of engagement as well as cost of subsistence between the date of termination of the contract and the date of repatriation.

3.9.4 Repatriation of body of deceased employee

If an employee is brought to the place of employment by the employer (or by any person acting on his behalf), and such employee dies, from any cause whatsoever, before termination of the contract of service, the employer is required to pay the expenses of repatriating the body of the deceased employee by reasonable means to the place from which he was brought, unless deemed unreasonable or impracticable by a proper authority.

3.10 Ministerial Powers

The Minister for Labour is empowered to make regulations, after considering the advice of the Labour Advisory Board, for efficient implementation of the provisions of the Act, and for, inter alia, the following:

- providing for the particulars to be contained in written contracts of service, and for the manner of execution, attestation and registration thereof and for all other matters relating to their making, enforcement, transfer and cancellation;
- prescribing the adequacy and cash value of food, housing, clothing and other essential supplies where they form part of the remuneration of employees;
prescribing the hours of work of women, young persons and children;
• prohibiting or regulating the employment of persons suffering from any infectious disease or any other prescribed physical disability;
• prescribing the books, records, accounts and other documents to be kept and the returns to be rendered by employers, and other persons in respect of employees;
• prescribing the records and registers to be kept and the returns to be made by the employers of women, young persons and children;
• providing for the application of any sums due to the estates of deceased employees;
• prohibiting, restricting, controlling or regulating the employment of women, young persons and children in commercial undertakings;
• prescribing for any period the maximum number of hours during which any employee or class of employees, either generally or in relation to any particular kind of work or employment, may be required to work;
• providing for and prescribing the description and scale of medicines, medical attention, accommodation, equipment, staff and treatment to be provided by employers for employees;
• regulating the engagement and the embarkation of employees to be employed under a foreign contract of service;
• providing for the establishment and administration of free public employment exchanges;
• providing for all matters relating to the return of employees from the place of employment to the place of engagement;
• providing for the giving of security by employers or other persons and all matters relating thereto;
• further restricting the employment of women, children and young persons in specified occupations;
• prescribing the maximum amounts of loans and installments and the terms and conditions upon which loans may be made by employers to employees and upon which loans and installments may be recovered;
• for the establishment and administration of boards and committees to register casual labour and to regulate the employment of casual labour, to empower any such board or committee to charge such fees as the Minister may approve in connection therewith and to provide that any such fees may be paid to such boards or committees; and
• prescribing all matters that are authorised by the Act to be prescribed.

Various regulations have been made under these provisions. One of the important ones is that relating to annual holidays.

3.11 Annual Holidays

Employees are entitled to paid holidays from their employers. After each year of employment with an employer, an employee is to be given ten working days’ holiday for which he is to be paid the wages he would have been paid for the time he would have normally worked during that period. The entitlement to paid annual holiday, however, is eliminated if the employee was absent from work for more than thirty-six
normal working days during that year, except where such absence has been due to sickness certified by a medical practitioner.

For periods of service of less than one year, the employee is entitled to be paid, in lieu of holidays, a sum equal to not less than five-sixths of a day's wages for each completed month of such period.

The regulations set out other details on the timing and payment of the holiday pays.

**Comments:** The *Employment Act* is an outdated piece of legislation. It was developed for the colonial era, where the labour market in Fiji was simple, and the formal sector was dominated by employment in the state sector. The ‘exclusion problem’ is a major problem for the Act. In addition, the legislation is not comprehensive. Matters like overtime work, child labour, and maternity leave are inadequately provided for. The legislation is unsuitable for the modern labour market, which has a very large section of the population in the informal sector, and where the state encourages employment in and growth of the informal sector and small and medium enterprises.
IV

Trade Unions and Industrial Relations

The Constitution of Fiji provides workers the right to form and join trade unions, and employers have the right to form and join employers’ organisations. It also enshrines the rights of workers and employers to organise and bargain collectively. These rights emerged from the right of people to organise and assemble contained in the UN’s Declaration of Human Rights.

Currently, the following laws regulate trade unions and industrial relations:
- Industrial Associations Act
- Trade Unions Act
- Trade Disputes Act
- Trade Unions (Recognition) Act

4.1 Industrial Associations Act

The Industrial Associations Act (IAA) is the oldest legislation in Fiji dealing with labour issues. First promulgated in August 1942, it has remained in force with amendments in 1943, 1945, 1961, 1962, 1966, 1991 and 1994. Its aim is to make provisions for the formation, registration and regulation of industrial associations. An industrial association is an association registered under the IAA.

The definition of an ‘association’ was amended in 1991 (Industrial Associations Act (Amendment) Decree 1991). Until then, an association referred to ‘any number of employers or employees or other persons in any particular industry associated together primarily for the purpose of regulating relations inter se or with other persons or associations and for protecting or furthering their interests and those of their associations’. In 1991, the purpose of the association was changed from ‘regulating relations’ to ‘promoting their professional interests’. Industrial associations, therefore, were restricted to deal with professional interests of the members only rather than regulating relations.

The amendments went further to disallow industrial associations from engagements in trade disputes or matters connected with the regulation of relations between, inter alia, employees and employers. The proviso to the amendment stated: ‘an association registered under this Act shall not be engaged in any trade dispute or matters connected with the regulations of relations between employees and employees or between employees and employers or between employers and employers’ (Industrial Associations Act (Amendment) Decree 1991, s3). The amendment also deleted the
definition of ‘trade disputes’.

In 1997, however, by the Constitutional Amendment Act (s195), the Industrial Associations Act (Amendment) Decree 1991 was repealed. Industrial associations, therefore, could continue to function, in effect, as trade unions.

But with the enactment of the Trade Unions Act, ‘trade union’ acquired a more specific definition.

Nonetheless, the IAA continues to guarantee the right to employees and employers to form and register industrial associations. S5 of the Act states: ‘Notwithstanding anything in any other Act contained, it shall be lawful for employers, employees and other persons engaged in any industry to form associations for the purposes and in the manner authorised by this Act.’

The Act goes further, guaranteeing freedom of association of employees and employers. It makes it a criminal offence for an employer to make it a condition of employment of any employee that that employee not be or become a member of an industrial association. It also disallows any person from making it a condition of any contract with any other person that that other person shall not be or become a member of an industrial association. Any such condition in any contract of employment or contract would be void.

The right of people to being or becoming a member of any industrial association is further protected by s22(2) as it disallows any other law from prohibiting any employee from being or becoming a member of any industrial association or subject him to any penalty by reason of his membership of such an association.

4.1.1 Registration of Industrial Associations

Associations seeking registration are required to submit the application on specified forms together with three copies of its authenticated constitution and rules, and furnish the CEO with any further information he may require.

The constitution of every industrial association should be in accordance with law, including the IAA, and should provide for:

- the qualifications of membership which shall require, inter alia, that an applicant for membership of the association shall be regularly and normally engaged in the industry which the association represents and shall not be a member of another industrial association. The president and the secretary of an industrial association, however, could be persons not regularly and normally engaged in the industry represented;
- [In 1991, the IAA was amended and the following additional provision added: that all officers of the association, except the secretary and the treasurer, should ‘have been and still are engaged or occupied for a period of not less than one year in an industry, trade or occupation with which the industry is directly concerned, and no officer of any such association shall be an officer of any other association or trade union’. This debarred the president from coming]
from outside the industry. It also barred association officers from holding multiple official positions in association and trade unions. However, in 1997, by the Constitutional Amendment Decree (s195), the Amendment decree was repealed, thus status quo maintained. An officer of an industrial association, therefore, could also be an officer of a trade union.

- the manner in which the amounts of the subscriptions (if any) to be paid by members shall be fixed;
- the appointment, removal and powers of office bearers and officials (such office bearers and officials must be members of the association);
- the calling and conduct of meetings of members or of representatives of members of the association;
- the election of representatives (who must be members of the association) to serve on any body having for its object the inquiry into or settlement of any industrial dispute;
- the acquisition and control of property;
- the keeping of books of account and the periodical auditing of accounts at least once every calendar year, and the making available to the Registrar and members of true copies of the audited accounts and of the auditor's reports thereon;
- the maintenance of a register of members and of a record of the subscriptions (if any) paid by each member, and the periods to which those payments relate;
- the alteration of the constitution;
- the winding up of the association;
- the circumstances under which a member shall cease to be a member or shall cease to be entitled to any of the benefits of membership; and shall define the purposes to which any of its funds may be applied, and the benefits to which members may become entitled, and prescribe the fines, levies and forfeitures to which they are liable and provide for the establishment of an executive committee and other committees and provide for the holding of ballots, in which case it shall prescribe the manner in which any ballot shall be conducted and controlled and deal with any other matter which is suitable to be dealt with in the memorandum of an association:

The registering officer is required to register the Association, except for on three specified grounds:

- the applicant has not complied with the requirements of the IAA; or
- the constitution and rules of the association are inconsistent with the provisions of the IAA or of any other Act except in so far as the provisions and purposes of such other Act may be repugnant to the IAA; or
- the association has been formed for the purpose of evading the provisions of any enactments that are not repugnant to any of the provisions of the IAA.

The association refused registration is given an opportunity of bringing its constitution or rules into conformity with the provisions of this or any other Act, as required by the registering officer.

Upon registration, the association becomes a body corporate. Each association is required to submit to the registering officer in the Ministry of Labour a general statement of the receipts, funds, effects and expenditure by the end of March each
year. The disclosures should include the assets and liabilities of the association, the expenditure in respect of the several objects of the association; and the number of members of the association and the number of such members whose subscriptions were then in arrears for a period exceeding three months.

Every member of the industrial association is entitled to receive, on application to the secretary of the association, a copy of such annual general statement, free of charge.

Periodically on request by the Registrar, the industrial associations are to furnish him a true statement giving any particular relating to the association that may be required by the Registrar. The Registrar or any other public officer authorised by him, is entitled to inspect the books and accounts of any industrial association at any time.

The registrar should also be fully informed of the election or appointment of office bearers or officials or members of the executive committee within 14 days of the election. The association is also required to inform the registrar of the address of the association and any changes made to it.

Members of the public are entitled to inspect the constitution, rules and list of officers of an industrial association at the office of the Registrar.

**Recommendation:** Provision should be made for periodic updating of membership list of each industrial associations, and this list should be made available for inspect by members of the public.

### 4.1.2 Inquiries by Registrar

If at any time the Registrar has reason to believe that an industrial association or any of its office bearers or officials is not observing the provisions of its constitution or is otherwise acting unlawfully, he may conduct an inquiry into the carrying out by that association or its office bearers or officials of its or their powers and duties under this Act or under its constitution, or authorise any magistrate or district officer (in this section referred to as the authorised officer) to do so.

At any time pending the holding or completion of such inquiry or the decision therein the Registrar, if he is satisfied by evidence, that there is a prima facie case that an industrial association or any office bearer or official of an industrial association is not observing the provisions of its constitution or rules or is otherwise acting unlawfully, may by order suspend for a maximum period of 6 weeks, any office bearer or official whom he considers to have been so guilty. The Act provides the processes conducting the inquiry. Upon the completion of the inquiry the Registrar has the power to cancel the certificate of registration of the association, or take other remedial action.

The Act provides for the expulsion of office bearers and members of an association who are found upon inquiry to have applied the funds of the association to any purposes other than those set out in the constitution.
4.1.3  Winding up of industrial association

An industrial association could be wound up if a majority of its members so decide by a ballot (or any other method approved by the Registrar) taken at a general meeting called for the purpose. When the Registrar has reasonable cause to believe that an industrial association has been wound up or is not functioning as an industrial association, he is entitled to cancel the registration of such an association.

4.1.4  Powers of the Minister

The minister responsible for labour is empowered to make regulations for carrying out the terms of the Act.

4.1.5  Immunities

In 1943, industrial associations were given immunity against any litigation on the basis of them being restraints to free trade. In 1945, members were given immunity against conspiracy charges if these related to industrial action. S3 states: ‘The purposes of any industrial association shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render any member of such industrial association liable to criminal prosecution for conspiracy or otherwise.’ S4 states: ‘The purposes of any industrial association shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust.’

An office bearer or a member of the association is not liable for any obligations of that association by reason only of the fact that he is a member, office bearer or official of that association, unless it is otherwise provided by the memorandum of association of the association.

The 1945 amendments on conspiracy in industrial disputes strengthened freedom of association of workers and employers. S23(1) of the Act grants immunity to people who agree to do, or procure to be done, any act in contemplation or furtherance of an industrial dispute if such act committed by one person was not to be punishable as a crime. It further stated that an act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of an industrial dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.

An industrial dispute refers to any dispute or difference between employers and employees, or between employees and employees, connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour, of any person. It also included any dispute or difference between sugar-cane farmers and sugar manufacturers\(^{10}\), and any dispute or difference between any other persons in any undertaking, industry, trade or occupation specified by the Minister by notice in the Gazette.

The immunity on conspiracy, however, is limited as the immunity granted by IAA

\(^{10}\) From 1984, disputes in the sugar industry were brought under the ambit of the Sugar Industry Act.
against conspiracy does not exempt from punishment any person guilty of a conspiracy for which a punishment is awarded by any other legislation.

It also does not extend to cover riot, unlawful assembly, breach of the peace, or sedition, or any offence against the State or the Sovereign.

The Act limits the right of scope of persons to organise or further a dispute. S24 makes it a criminal offence for any person who, with a view to compel any other person to abstain from doing any act which such person has a legal right to do, or abstain from doing, wrongfully and without legal authority

- uses violence to or intimidates such other person or his wife or children, or injures his property; or
- persistently follows such other person about from place to place; or
- hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or
- watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or
- follows such other person with two or more other persons in a disorderly manner in or through any street or road.

The Act also makes picketing at a workplace or a residence or a business unlawful if picketing is done in such numbers or in such manner as to be calculated to intimidate any person in that house or place, or to obstruct the approach thereto, or to lead to a breach of the peace.

But the Act removes liability for interfering with another person's business:

An act done by a person in contemplation or furtherance of an industrial dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills (s26).

The Act prohibits action of tort against an industrial association or its members or officials for tortuous acts alleged to have been committed by or on behalf of the association.

However, neither any provision in the Act, nor any rule of an IA can relieve any Fijian from his obligations under any regulation made by the Fijian Affairs Board, including expansion and/or reward or lack thereof, for the labour expanded.

4.1.6 Offences

The IAA creates certain specified offences. In particular it creates 14 offences for breach of the act. These relate to:
1. registration of the association (3 offences),
2. registration of constitutional amendments,
3. delegation of powers of industrial associations,
4. annual returns and submission of information to the Registrar (2 offences),
5. officers of defunct industrial associations,
6. employers violating freedom of association of employees,
7. strikes, picketing and intimidation (2 offences)
8. summons by the registrar,
9. making false statements, and
10. acting in contravention of or failing to comply with any order of the Registrar made in relation to conduct of inquiries by him.

For the offences listed in 1-7 above, there is a maximum fine of $50, while for the offences on 8 and 9, there is a maximum fine of $100 or imprisonment for a term of one year. For the last category, the offence carries a fine not exceeding fifty dollars and to an additional fine not exceeding four dollars for each day during which the offence continues.

In 1991, by the *Industrial Associations Act (Amendment) Decree*, the fines were increased from $4 and $10 to $100; from $50 to $1,000, and from $100 to $2,000. However, by the *Constitutional Amendment Act 1997*, the amendment decree was repealed, thereby reverting the fines to the original level.

Recommendations:

1. The IAA creates a range of offences, but the penalties for the offences are extremely low. The penalties are not sufficient deterrents to the breach of the legislation. No revision of penalties has taken place since 1966. The 1991 revisions were nullified in 1997. There is an urgent need to examine the penalties again.

2. The ambit of the IAA transgress the scope of the Trade Unions Act, though the IAA is an older legislation. This is a cause for potential confusion for worker and employer organizations. The IAA deals with, inter alia, employers and employees, that is, with matters concerning employment of workers. The TUA also deals specifically with matters concerning trade unions. There is no effective purpose being served by two different legislation covering the same matters. There is a need for one composite legislation covering all matters relating to the regulation of relations between employers and unions.
4.2 Trade Unions Act

4.2.1 Application

The objective of the Trade Unions Act is to regulate formation, registration and activities of trade unions of employees and employers. It applies to all employees, including those employed in the state sector, except for those persons in the state’s naval, military or air services, the Fiji Police Force and the Fiji Prisons Service.

A ‘trade union’ is defined in the TUA as:

any combination whether temporary or permanent, of more than six persons
the principal objects of which are … the regulation of the relations between
employees and employers, or between employees and employees, or between
employers and employers, whether such combination would or would not, if
this Act (or the Industrial Associations Act) had not been enacted, have been
deemed to have been an unlawful combination by reason of some one or more
of its objects being in restraint of trade.

The definition also provides for a trade union of employers where there are no more than 6 employers. In this case, the requirement that an application be supported by more than six members is not to apply to any such trade union or proposed trade union.

From the definition, therefore, an organization could be a trade union of employees if it has at least 7 members. This means that workers at a workplace which has less than 7 employees cannot form their own union. If they were to be unionized, the only option would be to join hands with workers at other similar workplaces to form a union. On the other hand, a trade union of employers could have fewer than 7 members.

Recommendation: The anomaly between the minimum required membership of a trade union of employees and a trade union of employers needs to be corrected.

A key office created by the TUA is the Registrar of Trade Unions (RTU). The RTU, appointed by the Minister for Labour, is responsible for the performance of the duties and functions assigned to him as Registrar under the Act. The RTU is advised by a committee of four persons appointed by the Minister, comprising a representative each of the employers and employees, and two independent persons.

In 1991, through the Trade Unions Act (Amendment) Decree a definition of ‘employer’ was inserted in the Act. This definition was the same as that provided in the Employment Act, except that for government employees, the immunity provided to the government officers who are deemed to be employers of government employees, was excluded. In 1997, however, the amendment was repealed.
4.2.2 Registration of Trade Unions

Every trade union formed is required to be registered as a trade union within one month of the date of its formation. A trade union is deemed to be formed on the first date on which more than the prescribed number of employees or employers, as the case may be, agree in writing to become or to form a trade union. Any failure to apply for registration in accordance with the provisions of the TUA is an offence for which the trade union, every officer of the union, and every person acting as an officer thereof or purporting so to act, is liable on conviction to a maximum fine of one hundred dollars. Further, the trade union shall be deemed to be dissolved on notification in writing to that effect by the Registrar.

A trade union or any officer or member is prohibited from performing any act in furtherance of the objects for which it has been formed unless application has been made by such trade union for registration. No trade union is to enjoy any of the rights, immunities or privileges of a registered trade union until it is registered as a trade union, nor do its officers or members enjoy any of the rights or privileges accorded to the officers and members of a registered trade union.

An application for registration as a trade union is to be made to the Registrar on a prescribed form which shall be signed by at least seven members of the body applying for registration. Applications need to be accompanied by four copies of the rules of the trade union or the proposed trade union duly authenticated by the president and the secretary and a statement containing the names, occupations and addresses of members making application; the name of the trade union or proposed trade union and the address of its registered office and its registered postal address; and the titles, names, ages, occupations and addresses of the officers of the trade union or proposed trade union.

Upon receipt of the application, the Registrar may call for further information for the purpose of satisfying himself that any application made by a trade union or proposed trade union for registration complies with the provisions of the TUA or that the trade union or proposed trade union is entitled to registration under the Act. If the name under which a trade union is proposed to be registered is identical with that by which any other existing trade union has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive or mislead the public or the members of either trade union or is undesirable, the Registrar shall require the persons applying for registration to alter the name of the trade union stated in the application, and shall refuse to register the trade union until such alteration has been made.

The Registrar is required to register the trade union as a registered trade union, upon which he is required to issue to the trade union a certificate of registration in the prescribed form and that certificate, unless proved to have been cancelled or withdrawn, shall be conclusive evidence for all purposes that the trade union has been duly registered under this Act.

The registration of a trade union renders the union a body corporate by the name under which it is registered, with perpetual succession and with power to hold property real or personal and to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its
The Registrar may refuse to register any trade union if he is satisfied that:

- the trade union has not complied with the provisions of the TUA or of any regulations made thereunder;
- any of the objects in the constitution or rules of the trade union is unlawful or conflicts with any such provisions;
- the trade union is used for unlawful purposes;
- the principal objects of the combination seeking registration are not in accordance with those set out in the definition of ‘trade union’;
- any other trade union already registered is adequately representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration, provided that the Registrar shall, by notice in the Gazette or otherwise, notify any registered trade union which appears to him to represent the same interests as the applicants of the receipt of such application, and shall invite the registered trade union concerned to submit in writing within a period of twenty-one days any objections which any such trade union may wish to make against registration; [In 1991, the Trade Unions Act (Amendment) Decree repealed this proviso. This was intended to enable formation of multiple trade unions. However, in 1997, under the Constitution Amendment Act, this decree was repealed]  
- the trade union seeking registration is an organization consisting of persons engaged in or working at more than one trade or calling and that its constitution does not contain suitable provision for the protection and promotion of their respective sectional interests;
- proper and satisfactory arrangements for the custody, distribution, investment of and payment from the funds of such trade union are not contained in the constitution thereof.

When the Registrar refuses to register a trade union, he shall notify the applicants in writing of the grounds of such refusal within two months of the date of receipt of such application and the trade union shall be deemed to be dissolved but such dissolution shall not take effect prior to the expiry of the period given for any appeal.

Any person acting as an officer of a trade union which has been deemed to be dissolved or any person purporting so to act shall be guilty of an offence, and shall be liable on conviction to a fine, provided that it shall not be an offence for a person to act on behalf of such a dissolved trade union for the purpose of any proceedings brought by or against any such union; or dissolving such union and disposing of its funds in accordance with its constitution and rules.

4.2.3 Cancellation or suspension of registration

The registration and the certificate of registration of a registered trade union may be cancelled by the Registrar at the request of the trade union upon its dissolution.

The registration can also be cancelled or suspended if the RTU is satisfied that:

- the registration was obtained by fraud or misrepresentation;
- any of the objects of the trade union has become unlawful;
- the objects for which a trade union is actually carried on are such that had they been declared as objects of the constitution and rules of the union at the time of application for registration the Registrar could properly have refused registration;
- the trade union has willfully and after notice from the Registrar contravened any provision of the TUA, or allowed any rule to continue in force which is inconsistent with any provision of the TUA, or has rescinded any rule from its rules which are required to be part of the rules of the Union under the TUA; or
- the trade union has ceased to exist.

The registration may also be cancelled or suspended by the RTU if he is satisfied that
- the funds of the trade union have been or are being expended in an unlawful manner or on an unlawful object or on an object not authorised by the TUA;
- the accounts of the trade union are not being kept in accordance with the provisions of the TUA;
- the trade union, being an organisation consisting of persons engaged in or working at more than one trade or calling and having a constitution providing for the protection and promotion of the respective sectional industrial interests of its members has failed to carry out the provisions of its constitution;
- registration was obtained by mistake;
- the trade union has been or is being used for any unlawful purpose or for any purpose inconsistent with its objects or rules; or
- the officers or any of the officers of the trade union have persistently and willfully failed to comply with the provisions of this Act;

If the registration is suspended then the RTU shall, before the expiration of four months from the date of such suspension, either restore the registration or cancel the registration and certificate.

If the registration of any trade union is suspended, then during the period of such suspension the trade union shall cease to enjoy any of the rights, immunities or privileges of a registered trade union but without prejudice to any liabilities incurred by the trade union, which may be enforced against the trade union and its assets, nor could its officers or members enjoy any of the rights or privileges accorded to the officers and members of a registered trade union.

The TUA provides for remedies and provisions for appeal for a trade union whose registration has been suspended or cancelled, or whose registration application has been refused.

A trade union whose registration has been cancelled ceases to exist as a corporate body, and the Registrar may, notwithstanding anything contained in the rules of such trade union, forthwith appoint one or more persons to be liquidators thereof. It also ceases to enjoy any of the rights, immunities or privileges of a registered trade union, but without prejudice to any liability incurred by the trade union, which may be enforced against the trade union or its assets, whether such liability is incurred before, on or after the date of the cancellation of registration. Such a union is forthwith to be dissolved. Consequently, no person can, except for the purpose of defending proceedings against the trade union or of dissolving it and disposing of its funds in accordance with the rules thereof and the provisions of this Act, take any part in its
management or organisation or act or purport to act on behalf of the trade union or as an officer thereof.

Where a trade union is liquidated all of the funds (including welfare funds, if any) and assets belonging to the trade union are to be converted into money and be applied first to the cost of the liquidation, then to the discharge of the liabilities of the trade union, then to the payment of share capital, if any, and then in such manner as may be provided by the rules of the trade union or, failing any such provision, in such manner as the Registrar may direct. Any surplus remaining after the application of the funds as specified and the payment of any claims are to be paid into the Consolidated Fund.

The RTU is required to keep and maintain a register of trade unions containing the particulars relating to any such registered trade union and any alteration or change which may from time to time be effected in the name, rules and constitution, officers or registered postal address thereof or in the situation of the registered office thereof, and all such other matters as may be required to be contained therein under this Act or any regulations made thereunder. These comprise the official record of the unions with the state.

4.2.4 Immunities

The TUA provides strong immunities to trade unions and their officials from civil claims and criminal prosecutions. S23 of the TUA gives immunity to trade union members against claims on the basis of the union being a restraint to trade. It also gives immunity to members against criminal prosecution for conspiracy. S25 gives immunity to unions, members and union officials from civil claims ‘in respect of any act done in contemplation or in furtherance of a trade dispute on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.’

Trade unions are immune from tortuous suits as well. S26 states: ‘A suit against a registered trade union or against any member or officer thereof on behalf of themselves and all other members of such a registered trade union in respect of any tortuous act alleged to have been committed by or on behalf of such trade union shall not be entertained by any court.’ This immunity does not extend to affect the liability of a trade union or any member or officer thereof to be sued in any court touching or concerning the property or rights of a trade union; it includes only those actions which are committed by or on behalf of the trade union in contemplation or in furtherance of a trade dispute.

[In 1991, the Trade Unions Act (Amendment) Decree repealed s25 and s26, and inserted a new section which took away the immunity of trade unions or members or union officials from civil suits or other legal proceedings. The Amendment, however, was repealed in 1997 under the Constitution Amendment Act 1997]

The immunity also does not extend to claims for breach of any contract that the union enters into. However, no legal claim lie of unions for breach of:

- any agreement between members of a trade union concerning the conditions on which any member shall or shall not sell their goods, transact business,
employ or be employed;

- any agreement for the payment by any person of any subscription or penalty to a trade union;

- any agreement for the application of the funds of a trade union to provide benefits to members other than benefits under a contributory provident fund or pensions scheme; and to furnish contributions to any employer or employee not a member of such trade union, in consideration of such employer or employee acting in conformity with the rules of resolutions of such trade union;

- any agreement made between one trade union and another; or

- any bond to secure the performance of any of the abovementioned agreements.

The law also circumscribes the charge of conspiracy against a trade union:

An act by two or more persons in contemplation or furtherance of a trade dispute a member or official of a union shall not be punishable as a conspiracy if such act committed by one person would not be punishable as a crime (s58(1)).

An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable.

However, actions for conspiracy which are treated as punishable as a crime in other acts, are not exempt. Nor any action of the union, member or official be exempt for breach of a law on riot, unlawful assembly, breach of the peace, or sedition, or any offence against Her Majesty or the Government of Fiji as by law established.

4.2.5 Union Rules and Constitution

Each trade union is required to draw up its rules and the constitution. The rules are to provide for the following matters:

- The name of the trade union and the address of its registered office

- A list of the officers in the trade union and the functions of the holders of such offices specifying officers of the trade union empowered to operate bank accounts.

- The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, the conditions under which any member thereof may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member thereof.

- The persons eligible for membership of the trade union.

- The manner of making, altering, and rescinding rules.

- The keeping of a register of members of the trade union.

- The maintenance of discipline within the trade union, including provision for appeal to the voting members at a general meeting of the trade union against any decision of the executive committee canceling the membership of any member or dismissing any officer.

- The appointment or election and removal of an executive committee and secretaries, treasurers, and other officers of the trade union.

- The method of convening and conducting annual general meetings and extraordinary general meetings, and the matters to be presented to the members of the trade union at such meetings, including in the case of annual
general meetings the presentation of audited accounts.

- The custody and investment of the funds of the trade union, the designation of the officer or officers responsible therefore, and the annual or periodical audit of its accounts.

- The inspection of the books and names of members of the trade union by any person having an interest in the funds of the trade union.

- The manner of the dissolution of the trade union and the disposal of the funds thereof available at the time of such dissolution.

- The taking of decisions by voting members of the trade union by secret ballot on the following matters:11
  
  - the election of officers of the union;
  - the alteration of the rules of the union;
  - all matters relating to strikes and lockouts;
  - dissolution of the union;
  - the amalgamation of the trade union with any other trade union;
  - the federation of the trade union with any other trade union or with a trade union federation;
  - imposition of levies.

- The right of any member, who is not disqualified from voting, to a reasonable opportunity to vote.

- The amount of subscription and fees payable by members and the disqualifications of a member from voting on any matter concerning the trade union and from receiving benefits if his subscription is more than thirteen weeks in arrears.

- If honorary members are to be permitted, the conditions under which a person may become an honorary member.

- Provision for keeping in a separate fund all moneys received or paid by the trade union in respect of any contributory provident fund or pensions fund scheme.

- The constitution of the trade union, in so far as any part of it is not contained in the foregoing paragraphs.

- Provision whereby members of a trade union shall cease to be members of such trade union if their subscriptions are more than twelve months in arrears.

- Provision whereby a member of a trade union becomes a voting member.

- A requirement that at any meeting of the union or branch thereof a quorum shall consist of at least 20 per cent of the voting members of the union or branch as the case may be.

- A requirement that at any meeting of the executive committee of a trade union or branch thereof a quorum shall consist of not less than 33⅓ per cent of the members of the executive committee where the total number of such executive committee consists of 21 persons or more, and of not less than 50 per cent of the members of the executive committee where the total number of such executive committee consists of 20 persons or less, but that in any case the quorum shall not consist of fewer than five persons.

11 The Trade Unions Act (Amendment) Decree, 1991 added the requirement for provision in union rules for secret ballot for all matters relating to requests by unions for solidarity support from any person or organisation outside Fiji. This Amendment, however, was repealed in 1994 under the Trade Unions (Amendment) Act 1994.
The union may change its rules as long as the change is not contrary to the provisions of the TUA. If a union changes the rules, it has to follow the procedures of notification to the RTU as specified in the TUA. It is a requirement of the TUA that a copy of the constitution and rules of the union be prominently displayed in the registered office of the union and every branch office. This responsibility vests with the secretary, who is also required to supply any member a copy of the same on demand on payment of the sum of ten cents.

[In 1991, the Trade Unions Act (Amendment) Decree amended the definition of the term 'strike' Until then, 'strike' meant a cessation of work by a body of employees employed in any trade, industry or calling, acting in combination, or a concerted refusal or a refusal under a common understanding of any number of employees who are employed, or who have been so employed, to continue to work or to accept employment.

The new definition was:
Any act of any number of workers who are or have been in employment of the same employer or of different employers:

a. in discontinuing their employment whether wholly or partially, on [sic] in reducing the normal performance of it; or
b. in breaching their contracts of service;
c. in refusing or failing after such discontinuance to resume or return to their employment; or
d. in refusing or failing to accept engagement for any work in which they are usually employed; or
e. in reducing their normal output or their normal rate of work, the said act being due to any combination, agreement, common understanding, or concerted action, whether expressed or implied, made or entered into by any worker, but does not include a union meeting allowed by the Act or authorized by an employer.

This amendment required that a union had to conduct a secret ballot to engage in any activity which could be interpreted as a breach of contract, or a work-to-rule. In 1997, however, the Trade Unions Act (Amendment) Decree, 1991 was repealed, thus the new definition made redundant for the purposes of the Trade Unions Act]

4.2.6 Membership

Membership of trade unions is open to all persons who are normally employed and normally resident within Fiji, but no person can be a voting member in more than one trade union. Apart from this general provision, there are specific provisions for membership of young persons. Unless provision is made in the constitution and rules of the Union to the contrary:

• a person under the age of sixteen years may be a member of a registered trade union but shall not be a voting member or a member of the executive committee of a registered trade union.

• A person under the age of twenty-one but above the age of sixteen years, may be a member of a registered trade union, and may, subject to such constitution and rules, enjoy all the rights of a member except as provided for in the TUA,
and execute all instruments and give all acquaintances necessary to be executed or given under the rules, but shall not be a member of the executive committee of a registered trade union.

The Trade Unions Regulations require every registered trade union to keep a register of its members, ‘in which shall be entered:

- the name, address and occupation of each member;
- the date on which each member was admitted to membership;
- the payments made by each member in respect of entrance fee, subscriptions or any other payments provided for under the constitution and the dates of such payments; and
- the date on which any member ceases to be a member.’ (s13, TU Regulations)

### 4.2.7 Officials

The TUA requires that all the officers of every trade union be persons who have been and still are engaged or occupied for a period of not less than one year in an industry, trade or occupation with which the union is directly concerned, except for the secretary and, with the permission of the RTU, the treasurer, who may be someone not engaged in the industry, trade or occupation. For the posts of secretary or treasurer, the holders should, in the RTU's opinion, have acquired a sufficiently high standard of literacy so as to enable them to perform their duties effectively. A person who has been convicted of any crime involving fraud, dishonesty or extortion does not qualify to be an officer of a trade union during the period of five years immediately following the date of such conviction.

The Act also disallows an officer in a trade union to be an officer in another trade union.

[[In 1991, the Trade Unions Act (Amendment) Decree amended s31 of the Act to prohibit a union official from becoming an officer in another trade union or industrial association. The Amendment, however, was repealed in 1997 under the Constitution Amendment Act 1997]

A notice giving the names of all officers and their titles are to be prominently exhibited in the registered office of every trade union and in every branch office.

Notice of all changes of officers are to, within fourteen days after such change, be sent to the Registrar on the prescribed form by the trade union together with the prescribed fee. The Registrar is required to correct the register accordingly.

Any member of the public may inspect the constitution and rules, and the list of officers of a trade union at the office of the RTU, subject to the conditions the RTU places on these inspections. The law makes no provision for the submission of membership lists to the RTU.

**Recommendation:** The law should provide for the submission of membership lists to the RTU, and for the lists to be amenable to inspection by members of the public.
4.2.8 Registered office and postal address

Every trade union is required to have a registered office and registered postal address, to which all communications and notices are to be addressed. These details are registered by the RTU. Unions are to maintain these details up-to-date.

4.2.9 Amalgamation

The law disallows amalgamation of trade unions without the consent of the RTU. The TUA sets out the processes which unions desiring amalgamation need to follow. The Registrar may refuse to give his consent to an intended amalgamation only on the basis set out in the TUA. This limits the RTU’s discretion on allowing amalgamation.

4.2.10 Dissolution

When a registered trade union is dissolved, notice of the dissolution, signed by the secretary of the trade union and seven persons who were voting members at the date of the dissolution, shall, within fourteen days after the dissolution, be sent to the Registrar by the trade union. Upon registration by the Registrar of such dissolution, the trade union ceases to be a body corporate.

4.2.11 Union Funds

The TUA specifies the areas in which trade unions may use their funds. No fund of a trade union can be applied either directly or indirectly for any political purpose or be paid or transferred to any person or body of persons in furtherance of any political purpose whether within or outside Fiji. The funds of a trade union may be used only for the following objects:

- the payment of salaries, allowances and expenses to officers of the trade union;
- the payment of expenses for the administration of the trade union, including audit of the accounts of the funds of the trade union;
- the prosecution or defense of any legal proceedings to which the trade union or any member thereof is a party, when such prosecution or defense is undertaken for the purpose of securing or protecting any rights of the trade union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs;
- the conduct of trade disputes on behalf of the trade union or any member thereof;
- the compensation of any member for loss arising out of trade disputes;
- allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members;
- allowances to members in distress through circumstances beyond their control;
- social insurance, medical aid, and the supply of medicaments and drugs to members or their dependants, and any incidental expenses thereof;
- expenses incurred on trade union business by officers and members of the trade union;
- the erection of any building or the purchase or lease of any building or land required for the purposes of the trade union, and for the rent, upkeep and
furnishing thereof;
• affiliation fees or contributions payable to a trade union federation to which such union is affiliated;
• contributions to a charitable, educational or cultural institution or society approved by the Registrar;
• contributions or loans, with the approval of the Registrar, to any registered trade union for the purpose of assisting such trade union in financial difficulties;
• the educational, cultural and vocational training of members as approved by the Registrar, and any incidental expenses thereof;
• the organization of any theatrical performance, concert, reception, dance, sports meeting or excursion;
• the purchase of books, newspapers and other literature and the upkeep of a reading room for the use of members;
• the editing, printing, publication and circulation of any book, newspaper or other periodical, bulletin, pamphlet or other printed literature for the advancement of the lawful objects of the trade union or the promotion of the interests of its members as such;
• the payment of interest on loans and the payment of income and other legally imposed taxes;
• the provision of social facilities for members;
• any other object which, by notification in the Gazette, the Minister may, on the application of any trade union, declare to be an object for which such funds may be expended by such trade union or by any trade union, such expenditure to be subject to such conditions as the Minister may, by the same or any such notification, direct.

4.2.12 Union Funds, property, accounts and annual returns

The officers of every registered trade union are required to keep such books of accounts as prescribed in the constitution. The accounts books and the minute book of the trade union, are to be kept at the registered office of the union except during the audit of the accounts of such trade union or with the written permission of the Registrar.

The trade union shall cause the account to be audited by some fit and proper person approved by the Registrar.

The secretary of every registered trade union is required to furnish annually to the Registrar on or before the 30th day of April in every year a general statement audited in the prescribed manner of all receipts and expenditure during the period of twelve months ending on the 31st day of December of the preceding year, and of the assets and liabilities of the trade union as at 31st day of December. The statement is to be accompanied by a copy of the auditor's report and shall be prepared in such form and is to comprise such particulars as may be prescribed.

**Recommendation:** The requirement under the law is for the submission of audited accounts of the union. There is no reference to whether the accounts to be submitted needs to be approved by the membership prior to their submission. It is
recommended that the Act be amended to require that before the audited accounts are to be submitted, they need to be approved by the membership at the annual general meeting of the union.

The account books, receipt books and receipts for expenditure of a trade union and a list of the members are to be open to inspection by any officer or member of the trade union at such times as may be provided for in the rules of the trade union.

The minutes relating to financial matters, the list of members, account books, receipt books, receipts for expenditure, cheque books, pay-in slips and all other vouchers and documents relating to the accounts of the trade union are to be open to inspection by the Registrar or any person authorised in writing by the Registrar in that behalf at any reasonable time.

The Registrar may, at any time, call upon the treasurer, the executive committee or other proper officer or officers of a trade union to render within seven days of the call being made in writing detailed accounts of the funds of the trade union or any branch in respect of any particular period. Such accounts are to show such information as the Registrar may require.

The Trade Unions (Accounts) Regulations makes provisions for the collection, receipting, etc., of subscriptions and other funds of the union, as well as the expenditure documentation of the union. It also requires a union to keep all financial source documents and books for a period of at least three years after the end of the trade union's financial year.

4.2.13 Secret Ballot

The Trade Union Regulations make provision for the conduct of secret ballots. They also provided in detail the procedures to be followed by union officials responsible for taking secret ballot. In 1991 under the Trade Unions Regulations (Amendment) Regulations, major amendments were introduced to the provisions on secret ballot. It, however, repealed the detailed procedures that were present prior to the amendment. As it stands now, the conduct of all secret ballots are to be supervised by the Registrar of Trade Unions or an official of the Ministry of Labour who is designated by the Registrar to be present at and to supervise the ballot.

Second, the Registrar/supervisor may take such action and give such directions as they consider necessary to prevent the occurrence of any irregularity in or in connection with the ballot. The RTU is empowered to declare the result of a ballot null and void.

Third, any secret ballot in relation to the election of officers of the union, alteration of the rules of the union, strikes and lockouts, dissolution of the union, amalgamation of the trade union with any other trade union, the federation of the trade union with any other trade union or with a trade union federation, or the imposition of levies, can only be taken after the union gives the Registrar of Trade Unions at least a 21-day notice of the intention to hold the ballot. Such a notice is to include, inter alia, the date, the time and place where and when the ballot is to take place.
Fourth, the amendment lays down the procedure to be followed in taking a secret ballot for any election of a trade union executive committee. The procedure includes the requirement of equality of voting rights, and non-interference of the union officials, members or employees on the vote process or any constraint on a voter. It also lays down the procedure for postal ballots.

Fifth, the regulation lays the procedure for a secret strike ballot. Once a ballot is taken, the regulation states that any affirmative strike vote authorizes a union to call a strike on the issue during a 6-week period from the date of declaration of the result of the ballot. This provision substantially limited the leeway of a union to call a strike. In 1993, however, this provision was repealed by the Trade Unions Regulations (Amendment) Regulations.

Recommendation: The detailed procedures for conducting secret ballots be re-introduced so as to provide uniformity to the procedures for conducting secret ballots.

4.2.14 Freedom of Association

Freedom of association by employees is guaranteed by the TUA. S59(1) provides that no employer can make it a condition of employment of any employee that the employee shall not be nor become a member of a trade union. No employer or any other institution can prohibit any employee from being or becoming a member of a trade union, or subject him to any penalty by reason of his membership of any registered trade union.

4.2.15 Ministerial Powers: Regulations

The TUA empowers the Minister to make regulations for the purpose of carrying out or giving effect to the provisions of the Act. Such regulations may include the specification that they may apply to a specific trade union only, or that any particular trade union or class of trade unions shall be exempted from the operation of such regulations.

4.2.16 Public Information

The TUA requires that the Registrar notify the public, through the Gazette within twenty-eight days of the performance thereof, of the following:

- that a trade union has applied for registration;
- that any trade union has been registered or that registration has been refused;
- that the registration of any registered trade union has been cancelled or suspended;
- that a change of name or amalgamation affecting any registered trade union has been registered;
- that any registered trade union has been dissolved; and
- that a trade union has applied to amend its constitution so as to enlarge the class of employees authorised to be members thereof.
4.2.17 Offences

Various sections of the Act create offences for breaches of the Act. However, not all breaches result in a specified offence. Only two general offences are created; these concern misuse of money or property of a trade union, and failure to give notice or produce documents as required under the Act.

The penalties for the offences created, however, have remained at the levels established in 1964. In 1991 the *Trade Unions Act (Amendment) Decree* raised the penalties for the general offences significantly, but the Decree was repealed by the *Constitution Amendment Act 1997*. Thus, the older penalties remain.

**Recommendation**: The penalties established in the TUA need to be reviewed so that they remain effective deterrents against breaches of the Act.
4.3 Trade Unions (Recognition) Act

A legislation for the recognition of trade unions was enacted in 1998. The specific purpose of this legislation is to provide for the recognition of trade unions by employers. The Act commenced on the date on which the Constitution Amendment Act 1997 (No. 13 of 1997) commenced. Prior to this legislation, trade union recognition was regulated by the Trade Unions (Recognition) Act (Cap. 96A) 1976, and the Trade Unions (Recognition) Act (Amendment) Decree 1991.12

The results under the pre-1998 legislation were that there emerged a significant number of trade disputes that involved the issue of recognition of trade unions, and their rights to represent members. A precursor to the 1998 legislation was the creation of a legal distinction between ‘disputes of interests’ and ‘disputes of rights’ by the Trade Disputes Act (Amendment) Decree 1992.13 The recognition legislation aims to prevent the occurrences of disputes of rights.

The Act defined trade union recognition, as recognition of a trade union by an employer for the purpose of collective bargaining. Such recognition could be voluntarily given by employers or, where employers refuse recognition, accorded by the state as compulsory recognition.

4.3.1 Recognition

The Act makes provisions for the recognition of majority unions and minority unions. A majority trade union is defined as a registered trade union of which 50% or more of the persons eligible for membership in a trade union and employed by that employer are voting members. A minority trade union is a registered trade union of which less than 50% of the persons eligible for membership in a trade union and employed by that employer are voting members;

4.3.1.a Recognition of Majority Unions

The Act provides that where there is a registered trade union of which more than 50% of the persons eligible for membership and employed by an employer are voting members, and where no other registered trade union claims to represent those persons, that trade union is, for the purpose of collective bargaining, entitled to recognition by the employer in accordance with a voluntary recognition agreement executed between the employer and the trade union.

The union seeking recognition is required to make an application for recognition in writing to the employer, with a copy sent to the CEO of Labour. On receipt of the application, the employer must respond to the applicant within 7 days.

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12 The decree, which had amended ss3, 6, 10, and 11; repealed ss 12 and 15, and added a new part II to the Act, was repealed by the 1997 Constitution, upon which the Trade Unions (Recognition) Act 1998 came into force.

13 A ‘dispute of interest’ is a dispute created with intent to procure a collective agreement. A ‘dispute of rights’ is a dispute concerning the interpretation, application, or operation of a collective agreement.
If recognition is refused by the employer, or it has not been accorded recognition by the employer within 1 month of the application, the union may apply to the CEO of Labour for the issue of a compulsory recognition order.

4.3.1.b Recognition of Minority Trade Unions

Where there is more than one registered trade union for which the persons employed by an employer are eligible for membership and claiming to represent those persons, or where minority trade unions are concerned generally, the most representative trade union is entitled to recognition by the employer in accordance with the terms of a voluntary recognition agreement executed by the employer and the trade union.

‘Most representative trade union’ is defined as a registered trade union which represents more of the groups of employees employed by the employer than any other registered trade union, but it includes within its membership more than 30% of all union members employed by the employer. If there is an equal number of groups of employees covered by more than 2 registered trade unions, the registered trade union that represents more than 30% of all union members employed by the employer is regarded as the most representative trade union.

Minority trade unions are permitted to apply to the employers for their recognition. The employer may voluntarily recognise a minority trade union for the purpose of collective bargaining and may allow such trade union to negotiate on behalf of the employees it represents.

If a registered trade union claims to be entitled to recognition by an employer, but the employer refuses to recognise the trade union only on the ground that less than 50% or 30%, as the case may be, of the persons in the employment of the employer who are eligible for the membership of the trade union are voting members of it, the trade union may refer that matter for decision to the CEO of Labour. The CEO’s decision on recognition is final.

4.3.2 Determination of Membership

A key element of recognition is membership of the union. The law allows the CEO (or a labour officer/inspector) to, for the purposes of determining the membership of a trade union, require an employer to produce the records of wage payments required to be kept by it under the Employment Act, or require any trade union to produce records required to be kept by it under the Trade Unions Act. In either case, they may require, by notice in writing served on an employer or a trade union, such production at a place reasonably accessible to the employer or to the trade union and at a time and date to be specified in the notice but not less than 7 days from the date of service of the notice.

In determining the percentage of union membership of persons employed by an employer only those persons who were in the employment on the date on which the union applied for recognition are to be taken into account. An employee who of his own accord leaves employment with the employer after the date on which a trade union applied for recognition is excluded from the determination.
4.3.3 Compulsory Recognition Order

The CEO of Labour is empowered to make a compulsory recognition order declaring that a registered trade union is entitled to recognition, specifying the manner in which the employer is to accord recognition to the trade union.

4.3.4 Refusal of Recognition Order

If on an application the CEO refuses to make a compulsory recognition order, the registered trade union is not entitled to recognition by the relevant employer for 6 months from the date of the refusal.

Recommendation: S9 needs to be amended to specify that a union that has been denied a compulsory recognition order can not apply for another CRO within 6 months from the date of refusal. By disallowing recognition for 6 months, the law is disallowing even a voluntary recognition which an employer may wish to grant a union – perhaps under changed circumstances of changed leadership subsequent to the refusal by the RTU of a CRO.

4.3.5 Duration of Recognition

A registered majority trade union that is entitled to recognition continues to be so entitled until such time as the CEO, on an application by the employer or a majority trade union, determines that the average number of persons in the employment of the employer who were voting members of the union was less than 50% of the average number of persons who were eligible for membership in the union. In this case from the date of such determination the registered trade union ‘ceases to be entitled to recognition’.

Recommendation: The provision (s10(1) - a registered union ceasing to be entitled to recognition if its membership declines to below 50% of the eligible membership - conflicts with the provision of minority union recognition (s4). The section should be amended with the following words added after recognition: ‘as a majority trade union’.

The most representative trade union entitled to recognition, continues to be so entitled until such time as the CEO, on an application by the employer, determines that the average number of persons in the employment of the employer who were voting members of the union was less than 30% of the average number of persons who were eligible for membership. In this case, from the date of such determination the registered trade union in question ceases to be entitled to recognition.

An employer or majority trade union whose application for recognition has been refused is not entitled to make a similar application within 6 months from the date of such refusal.

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14 The determination is for a period of 6 months ending not more than 2 months before the date of application.
15 This determination is for a period of 6 months ending not more than 2 months before the date of application.
4.3.6 Exclusion from recognition

S11 of the Act empowers the CEO, on application by an employer or a registered trade union, to, by order, ‘exclude from recognition of a trade union any person who is employed in a confidential capacity or who represents the employer in matters affecting industrial and staff relations’.

Recommendation: S11 is unclear on how a person could be excluded from recognition. It sees that the intention of the section is to disallow membership of a person who works in a confidential capacity or who represents the employer in industrial and staff relations. If this is the case, then it may breach the constitutional provisions relating to worker rights to trade unionism and collective bargaining. S11 needs to be amended to clarify its meaning.

4.3.7 Strike or lock-out on Recognition

Where it appears to the Minister that there is an actual or declared strike, lock-out or boycott arising out of recognition or in relation to recognition in any industry or section of an industry, and the Minister is satisfied that all practicable means of obtaining recognition through the procedures laid down in this Act have not been followed, the Minister may by order declare the strike, lock-out or boycott to be unlawful.

4.3.7.a Unlawful strikes/lock-outs

A person who in connection with any strike, lock-out or boycott declared unlawful, causes, procures, counsels or in any way encourages, persuades or influences another person to take part in the strike, lock-out or boycott commits an offence.

It is also an offence for a person to cease work or refuse to continue to work, being work which in terms of his employment he is bound to do, which gives rise to reasonable suspicion that he is taking part in or acting in furtherance of an unlawful strike.

A trade union that engages in an unlawful strike, lock-out or boycott or is in breach of an order made under this Act, commits an offence.

4.3.8 Offences and Penalties

The Act creates offences for violating the provisions of recognition. An employer who, or a trade union which, fails to comply with the provisions of a voluntary recognition agreement executed, or a compulsory recognition order, commits an offence. So does the union that violates the provisions on determining membership of the trade union.

For committing any of these offences, the offender is liable, on conviction, to a fine of $1,000. In the case of a continuing offence the offender is liable to a further fine of $100 for every day during which the offence continues.

S16 provides for penalties of upto $2,000 and to imprisonment for 12 months for the
breach of the requirements on strikes and lock-outs. If the persons so convicted are officials of the union, they become disqualified from holding any post as an officer of a trade union for 2 years from the date the offence was committed.

4.3.9 Regulations

The legislation empowers the Minister to make regulations to give effect to the provisions of this Act, and to prescribe penalties for breaches of such regulations, which do not exceed a fine of $5,000 or imprisonment for 12 months.
4.4 Trade Disputes Act

Enacted in 1973, the *Trade Disputes Act* (TDA) aims to make provisions for the settlement of trade disputes. It was amended in 1991 by decree, and again in 1998.

4.4.1 Scope

The Act applies to all employees except the members of the disciplined forces (Fiji Military Force, Fiji Police Force, and Fiji Prisons Service).

The term ‘trade dispute’ was defined in the original act as any dispute or difference between employers and employees, or employees and employees, or employees and any authority or body, connected with the employment or non-employment, or with the terms of employment, or with the conditions of labour, of any person. Sugar industry disputes were excluded from the definition of a trade dispute, unless under S14(6) of the *Sugar Industry Act* the Minister responsible for the sugar industry decided that a trade dispute be dealt with under the provisions of the Trade Disputes Act.

In 1992, the definition was narrowed to mean any dispute or difference between any employer and a *trade union recognised* under the Trade Unions (Recognition) Act, or between a union of employers connected with the employment or with the terms of employment, or with the conditions of labour, of any employee. This meant that a trade dispute occurred only when a recognised trade union was involved. Disputes which involved un-unionised workers, or workers in the non-unionised sectors were not regarded as trade disputes, thus fell outside the scope of state machinery aimed at resolving trade disputes.

The 1992 amendment excluded a trade dispute in the sugar industry from the scope of the TDA.

In 1998, this definition was amended further; the amendment defined a trade dispute as any dispute or difference between:

- an *employer* and a registered *trade union* recognised and connected with the employment or with the terms of employment or the conditions of labour of any employee,
- an *employer* and a registered *trade union* that has applied for recognition and connected with the termination of employment of that employee during the time when the application for recognition of the trade union is being processed; or
- an *employer* and an *employee* who is a member of a registered trade union that has applied for recognition and connected with the termination of employment of that employee during the time when the application for recognition of the trade union is being processed.

The amendment, however, withdrew the exemption that the sugar industry had until
The new definition is a much narrower definition of a trade dispute than the original definition. Excluded are disputes related to conditions of employment or termination involving:

- employer and employees who are not members of a union,
- an employer and employees who are in the process of forming a trade union,
- an employer and employees who have formed a union but not applied for recognition when the dispute arose,
- an employer and employees who are members of a union, but whose recognition has been successfully challenged by an employer.

This narrows the scope of state involvement in resolving a dispute at the workplace. State involvement in resolving trade disputes is seen as a useful means of ensuring industrial harmony. But reducing state involvement, employers could prolong an industrial dispute and tire out workers.

**Recommendation:** The law needs to create a mechanism for resolving disputes between employers and workers who are not members of a trade union, or who are in the process of forming a trade union, or whose trade union is still in the process of registration and recognition, or whose registration has been successfully challenged by the employer.

The amendment in 1992 divided all trade disputes into two types of disputes: a dispute of interest and a dispute of right.

A ‘dispute of interest’ is a dispute created with intent to procure a collective agreement, including a dispute created with intent to procure a collective agreement or amendment to settle a new matter.

A ‘dispute of rights’ is a dispute concerning the interpretation, application, or operation of a collective agreement, or any dispute that is not a dispute of interest, including any dispute that arises during the currency of a collective agreement.

In line with this distinction, the procedures to settle disputes were also amended.

### 4.4.2 Reporting of Trade Disputes

The TDA made provision for a trade dispute, whether existing or apprehended, to be reported to the CEO ‘by or on behalf of any of the parties to the dispute’. Such reports were to be done in writing, and were to contain, sufficiently,

- (a) the employers and employees, or the classes and categories thereof, who are parties to the dispute, and the place where the dispute exists or is apprehended;
- (b) the party or parties by whom or on whose behalf the report is made;
- (c) each and every matter over which the dispute has arisen or is apprehended;

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16 This withdrawal is of no effect since sugar industry industrial relations are covered under the Sugar Industry Act.

17 This is a terminology used in labour laws to refer to matters which may convert into trade disputes.
(d) the steps which have been taken by the parties to obtain a settlement under any arrangements for the settlement of disputes which may exist by virtue of any registered agreement between the parties thereto.

The person reporting a trade dispute is required to furnish, without delay a copy of the report to each party to the dispute. Any person could report the trade dispute.

In 1992 and 1998, however, amendments were made to the reporting requirement. The range of persons who could report a trade dispute was narrowed to the following:

- an employer who is a party to the dispute or a trade union of employers representing him in the dispute; or
- a trade union of employees recognized under the Trade Unions (Recognition) Act, which is a party to the dispute,
- a trade union of employees that has applied for recognition under the Trade Unions (Recognition) Act and which is a party to the dispute; or
- an employee who is a member of a trade union that has applied for recognition under the Trade Unions (Recognition) Act and which is a party to the dispute.

The report of a trade dispute is to be made in writing and is to sufficiently specify:

- the employers and employees, or the classes and categories thereof, who are parties to the dispute, and the place where the disputes exists or is apprehended;
- the party by whom the report is made;
- each and every matter over which the dispute has arisen or is apprehended; and
- the steps which have been taken by the parties to obtain a settlement under any arrangements for the settlement of disputes which may exist by virtue of any registered agreement between the parties to it.

On receipt of the report, the CEO is to inform the parties that either the dispute is accepted, or rejected. By the 1992 amendments, the CEO could not accept any dispute that arose more than one year from the date it is reported, except in cases where the delay or failure to report the trade dispute within the specified period was occasioned by mistake or other good cause. A report which has been rejected by the CEO shall be deemed not to have been made under the provisions of this Act. He may also decide that any of the matters over which the trade dispute had arisen or is apprehended is not a trade dispute under the provisions of this Act.

The CEO may refer the matter back to the parties and, if he thinks fit, make proposals to the parties or to any of them upon which a settlement of the trade dispute may be negotiated.

After the 1992 amendments, if the matter were a dispute of interest, the CEO is to appoint any person, whether within the public service or outside, to act as a mediator and conciliator. If, however, the matter were a dispute of right, then the CEO is required to refer the matter to a Disputes Committee.

The CEO also has the option of getting an investigation of the trade dispute, or any matter connected to it, to be made by any person who appears to be independent to him. This person may or may not be a public officer.
4.4.3 Disputes of Rights and Disputes Committee

Disputes of rights are to be submitted to a Disputes Committee. A DC consists of an independent chairperson, appointed by the CEO, and a member each appointed on the recommendation of the party affected by the dispute, and the employer or the trade union of employers affected by the dispute of rights.

The Disputes Committee is required to hear the parties to the disputes and make its decision within fourteen days from the date the trade dispute was referred to it, unless the circumstances of the case required an extension of time by the CEO. A decision that is arrived at by consensus is binding on the parties and deemed an award.

If one or both parties, or the Disputes Committee fail to comply with requirements, the CEO is required to refer the dispute to the Minister who shall authorise the CEO to refer such dispute to a Tribunal for settlement. The Tribunal’s decision is final and binding. The CEO may refer the dispute to the Tribunal if both parties consent, and agree in writing to accept the award of the Tribunal.

But irrespective of whether the parties consent, the Minister may authorise the CEO, to refer a dispute to a Tribunal if:

- a strike or lock out arising out of a trade dispute, whether reported or not, has been declared by order of the Minister to be unlawful; or
- a trade dispute, whether reported or not, involves an essential service; or
- the Minister is satisfied that a trade dispute, whether reported or not, has jeopardised or may jeopardise the essentials of life or livelihood of the nation as a whole or of a significant section of the nation or may endanger the public safety or the life of the community.

If a dispute is referred to a Disputes Committee or the Tribunal, no employee employed by an employer who is a party to the dispute shall discontinue or impede normal work either totally or partially. Similarly, no such employer shall take any action in respect of the dispute. If the dispute involves an intention to dismiss an employee, the employer is required to suspend the employee, pending the settlement of the dispute. The suspension period is without remuneration unless decided otherwise.

**Recommendation:** The provision on suspension without remuneration may give the employer an unfair advantage over the employee as the employer would not have any reason to play its part in expediting the settlement of the dispute. The evidence to date needs to be evaluated for possible re-consideration of this provision.

Where a trade dispute has been referred to a Tribunal or to conciliation or to a Disputes Committee, the Minister may by order prohibit the continuance of and declare unlawful any strike or lock out in connection with such dispute which may be in existence on the date of the reference.

Notwithstanding any other provision of the TDA, where any trade dispute exists or a strike or lock out is apprehended, the CEO may, whether or not the trade dispute is reported to him under the provisions of this Act, inquire into the causes and
circumstances of such trade dispute. He may, on the direction of the Minister, refer the dispute to a Board of Inquiry to inquire into the matters referred to it and report back to the Minister. An inquiry by a Board of Inquiry may also be resorted to if the matters relating to the dispute are connected with the economic or industrial conditions of Fiji.

### 4.4.4 Strike or Lock-outs

'Strike’ was traditionally defined as the *cessation* of work by a body of employees acting in combination, or a concerted refusal or a refusal under a common understanding of any number of employees to continue to work for an employer, done as a means of compelling their employer or any employee or body of employees, or to aid other employees in compelling their employer or any employee or body of employees, to accept or not to accept terms or conditions of or affecting employment.

In 1992, this definition was widened to include go-slows and work-to-rule. The amendment redefined strike as the act of any number of workers who are or have been in employment of the same employer or of different employers:

- in discontinuing that employment whether wholly or partially, or in reducing the normal performance of it; or
- in breaching their contracts of service; or
- in refusing or failing after such discontinuance to resume or return to their employments; or
- in refusing or failing to accept engagement for any work in which they are usually employed; or
- in reducing their normal output or their normal rate of work,
- the said act being due to any combination, agreement, common understanding, or concerted action, whether expressed or implied, made or entered into by any worker.

Even a breach of contract of service, if it was due to any combination, agreement or common understanding, or concerted action made or entered into by any worker, is included as a strike.

### 4.4.5 Unlawful Strikes

A strike, lock-out or boycott can be declared as unlawful by the Minister. This arises under 4 specific circumstances: procedures not exhausted before proceeding on the strike/lock-out, the matter was settled before strike/lock-out action, the strike/lock-out had an extraneous objective, and that no secret ballot was taken before taking the action.

#### 4.4.5.a Procedures not exhausted

The Minister is empowered to declare a strike or lock-out unlawful if it appears to him that there is an actual or a declared strike or lock out arising out of a trade dispute in any industry or section of industry, and the Minister is satisfied that:

- all practicable means of reaching a settlement of that dispute through the procedure laid down in the registered agreement have not been exhausted or,
- where no such procedure is provided in the agreement, then the procedures...
under the provisions of this Act have not been exhausted.

This power of the Minister is only valid for 42 days from the date of acceptance of the dispute by the CEO. If 42 days elapse since the date on which the report of the dispute causing such strike or lock out was accepted by the CEO, and the dispute has not within that time been settled or directed by the Minister to be referred to a Tribunal for settlement, any strike or lock-out can not be declared unlawful.

4.4.5.b Matter Settled

Where it appears to the Minister that there is an actual or a declared strike or lock out arising out of a trade dispute in any industry or any section of industry and the Minister is satisfied that the matters to which the trade dispute relates have been settled by an agreement or award; and that the agreement or award is expressed to have effect until a date which has not been reached, the Minister may, inter alia, declare any strike or lock out (whether actual or imminent) in that industry or section of industry to be unlawful until a date specified in the order.

4.4.5.c Extraneous Objectives

The Minister may also declare the strike, lock-out or boycott unlawful if it appears to the Minister that the actual or a declared strike, lock out or boycott:
- has any objective other than or in addition to the furtherance of a trade dispute within that trade or industry or section of industry, or
- is designed or calculated to coerce any employer or employee in any other trade or industry or section of industry in respect of his conduct in or in connection with that other trade or industry or section of industry either directly or by inflicting hardship on the community.

4.4.5.d No Secret Ballot

Where it appears to the Minister that there is an actual or declared strike arising out of a trade dispute that has been authorised or endorsed by a trade union and there has not been a properly conducted secret strike ballot of union members affected on the actual or declared strike, the Minister may declare that strike unlawful and order discontinuance of the strike.

Any order made by the Minister relating to strikes, lock-outs and boycotts come into force on the day following the day on which it is made unless otherwise specified.

4.4.6 Offences and Immunities

Any person who in connection with any strike, lock out or boycott declared to be unlawful, causes or procures or counsels or in any way encourages, persuades or influences others to take part in any such strike, lock out or boycott is guilty of an offence.

Any person who ceases work or refuses to continue work, being work which in terms of his employment he is bound to do, in circumstances which gives rise to reasonable suspicion that he is taking part in or acting in furtherance of an unlawful strike, is
guilty of an offence, unless he satisfies the court that he ceased work, or refused to continue work, as the case may be, for causes wholly unconnected with that strike.

Any trade union or employers' organisation which has been or is engaged in an unlawful strike, lock-out or boycott or is in breach of any order made under this Act is guilty of an offence.

No person refusing to take part or to continue to take part in any strike, lock out or boycott which is declared to be unlawful, shall be, by reason of such refusal or by reason of any action taken by him under this section, subject to expulsion from any organisation, or to any fine or penalty, or to deprivation of any right or benefit to which he or his personal representatives would otherwise be entitled, or liable to be placed in any respect either directly or indirectly under any disability or to any disadvantage as compared with other members of the organisation, anything to the contrary in the constitution or rules of an organisation notwithstanding.

4.4.7 Essential Services

The legislation lists numerous services which are defined as essential services. The list includes:

- Water Services
- Electricity Services
- Health Services
- Hospital Services
- Sanitary Services
- Air Traffic Control Services
- Civil Aviation Telecommunication Services
- Meteorological Services
- Fire Services
- Telecommunications and Telegraphs
- Air/Sea Rescue Services
- Emergency Services in times of national disaster
- Lighthouse Services
- Mine Pumping, ventilation and winding
- Air Transport
- Port and docks services including stevedoring and lightering, loading and unloading of cargo from or on to any ship and despatch of any cargo to destination.
- Transport Services necessary to the operation of aforementioned services or any of them.
- Supply and distribution of fuel, petrol, oil, power and light essential to the maintenance of the above services.

In 1992, the following were also added to the list of essential services:

- Custom Services;
- Immigration services;
- Tourism Industry;
- Vault Security Services of the Reserve Bank of Fiji
- Quarantine Services and Animal Services of the Ministry of Primary
Industries and Co-operatives.

If a union is contemplating a strike or an employer is contemplating a lock-out in pursuance of a trade dispute in the areas listed as essential service, a report of a trade dispute is to be lodged, and at least a 28-days’ notice of strike or lock out is to be given in writing to the CEO and to the employer of every person. The strike notice is to be signed by the person or persons giving it, specifying the names, addresses and employment of all persons by, or on behalf of whom it is given; if the notice is given by a trade union, the notice should contain the name of such trade union. Such a notice should state the date on which the strike or lock out is contemplated. It needs to be delivered by hand or by registered post. If the strike or lock out does not take place on the date it is contemplated the report shall be deemed not to have been made.

If 28-days elapse since the date on which the notice of the strike or lock out was accepted by the CEO, and the dispute remains unsettled by then, or has not been directed by the Minister to be referred to a Tribunal for settlement, breaking a contract of service in these areas is lawful. In all other circumstance, breaking a contract of service is an offence if this was done with the knowledge or with a reasonable cause to believe, that the probable consequences of so doing, either alone or in combination with others, will be:

- to deprive the public, or any section of the public wholly or to a great extent of an essential service, or substantially to diminish the enjoyment of that service by the public or by any section of the public; or
- to endanger human life or cause serious bodily injury or to expose valuable property whether real or personal, to destruction, deterioration or serious damage.

Any person who causes or procures or counsels or influences any employee to break his contract of service or any employer causing a lock out to be declared in any of the circumstances referred to in subsection (1), is be guilty of an offence.

Employers are required to post a notice containing the law on breaking the contract of service in an essential service, and the list of sectors which are included as essential service.

**Recommendation**: Prior to listing industries/sectors as essential services, the law ought to define ‘essential services’. This would eliminate the continuing suspicion that the state is using the concept of essential services to limit worker rights to industrial action.

### 4.4.8 Arbitration Tribunal and Consideration of a Trade Dispute

The Minister could appoint a sole arbitrator, or appoint an arbitrator assisted by one assessor each nominated by or on behalf of the employer(s) and the employees respectively, or appoint one or more arbitrators selected from a panel nominated in equal number(s) by or on behalf of the employers concerned and the employees concerned, respectively, and an independent Chairman.

Except when the Tribunal comprises arbitrators and a chairperson, the functions of a Tribunal may be discharged by a Permanent Arbitrator. The Permanent Arbitrator is
appointed by the President acting after consultation with the Minister. The office of
the Permanent Arbitrator is not a public office. The minimum qualification required to
hold or act in the office of Permanent Arbitrator is a qualification suitable for
appointment as a judge of the Supreme Court, or extensive experience in economics
or industrial relations. The Permanent Arbitrator’s position is a 3-year contractual one,
with eligibility for reappointment.

A Tribunal is required to make its award without delay and in any case within twenty-
eight days from the date of reference to it, provided that the Minister, if in his opinion
the circumstances of the case make it necessary or desirable so to do, extend such
period of twenty-eight days for such further period as he thinks fit.

Any award or agreement concerning a trade dispute which is made or effected by the
Permanent Secretary, a Tribunal or otherwise, may be made so as to have
retrospective effect.

No award of the Arbitration Tribunal should conflict with any law on wages, hours of
work or the terms or conditions affecting employment, or is(are) less favourable to the
employees than any award or order lawfully made in pursuance thereof.

Parties can apply for a variation of any award after 9 months of the publication of the
award. If the application is made earlier, then a written permission by the Minister is
necessary.

A Tribunal (or a Board of Inquiry) is not bound by the rules of evidence in civil or
criminal proceedings in eliciting information and evidence on the matter before them.
They have the power to subpoena documents or persons. The Tribunal or a Board is
also not bound by the rules of trial in open court.

In any proceeding under this Act a trade union may be represented by an officer or
employee of the trade union. An employer may appear personally or be represented
by his duly authorised employee, or by an officer or employee of a trade union of
employers of which he is a member. Parties may be represented, with leave, by a
member, officer or employee of an organisation of which that party is a member. For
a proceeding before a Tribunal or a Board of Inquiry, a party may, with leave from the
Tribunal or Board, be represented by a barrister and solicitor.

Parties can not be represented by a barrister and solicitor for any proceeding other
than that before a Tribunal or a Board of Inquiry (for example, a proceeding before a
CEO or a person appointed by him, or a Disputes Committee). Prior to 1992, however, parties could be represented by a lawyer in any proceeding.

4.4.9 Collective Agreements

Collective Agreements are agreements that are made by or on behalf of one or more
organisations of employees and one or more employers or organisations of employers
which prescribe, wholly or in part, the terms and conditions of employment of
employees of one or more descriptions, or a procedure agreement, or both.

A copy of every collective agreement (and any amendment) regulating the terms and
conditions of employment of employees should be registered with the CEO.

It is the responsibility of every party to the agreement to ensure that a signed copy of the agreement is lodged with the CEO within twenty-eight days after it is made.

It is deemed that the provisions of a collective agreement comprise implied conditions of contract between every employee and employer to whom the agreement applies.

4.4.10 Picketing

Picketing in contemplation or furtherance of a trade dispute is permitted if it is for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working. However, it is an offence if picketing is in such numbers or in such manner, as to be calculated to intimidate any person in any place, or to obstruct the approach thereto or egress therefrom, or to lead to a breach of the peace.

It is also an offence for a person who, with a view to compelling any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority,

- uses violence to or intimidates such other person or his wife or children, or injures his property; or
- persistently follows such other person about from place to place; or
- hides any tools, clothes or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or
- watches or besets the house or other place where such person resides or works or carries on business or happens to be or the approach to such house or place; or
- follows such other person in a disorderly manner in or through any street or road.

These offences are similar to those in the *Industrial Associations Act* (s24).

4.4.11 Ministerial Powers

The Minister has the power to make regulations for the better carrying into effect of the provisions of this Act and for establishing the procedure to be followed in any proceedings before a Tribunal or Board or otherwise.

The CEO may give directions not inconsistent with any such regulations relating to the scope, method and conduct of any specific proceedings.

Comments: The procedures in the legislation are too cumbersome, too discretionary, and too restrictive in that there is no place for ununionised labour.
Part V

Work and Pay

Specific matters relating to work and pay, other than the general principles covered in Employment Act, are covered in the Shop (Regulation of Hours & Employment) Act, the Wages Council Act, the Daylight Savings Act, and the Public Holidays Act.

5.1 Shop (Regulation of Hours and Employment) Act

Regulation of shop hours and employment was first done in 1964 by the Shop (Regulation of Hours and Employment) Ordinance (No. II of 1964). It was subsequently amended in 1965, 1966 and 1975.

The Act applies to any town and to any other area to which the Minister applies all or part of the provisions of the Act by notification in the Gazette. Sale of liquor by a hotel publican to hotel guests is excluded from this Act.

5.1.1 Work Conditions in Shops

The law disallows any shop to be open on Sundays and public holidays. However, the local authority may grant exemptions to this requirement as it may consider appropriate.

On at least one weekday in each week, all shop assistants in a shop are not to be employed about the business of a shop after one o'clock in the afternoon. This brings to total the working days to no more than five and a half. The employer is required to prominently display a notice in the shop on the day of the week on which his shop assistants are not employed after one o'clock. Shops could fix different days for different shop assistants but only if the shop is exempted from closing under the provisions of the Act. Such shops include those for which the local authority grants exemptions, or those which sell ‘dairy-shop’ type goods (newspapers, confectionery, bread, eggs, milk and milk products, cigarettes, fruits, vegetables, camera films, etc), cooked meals, intoxicating liquor; medicines, medical and surgical appliances, ice, petroleum; and goods sold by auction, or those in the business of barber or hairdresser.

To reinforce the above provision, the Act specifies that every shop needs to be closed for the serving of customers not later than one o'clock in the afternoon on one weekday in every week other than a Sunday. The local authority may by order fix the day on which a shop is to be closed. Such an order may either fix the same day for all shops or may fix different days for different classes of shops; or different days for different parts of the area under the control of such local authority. The local authority order must meet the approval of a majority of the shop owners who are to be affected by the order. If the local authority does not make any such order, then the onus is on
the shop owner to declare the half-day day. If this were to be the case, then the shop owner is required not to change the day more often than once in any period of three months.

Shop workers are to be allowed not less than 45-minute interval for meals for persons who are employed between the hours from 11.30am to 2.30pm; this is so for workers who take their meals in the shops or in a building attached to the shop. For those who take their meals outside the shops, the meal interval is one hour. This interval is to be within the 11.30am-2.30pm period. For workers employed in the sale of refreshments or intoxicating liquor, the meal interval is to be outside these hours.

In any case no person is to be employed for more than six hours without an interval of at least twenty minutes being allowed during the course thereof.

5.1.2 Hours of Employment of Shop Assistants

The maximum work hours per day is 10, excluding meal intervals. These 10 hours should be completed within 11 hours from the commencement of a day's work. There, however, are exceptions to this for shops that are allowed to open until 9pm on Fridays, or on the Thursday immediately preceding Good Friday, and on 4 days preceding Christmas Day and New Year's Day, including Sunday. On these days, the daily hours of work could be extended to the closing time of the shop.

[The Wages Council Act, however, empowers the Wages Councils to examine any matter concerning working hours. The relevant Wages Council in this case is the Wholesale and Retail Trades Wages Council. It is understood that the Wages Council would not prescribe conditions lower than the minimum prescribed in other labour laws, and that a Ministerial Order prescribing work conditions, including working hours made under the Wages Council Act, can not amend the provisions of any legislation.]

For a shop that is permitted to remain open a shop assistant may be permitted to work during the hours that such shop is permitted to remain open. However, solely for the purpose of stock-taking or for the moving of stock into, from or within the shop, the working hours may be extended for not more than eight hours in any one week, provided that such working hours shall not, in any case, be extended for more than sixty hours in any one year.

An employer may also, upon giving reasonable notice to the officer in charge of the police station nearest to his shop of the names of the shop assistants concerned and the dates upon which he intends to extend their working hours, may (on not more than two occasions in any year and solely for the purpose of stocktaking) permit such shop assistants to work on a Saturday afternoon and on the following Sunday except if the New Year falls on the Monday following the Sunday.

Any shop worker found in a shop after the closing hour prescribed by this Act or after the hours permitted for his employment under this Act is deemed to be in the employment of such occupier until the contrary is proved by such employer.
5.1.3 Seats for Female Staff

In all rooms of a shop where female shop assistants are employed in the serving of customers, the occupier of the shop is required to provide seats behind the counter or in such other position as may be suitable for the purpose; and such seats shall be in the proportion of not less than one seat to every three such female shop assistants employed in such room.

5.1.4 Opening and Closing Hours

The Shop (Regulation of Hours of Employment) Act regulates the opening and closing hours of shops. It empowers a local authority to make an order to fix the opening and closing hours of a shop.

The hour fixed by a closing order can not be earlier than 4.30 o'clock or later than 6 o'clock in the afternoon, while the hour of opening is not to be earlier than 6 o'clock in the morning.

If a closing order is not made, no shop should be opened earlier than 6 o'clock in the morning and all shops should be closed not later than 6 o'clock in the afternoon. Exceptions to this are provided in the Act; these include the list given in paragraph 5.1.7 below.

The Act provides that notwithstanding the provisions on closing orders, a shop may remain open until 9 o'clock in the evening on Friday of every week, and on the Thursday immediately preceding Good Friday and on the four days, exclusive of Sundays, immediately preceding Christmas Day and New Year's Day.

The closing orders need to be given only after providing a period for objections to the proposed order. Once it is approved, the Minister is given the final authority on approving the closing order.

5.1.5 Enforcement

The law empowers the police force to enforce the provisions of the Act. It states that any police officer may enter any shop and demand information to ascertain whether or not the provisions of the Act are being observed. Refusing to co-operate becomes a criminal offence.

5.1.6 Ministerial Powers

The Minister responsible for Labour has the power to make regulations for prescribing anything which under the Act is to be prescribed, to amend the schedule of exemptions, the mode of ascertaining the opinion of occupiers of shops, the conduct of local inquiries, procedure for obtaining the revocation of a closing order, prescribing the terms and conditions under which trades or businesses exempted from the provisions of a closing order may be carried on, and generally for carrying into effect the provisions of the Act.
5.1.7 Exemptions

Exemptions from the provisions of this Act include:

- any bazaar or sale of work for charitable or other purposes from which no private profit is derived,
- hawking of newspapers,
- business of an undertaker,
- delivery of medicines and medical necessaries to hospitals and nursing institutions or in case of sickness to private persons
- hawkers licensed by the proper authority under any Act,
- persons, shops, trades or businesses exempted by the Minister from the operation of this Act for any period specified in such exemption,
- service of victuals, stores or other necessities for a ship on her arrival at or immediately before her departure from a port, at a time when the shop in which they are sold is required to be closed,
- shop assistants who are employed in a shop dealing in machinery, motor vehicles, motor cycles, aircraft, spare parts or accessories thereof, from entering such shop on a weekly half-holiday, a Sunday or a public holiday solely for the purpose of supplying to a customer any tools, spares, equipment or accessories required in the case of a bona fide breakdown of machinery, or of a motor vehicle, motor cycle or aircraft,
- trade or business of a motor fuel seller.

Exemptions from the weekly holiday provisions are the following classes of trades and businesses:

- the business of a barber or hairdresser.
- the sale of confectionery and sweetmeats (including Indian sweetmeats), bread, fresh milk, cream, eggs, butter, fresh fruit and vegetables,
- the sale of cooked meals,
- selling goods by auction,
- the sale of intoxicating liquor,
- the sale of newspapers and periodicals,
- the sale of tobacco, cigarettes, cigarette papers, cigars and matches,
- the sale of unexposed camera film,
- the sale of medicines, medical and surgical appliances,
- the sale of petroleum products, and
- the sale of ice.

The following classes of trades and businesses are exempted from the provisions of closing orders:

- the sale of intoxicating liquor,
- the sale of refreshments and cooked meals,
- the sale of newspapers and periodicals,
- the sale of petroleum products,
- the sale of tobacco, cigarettes, cigarette papers, cigars and matches,
- the sale of medicines and medical appliances,
- the sale of fresh milk, cream, eggs, butter and bread,
- the sale of unexposed camera film,
Work and Wages

- the sale of ice, and
- selling goods by auction.

When enacted, the *Shop (Regulation of Hours and Employment) Act* was aimed at regulating ‘shop hours’ and ‘employment of shop assistants’. The Act, therefore, has two components, one dealing with hours during which wholesale and retail trade could take place, and the other dealing with hours of employment in such enterprises. While the two matters are related, a question that arises is whether the hours during which commerce could take place in a country should be determined by hours of work conditions. What needs to be considered is whether Fiji needs a separate hours of work conditions for all categories of employment, and a separate legislation on business opening and closing hours.

**Recommendation:** The appropriateness of regulating opening and closing hours for commerce in the same legislation as that regulating hours of work conditions needs to be examined, with a view to consider whether both, commerce and workers’ interests could be better served by separate legislation on business hours and work hours.
5.2  Wages Council Legislation

5.2.1  Objective

The law on wages council was first promulgated in 1957. Since then, it has been revised in 1961, 1963, 1965, 1966 and 1970. It provides for the establishment of Wages Councils.

A wages council is required to, upon request by the CEO, ‘consider any matter affecting the industrial conditions of workers and employers in relation to whom it operates’, and make a report to the CEO. A Wages Council may, of its own motion, make a recommendation on any matter relating to work conditions to the CEO.

A wages council, appointed by the Minister responsible for Labour, consists of not more than three independent members, and such number of persons who in the Minister’s opinion, represent employers in relation to whom the council is to operate, and such number who in the Minister’s opinion, represent workers in relation to whom the council is to apply. One of the independent members is appointed by the Minister as the chairperson of the Council. The number of persons representing the employers and the number representing the employees are required to be the same.

The Act specifies the procedures for the making of a wages council order. On receipt of any report or recommendation made to him the CEO is required to report the same to the Minister who shall take it into consideration and take such action (if any) as he thinks fit. The Minister may make an order, called the ‘wages council order’, if he is satisfied that no adequate machinery exists for the effective remuneration of the workers covered under the Order, or that existing machinery is likely to cease to exist or be adequate for that purpose, and that it is expedient that such a council be established.

However, before making a wages council order, the Minister is required to publish in the Gazette a notice of his intention to make such an order, specifying a place where copies of a draft may be inspected and the time, which shall not be less than thirty days from the date of the publication, within which any objection made with respect to the draft order must be sent to the CEO. Objections must be in writing and must state the specific grounds of objections and the omissions, additions or modifications asked for. The Minister is required to consider any such objection made by or on behalf of any person appearing to him to be affected by the proposed order, but is not bound to consider any other objection.

After considering the relevant objections, the Minister may:

- make an order either in terms of the draft order as published or subject to such modifications which, in his opinion, do not effect important alterations in the character of such draft order; or
- amend the draft order; or
- refer the draft order to a commission of inquiry for inquiry and report, in which case he shall consider such report and may then, if he thinks fit, make
an order either in terms of the draft or with such modifications as he thinks fit.

Where the Minister makes a wages council order, he is required to publish it, together with the report of any commission of inquiry relating to the order. The order comes into effect on the date on which it is so published or on such later date as is specified in the Order.

The Minister may at any time, after consultation with the Labour Advisory Board, by order, abolish, or vary the field of operation of a wages council.

5.2.2 Commission of Inquiry

If a matter is referred to a commission of inquiry, the commission is required to make all such investigations as appear to it to be necessary. It is also required to publish a notice stating the questions which it is to consider by virtue of the reference and further that it will consider representations on these matters made to it in writing. A period not less than forty days from the date of the publication is to be given to submitters. Upon this, it may decide to receive and consider oral evidence.

Every commission of inquiry shall consist of persons appointed by the Minister, being not more than three persons chosen by the Minister as being independent persons, and not more than two persons each chosen by the Minister to represent employers and workers, respectively.

The Minister may appoint such number of persons as he thinks fit as assessors to be available to any commission of inquiry, being persons who, in the opinion of the Minister have an expert knowledge of any of the matters with which the commission's inquiry is concerned.

5.2.3 Power to Fix Remuneration and Holidays

A wages council has the power to submit proposals to the Minister for fixing remuneration. This power includes the power to submit proposals for fixing holiday remuneration.

Before submitting any wages regulation proposal to the Minister, a wages council is required to make such investigations as it thinks fit. It is also required to inform the public of the proposals, make available copies for their inspection, and seek written representations on them within a specified period.

Where the Minister receives any wages regulation proposal, he shall make an order (referred to as a ‘wages regulation order’) giving effect to the proposal as from such date as may be specified in the order.

The Minister may refer the proposal back to the council for reconsideration. In this case, council is required to reconsider it having regard to any observation made by the Minister. It may re-submit the proposal to the Minister either without amendment or with such amendments as it thinks fit having regard to those observations. Where the proposals are so re-submitted, the proposals would be treated in the same way as the original proposals were.
Any wages regulation proposal and any wages regulation order for giving effect thereto may make different provision for different cases, and may also contain provision for the amendment or revocation of previous wages regulation orders.

No wages regulation order shall have effect so as to prejudice any rights to remuneration or holidays conferred on any worker by or under any enactment other than this Act.

Remuneration (including holiday remuneration) fixed by a wages regulation order are referred to as ‘statutory minimum remuneration’.

5.2.4 Effect and enforcement of wages regulation orders

If a contract between a worker to whom a wages regulation order applies and his employer provides for the payment of a lower remuneration than the statutory minimum remuneration, the latter would be deemed to become a part of the contract in place of the lower remuneration. The same applies to the payment of holiday remuneration.

5.2.5 Remuneration to infirm and incapacitated persons

For a worker who is infirm or incapacitated so as to render him incapable of earning the statutory minimum remuneration, the employer may apply to the CEO for a permit to pay such a worker a lower remuneration. The CEO may issue such a permit, which then authorises the employment of such worker at less than the statutory minimum remuneration. The remuneration shown would then be deemed to be the statutory minimum remuneration.

5.2.6 Remuneration

Wages regulation proposals and wages regulation orders may contain provisions authorising specified benefits or advantages, being (not illegal) benefits or advantages provided, by the employer or by some other person under arrangements with the employer, to be reckoned as payment of wages by the employer in lieu of payment in cash, and defining the value at which any such benefits or advantages are to be reckoned.

5.2.7 Employers not to Receive Premiums

Where a worker to whom a wages regulation order applies is an apprentice or learner, it shall not be lawful for his employer to receive directly or indirectly from him, or on his behalf or on his account, any payment by way of premium, unless any such payment is duly made in pursuance of any instrument of apprenticeship not later than four weeks after the commencement of the apprenticeship, unless approved by a wages council.

5.2.8 Records and notices

Employers to whom the respective wages regulation orders apply are required to keep
records in English as are necessary to show their compliance with the provisions. Such records need to be kept for 3 years.

Employers are also required to post notices of any wages regulation proposals or wages regulation order affecting them. These should be affixed in a conspicuous position in such place or places, in every place of employment as to be readily accessible to every such worker employed.

5.2.9 Inspections

An officer, for the performance of his duties, has the power to:

- require the production of wages sheets or other records of wages kept by an employer, and records of payments made to outworkers\(^\text{18}\) by persons giving out work, and any other such records as are required to be kept by employers, and to inspect and examine those sheets or records and copy any material part thereof;
- require any person giving out work and any outworker to give any information which it is in his power to give with respect to the names and addresses of the persons to whom the work is given out or from whom the work is received, as the case may be, and with respect to the payments to be made for the work;
- enter any premises, at any reasonable time, at which any employer to whom a wages regulation order applies carries on his business (including any place used, in connection with that business, for giving out work to outworkers and any premises which the officer has reasonable cause to believe to be used by or by arrangement with the employer to provide living accommodation for workers);
- inspect and copy any material part of any list of outworkers kept by an employer or person giving out work to outworkers;
- examine, either alone or in the presence of any other person, any person whom he has reasonable cause to believe to be or to have been a worker to whom a wages regulation order applies or applied or the employer of any such person or a servant or agent of the employer employed in the employer's business and to require every such person to be so examined and to sign a declaration of the truth of the matters in respect of which he is so examined.

The officer may initiate prosecutions against offending employers, and institute proceedings on behalf of and in the name of the worker short-remunerated for the recovery of the difference in payments.

The inspectors are also required to furnish to a wages council so requesting, such information with regard to the wages and other conditions of employment of workers.

5.2.10 Ministerial Powers

The Minister is permitted to make regulations for prescribing anything which by the Act is required or authorised to be so prescribed.

\(^{18}\) An ‘outworker’ is a person to whom articles or materials are given out to be worked on in his own home or on other premises not under the control or management of the person who gave out the materials or articles.
5.2.11 Wage Orders

During the past 15 years, ten Wages Council Orders have been made; these are listed in Table 5.1:

<table>
<thead>
<tr>
<th>Council</th>
<th>Orders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Security</td>
<td>2005 2004</td>
</tr>
</tbody>
</table>

The Wages Councils have significant powers to establish working conditions in the industries in which there are Councils. The importance of the role played by the Council lies in the timeliness of the orders issued. Long lags in giving wages council orders reduces the importance of the respective councils.

**Recommendation:** The *Wages Council Act* should be amended to provide for periodic (annual) revision of the wages council orders. This would entail legislating issues that are now under the control of the Minister for Labour. The proposal would see the reduction in the discretion that ministers of labour have on wage and working condition regulation. In the absence of any national minimum wage rate, this may be the more desirable approach to keeping working conditions and wages at par with the domestic and international economic environment.

A key ingredient of the management of the labour market concerns wage regulation. The presence of wages councils in some industries and not in others creates an uneven field as well as loopholes which could be used by employers to evade the wages council orders. An example would be re-designating a job, for example, of a security officer to a clerical position, thereby avoiding the application of the Security Industry Wages Council order.

**Recommendation:** Wages Council ought to cover all industries in the country.
5.3 Public Holidays Act

A law on public holidays was first proclaimed in 1931. This law aimed to make provisions for public holidays. It declared certain days in a year as public holidays. These days are to be kept as close holidays in all public offices and banks. If any of these Holidays fell on a Sunday, the following Monday is to be a public holiday unless otherwise ordered by the Minister by notification in the Gazette.

If the birthday of the Queen (or the heir to the British throne) or Fiji Day, falls on any day of the week other than Monday such day shall not be a public holiday but either the preceding or the following Monday, unless any other day is specified by the Minister through the Gazette.

When the twenty-sixth day of December falls on a Monday the day following shall be a public holiday.

The Minister may by notification in the Gazette appoint a special day or any part of a day to be kept as a close holiday in all public offices and in all banks or in any part thereof or in any town or district. Any day so appointed shall be deemed to be a public holiday for all the purposes.

Notwithstanding anything contained in the Act the head of any Government department may open the offices and works thereof and call upon all or any persons employed in such department to perform such of their duties on any public holiday as to such head of department may seem fit.

The following days were initially declared public holidays:

- The first day of January
- Good Friday,
- The day after Good Friday,
- Easter Monday,
- The day appointed for the celebration of the anniversary of the birthday of the Sovereign,
- Anniversary of the birthday of the Heir to the Throne,
- First Monday in August
- Tenth day of October,
- Christmas Day,
- Twenty-sixth day of December.

Subsequently the anniversary of the birthday of the Heir to the Throne and the first Monday of August were deleted from the list, and the following added:

- Prophet Mohammed’s Birthday (10th April)
- National Youth Day (5 May)
- Ratu Sir Lala Sukuna Day (19 May)
- Fiji Day (10 October)
- Deepawali (21 October)

While legislation has created certain public holidays, there is no equivalent legislation
on the payment of wages on public holidays.

S102 of the *Employment Act* empowers the Minister for Labour to make regulations for, inter alia, making provision for persons employed in undertakings generally or in any particular undertaking to be entitled to holidays with pay. To date, however, the successive Ministers have not made any regulation on wages for public holidays.

As such, there is no specific law that regulates wage payments, or lack thereof, on public holidays.

Under the *Wages Council Act*, however, wages councils have been making orders on wage payments on public holidays. But such orders are only for the nine industries where wages councils exist.

**Recommendation:** Given that there is no provision in any law, other than for the Wages Council Order in the sectors where Wages Councils exist, for holiday pay, there is a need for an amendment to the *Public Holidays Act* to provide for the payment, or non-payment, of wages on public holidays, as well as the working conditions relating to public holidays.
5.4 Daylight Savings Act

This legislation, enacted in 1998, was aimed at providing for daylight savings in Fiji. It empowers the Minister for Labour to declare any period of consecutive days between the beginning of November and the end of February as a daylight saving period. During this period, the time would be in advance of standard time by up to 2 hours.

The transition from and to daylight savings days have an impact on the hours of work and the associated remuneration of workers. S4 of the Act provides that if the hours of work are affected by the commencement of the daylight savings period reduces the hours worked, the pay and allowances of the worker for those hours must be equal to the amount of pay and allowances for the hours the person would otherwise have worked. If, however, the transition leads to a larger number of hours worked, then the worker is to be paid the actual hours worked.

In 1998, the provisions of the Act were invoked and daylight savings trialed in Fiji. This was in anticipation of the new millennium, when Fiji wanted to become the first country in the world to welcome the new millennium.
5.5 **Social Safety Net, Superannuation and Retirement**

Fiji does not have any unemployment benefit provision, nor any other form of social safety net. There also is no national pension scheme covering workers of all categories. The *Pensions Act 1983* and specific pensions legislations for members of the military forces and police force provide specific types of pension provisions. The only wider pension mechanism present is a superannuation scheme under the *Fiji National Provident Fund Act*.

5.5.1 **Fiji National Provident Fund: Contributions**

The Fiji National Provident Fund (FNPF) was established in 1966 to provide financial security for workers when they retire at, or reach the age of 55. The FNPF also provides for permanent incapacity, and survivors benefit in the event of death. The *Fiji National Provident Fund Act* provides for the powers and functions of the Board of the Fund, contributions to the fund, withdrawals from the fund, and offences and penalties for breach of the Act. Since enactment, the Act has been amended several times – by Ordinance numbers 19 of 1966, 13 of 1967, 63 of 1968, 41 of 1969; Legal Notice No. 112 of 1970; Act Nos. 1 of 1970, 9 and 33 of 1973, 9 and 21 of 1974, 1 of 1976, 17 of 1978, 11 of 1982, 11 and 18 of 1983, 12 of 1984, 11 and 28 of 1985.

Under the provisions of the Act, each employer and each employee is required to contribute equally to a fund in the name of the employee. The current contribution rate is 8% of the gross earnings of the employee, to be contributed by each of the parties, making the total sum contributed to the employee’s fund 16%. Employers may pay, on a voluntary basis, a higher contribution than the statutory rate, but such contribution may not exceed 30 per cent of the salary payable to the employee in the preceding month:

**Recommendation:** The voluntary excess contribution to the Fund is limited to payments by the employer. There is no provision for excess contribution by employees to their fund. Since the FNPF is the only pension fund available in Fiji, consideration should be given to allowing employees to also contribute more than the statutory rate to their Fund.

The FNPF covers all employees who are Fiji citizens. An employee is anyone who has attained the age of 16 years, and is employed under a contract of service, either individually, or as a member of a group. The contract may be written or oral, expressed or implied.

Prior to 2006, employers were required to make FNPF contributions for workers in employment for twelve or more consecutive days in any one month. From 1 January 2006, under the *FNPF (Amendment) Act 2005*, employers are required to pay contributions for all their employees, irrespective of the number of days that each employee works. The amendment also exempts foreign citizens working in Fiji from compulsory membership.

**Recommendation:** The Act now covers all employers, including those in agriculture,
and marginal sectors. The impact of the amendment on employers in marginal sectors, as well as the welfare of the employees, needs to be analysed and appropriate measures be adopted so as to ensure compliance with the law as well as survival of the marginal sectors. From the viewpoint of the welfare of the worker, the FNPF Act (Second Schedule) allows that where the monthly wage payable to an employee does not exceed 30 cents per hour, the entire contribution (16%) is to be payable by the employer. This provision, however, ignores the strong possibility that an employer’s ability to pay is often related to the profitability of the enterprise. If an employer can not pay more than the 30 cents per hour, it may be more a result of his inability to pay. Requiring him to pay the entire 16% may kill the enterprise altogether.

The Act also makes provisions for voluntary membership for self-employed workers, who pay their own contributions of 16%. From August 2005, voluntary membership was also made possible for employees over the age of 65, who can contribute on a voluntary basis. They also no longer have to fully withdraw from the Fund. Directors who hold 20% shares or less in a company are also eligible for membership.

The original legislation provided for exemptions for certain categories of employees from becoming members of the FNPF; these included domestic servants, outworkers, prisoners, and those who are members of superannuation schemes under other legislation. The 2005 amendments, however, aim to cover outworkers under contracts for service.

An employer is defined as the person with whom an employee has entered into a contract of service or apprenticeship or learnership, or the person with whom such employee has entered into a contract to perform manual labour, or the Government or the employer having a place of business in Fiji, or the owners of the vessel or aircraft. An employer also includes a person with whom an employee has been engaged under a contract for services or as an agent remunerated wholly or partly by commission.

In case of a bankruptcy, or liquidation, payments of the employees’ superannuation fund are charged as determined by the Board of the FNPF. This requires that the liquidator or other agent of the employer obtain from the Manager of the Fund a certificate to the effect that all contributions payable have been paid. If any distribution is made without first obtaining the referred to certificate, then such person is personally liable for any unpaid contributions together with any surcharge payable (s47).

The Act defines the base wage on which the superannuation contributions are to be calculated.

5.5.2 Fund Management

The Act specifies the Board of the FNPF as comprising one person holding an office in the government, 2 representatives of employers not being persons in the employment of the government; and 2 representatives of employees, to be appointed by the Minister for Finance.

The FNPF is a custodian of funds in a worker’s accounts. The Fund deals with a very
large sum of money, which is larger than the financial base of commercial banks in Fiji. At the end of last financial year, the total members’ balance stood at $2.17b. While one may expect that the representatives of employees on the board of the Fund, would safeguard the interests of workers, there is no guarantee that this would be so. To manage funds to the tune of $2b requires significant financial analysis skills, which normally employees representatives may not possess.

**Recommendation:** Some qualifying criteria for membership of the FNPF Board be established in order to ensure that the Board members are capable of managing large volume of funds.

### 5.5.3 Fund Earnings

The Act provides for the credit into the members’ accounts, an interest earning of not less than 2½ per cent per annum, unless the Board is of the opinion that the Fund does not have the ability to meet all payments required to be paid by the Fund. If the Fund is, at any time, unable to pay any sum which is required to be paid under the provisions of this Act, the sum required is to be advanced to the Fund by the Government. The Fund is required to repay the sum so advanced as soon as practicable. The Act disallows the payment of an interest exceeding 2½ per cent per annum if any sums advanced by the Government have not been repaid.

If an employer fails to pay any contribution which he is required to pay, the Board may (if it is satisfied that such failure was not due to the consent or connivance of the employee concerned, and that there is no prospect of recovering the amount unpaid within a reasonable time), credit to the employee the aggregate of the proportionate part of such contributions which would have been credited to his account as a member. Such amounts are to be charged to the general revenues of the Fund. The Fund may recover the sum from the employer.

### 5.5.4 Withdrawals

Money standing to the credit of a member in the Fund can not be withdrawn from the Fund before the date of entitlement of the member, or until the Fund is satisfied that the amount standing to the credit of the member is so small that it is not economically viable to maintain the account, or that it is unlikely that the member will again become a contributor to the Fund.

Upon entitlement – which is 55 years of age – the member is paid the total sum in the credit of his account, either as a lump sum, or periodically as a pension. If a member dies before entitlement, the member’s nominees are paid the amount in the member’s account.

Under the provisions of the Act, a member may withdraw a part of his funds for financing certain specified types of activities, like housing finance, financing of children’s education, medical expenses, and shares in approved companies.\(^9\) Such

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\(^9\) Under the FNPF Share Investment Scheme members are allowed to use up to ½ of their total contributions received less the net amount of all previous withdrawal and housing transfers taken, or a maximum of $20,000 whichever is lower, for purchase of shares in approved companies. As of now, the following listed companies
withdrawals are to be within clearly specified limits and conditions.

The pension rates since 1975 had been 25% of the members savings for sole members and 16.67% for joint members. These ratios were changed from July 1st 1999 whereby the pension rate was reduced regressively by 1% until 2008. The 2005 pension rate is 18% for sole and 12.8% for joint members. The reduction in the pension rate was aimed at ensuring the sustainability of the Fund.

**Recommendation**: The amendments to the pension regulations have had an adverse impact on later generations of contributors. Under the older rule, persons surviving after age 59, received pensions that belonged to contributions made by other contributors. As the number of contributors opting for pensions increased, the 25% pension rule made the fund unviable. But the solution adopted was still exploitative those opting for pension still receive money that belongs to other contributors. Table 6.1 shows the exploitative character of the current scheme

<table>
<thead>
<tr>
<th>Year Retiring</th>
<th>Pension Rate</th>
<th>Years on pension to recover own funds</th>
<th>Age to recover own contribution</th>
<th>Living on other members money after age</th>
<th>Living on other members money after age</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>25</td>
<td>4.000</td>
<td>59.00</td>
<td>59.00</td>
<td>59 years</td>
</tr>
<tr>
<td>1999</td>
<td>24</td>
<td>4.167</td>
<td>59.17</td>
<td>59.17</td>
<td>59 yrs 9 wks</td>
</tr>
<tr>
<td>2000</td>
<td>23</td>
<td>4.348</td>
<td>59.35</td>
<td>59.35</td>
<td>59 yrs 18 wks</td>
</tr>
<tr>
<td>2001</td>
<td>22</td>
<td>4.545</td>
<td>59.55</td>
<td>59.55</td>
<td>59 yrs 29 wks</td>
</tr>
<tr>
<td>2002</td>
<td>21</td>
<td>4.762</td>
<td>59.76</td>
<td>59.76</td>
<td>59 yrs 40 wks</td>
</tr>
<tr>
<td>2003</td>
<td>20</td>
<td>5.000</td>
<td>60.00</td>
<td>60.00</td>
<td>60 yrs</td>
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<tr>
<td>2004</td>
<td>19</td>
<td>5.263</td>
<td>60.26</td>
<td>60.26</td>
<td>60 yrs 14 wks</td>
</tr>
<tr>
<td>2005</td>
<td>18</td>
<td>5.556</td>
<td>60.56</td>
<td>60.56</td>
<td>60 yrs 29 wks</td>
</tr>
<tr>
<td>2006</td>
<td>17</td>
<td>5.882</td>
<td>60.88</td>
<td>60.88</td>
<td>60 yrs 46 wks</td>
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<tr>
<td>2007</td>
<td>16</td>
<td>6.250</td>
<td>61.25</td>
<td>61.25</td>
<td>61 yrs 13 wks</td>
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<tr>
<td>2008</td>
<td>15</td>
<td>6.667</td>
<td>61.67</td>
<td>61.67</td>
<td>61 yrs 35 wks</td>
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Thus anyone receiving pension in 2005, would be paid money belonging to other contributors if he lived after 60 years 29 weeks.

The exploitative character of the scheme acquires a greater effect since normally those with larger incomes have opted for the pension schemes. This means that their pension rates would yield a much higher value of the pension than for smaller contributors. One pensioner who retired before the sliding scale came into force, for example, had, for example, had $364,000 in his fund account on reaching 55 years. He opted for the pension scheme and began receiving $91,053 per annum from 1996. By 1999, he had exhausted his own funds. From 2000 to 2005, he has been receiving

have been approved by the FNPF for this purpose: Fiji TV, ATH, Carlton Brewery Ltd, Fijian Holdings Ltd, Flour Mills of Fiji Ltd, South Pacific Distilleries, RB Patel Group Ltd, Rice Company of Fiji Ltd, and Pacific Green (Fiji) Ltd.
the same annual sum, and would continue to do so as long as he lives. By 2005, he had received a total of $546,322 from the FNPF that belonged to other contributors. If he lived to 80 years, he would have received a pension, in total, of $2.276m that belonged to other contributors. Twenty-five such pensioners would cost active contributors $2.3m each year. The scale of exploitation of the poorer workers by the richer contributors is enormous.

The ideal solution would have been to place all retirees on an even playing field by allocating them a pension that is no more than the total fund standing to their names. This is the fairest system of a contributory pension scheme. It is a major concern that the FNPF opted for a highly exploitative pension scheme. Even if a gradual reduction on the pension rate was to be implemented, there were better models that could have been adopted. Table 6.2 shows one such model of sliding scale pension rate. In this model, rather than applying the reduced rates to only the new retirees, everyone’s pension rate is reduced annually by 1% until the viability level is achieved.

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<td>2008</td>
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This model is not the ideal, but it does provide a more level field for all retirees. It, however, does not balance the field between current retirees and current contributors. An urgent review of the pension regulations, therefore, is necessary.

5.5.5 Offences and Penalties

The Act creates numerous types of offences and penalties for breach of the legislation. It also empowers officers of the Fund and designated officers powers of inspections. Inspectors may

- enter any premises or place where persons are believed to be engaged as employees;
- make such examination and inquiry as may be necessary for ascertaining whether the provisions of the Act are being complied with;

An examination of the major players during the negotiations, which began in the early 1990’s, leading to the changes, shows that most of them, including union leaders, were reaching their retirement ages at the time of the negotiations. Whether their personal interests had any bearing on the final outcome needs to be investigated.
require the production of any document which an employer is required to keep under the provisions of this Act or of the Employment Act, or any document relating to a contract or the conditions of service existing between an employer and his employee or employees; and

- interview (including examination by summons), with respect to any matters under this Act on which he may reasonably require information, every person whom he has reason to believe can give information needed.

5.5.6 Prudential Supervision

In 2004, the Reserve Bank of Fiji took over prudential supervisory responsibility over the FNPF. The RBF is also the agent for the government in raising funds through issues and management of financial instruments. The government is the major borrower from the FNPF. Because of the dual role of the Reserve Bank of Fiji, members and trade unions have raised concerns on the viability of the Fund. Over the past 3 months (Feb-April 2006), the FNPF has taken out full-page newspaper advertisements trying to assure members of the sustainability and viability of the Fund. Yet, questions continue to be raised on this.

**Recommendation:** The practices, finances, and the institutional framework, including the various laws and regulations governing the FNPF need to be thoroughly examined and assessed to ensure that the Fund remains viable, and that workers superannuation funds are secure.
VI

Health, Safety and Training

Matters relating to health, safety and training of workers are covered in the following legislation:

- Factories Act,
- Health and Safety at Work Act,
- Ionising Radiation Act,
- Workmen’s Compensation Act, and
- Fiji National Training Act (now known as the Training and Productivity Authority of Fiji Act).

6.1 Health and Safety at Work Act 1996

6.1.1 Objective

In 1996, the Health and Safety at Work Act was assented to by the President of Fiji. The Act aimed to:

- reform the law relating to the health and safety of workers, and other people at work or affected by the work of other people;
- provide clear objectives, obligations and functions which cover every workplace;
- set out the roles of employers, including workers, self-employed persons, manufacturers, designers, suppliers, installers, inspectors and provide methods for the development of detailed standards and codes of practice; and
- provide for the consolidation and progressive replacement of the associated health and safety legislations.

The Act was to enter in force on a date or dates appointed by the Minister and published in the Fiji Republic Gazette. Provisions were made for different dates for the coming into force of different provisions of the Act. To allow for time for the affected workplaces to adjust to the requirements of the Act, the Minister allowed a 1-year grace period; the Act came into effect from 1st November 1997.

Prior to the HASAWA, the following Acts, now called the associated health and safety legislation, dealt with health and safety of workers at workplace:
Factories Act;
Petroleum Act;
Pesticides Act, and
Ionising Radiations Act.

These acts were to be repealed by the end of 2003; s61 of the HASAWA states: ‘All the associated health and safety legislation under Section 60 of this Act shall be progressively replaced with appropriate regulations, standards and codes of practices under this Act, within five years from the date of commencement of this Act.’. The progress on the regulations have been rather slow. The following regulations have so far been gazetted:

- Health and Safety at Work (Representatives and Committees) Regulations 1997.
- Health and Safety at Work (General Workplace Conditions) Regulations 2003.

The period 1998–2002 saw no regulation being made. The General Workplace Conditions Regulations, however led to the repeal of almost all the provisions of the Factories Act except the Plants Regulations.

As such, and under the provisions of the HASAWA, the associated legislation continue in force, except that where sections of these legislation have been repealed, and where any provision of the associated legislation is inconsistent with a provision of the HASAWA or regulations made under HASAWA, the provisions of the latter are to prevail. However, as far as the general duties and responsibilities under HASAWA are concerned, the offences under the associated legislation take precedence over offences under the HASAWA.

The provisions of the associated health and safety legislation are to be observed in addition to the provisions of this Act, until specifically repealed.

6.1.2 Applications

The Act applies to all workplaces in Fiji including territorial waters, land and airspace of Fiji, except for three categories: mining industry, defense industry and domestic work/servants. The Act applies to workplaces within a Fiji registered or Government owned ship or aircraft of any kind, whether or not the ship or aircraft is within the territorial waters, land or airspace of Fiji. The Act binds the Government, including Government departments and statutory authorities.

The provisions of this Act prevail over any contrary provision included in any work contract or agreement, whether such contracts are entered into before or after the commencement of this Act.

Any contractor agreement which purports to exclude or limit the application of this Act or to exclude or limit the rights or entitlements of a person under this Act is, to that
extent, null and void.

A person who urges, prevails on, persuades or offers an inducement to another person to enter into a contract or agreement whereby that other person would, consent or agree to the application of this Act being excluded or limited in respect of that other person, or to waive or limit that other person's rights, benefits or entitlements under this Act, shall be guilty of an offence.

6.1.3 Exceptions

The three sectors specifically excluded from the coverage of this Act are the mining industry, work related to national security and domestic servants.

6.1.3.a Mining Industry

The first exception concerns those workplaces or operations connected with the Mining Act, Quarries Act, Explosives Act, and Petroleum (Exploration and Exploitation) Act. Thus, the mining and quarrying industry is excluded from the provisions of the Act. The Minister could, however, after consultation with the Minister responsible for mining and quarries, by declaration published in the Gazette, extend all or part of the provisions of this Act to cover workplaces or operations connected with all or any of the exceptions.

To date, however, no Minister has extended the application of the Act to the mining and quarrying industries.

The OHS Section of the Ministry of Labour, however, carries out ‘non-destructive testing’ (NDT – which is used to check the integrity of lifting gears, etc) on request, and for a fee, for the Emperor Gold mining company. NDT is a required testing measure under the Factories Act. On requests from the Ministry of Mineral Resources, which oversees the Mining Act, the OHS section also checks and produces reports on industrial accidents in mines. These measures are not mandatory, or statutory requirements under the HASAWA, however.

6.1.3.b National Security

Nothing in this Act requires or permits a person to take any action, or to refrain from taking any action, that would be, or could reasonably be expected to be, prejudicial to Fiji’s national security or defense or to an existing or future covert operation or dangerous operation of the Fiji Military Force or the Fiji Police Force.

The Minister may, however, after consultation with the Minister responsible for national defense and security, by notice in the Gazette, declare that specified provisions of this Act do not apply, or apply subject to such modifications and adaptations as are set out in the declarations, in relation to specified operations or members of the Fiji Military Force or Police Force; or a workplace under the control of the Minister responsible for national defense and security. To date, no such declaration has been made.
6.1.3.c  Domestic Servants

Domestic servants are excluded from the provisions of HASAWA.

6.1.4  Duties of Various Parties

6.1.4.a  Duties of Employers to Workers

It is the duty of every employer to ensure the health and safety at work of all his or her workers. Towards this end, employers are required to

• provide and maintain plant and systems of work that are safe and without risks to health;
• make arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage or transport of plant and substances;
• provide, in appropriate languages, such information, instruction, training and supervision as may be necessary to ensure worker health and safety and to take such steps as are necessary to make available adequate information in appropriate languages on the use for which the plant is designed and about any conditions necessary to ensure that, when put to that use, the plant will be safe and without risks to health, as well as adequate information about any research, or the results of any relevant tests which have been carried out, on or in connection with the substance and about any conditions necessary to ensure that the substance will be safe and without risks to health when properly used.
• maintain the workplace under his control in a condition that is safe and without risks to health, and to provide and maintain means of access to and egress from it that are safe and without any such risks;
• provide and maintain a working environment for his or her workers that is safe and without risks to health and adequate as regards facilities for their welfare at work; or
• develop, in consultation with workers of the employer, and with such other persons as the employer considers appropriate, a policy, relating to health and safety at work, that will enable effective cooperation between the employer and the workers in promoting and developing measures to ensure the workers' health and safety at work and provide adequate mechanisms for reviewing the effectiveness of the measures or the redesigning of the said policy whenever appropriate.

Corporations and other employers which contravene or fail to comply with these duties are liable to a fine of $100,000 and $10,000, respectively.

6.1.4.b  Duties of Employers and Self-Employed Persons to Non-workers

The Act also requires that employers and self-employed persons ensure that persons not in their employment or contracts of service are not exposed to risks to their health or safety arising from the conduct of their undertaking while they are at the referred to workplace.
It is the duty of every self-employed person to ensure that persons not in his or her employment or contracts of service are not exposed to risks to their health or safety arising from the conduct of his or her undertaking while they are at his or her workplace.

6.1.4.c Duties of Persons in Control of Workplaces

Each person who has, to any extent, control of non-domestic premises which have been made available to persons (not being his or her workers) as a workplace, or the means of access thereto or egress therefrom; or any plant or substance in any non-domestic premises which has been provided for the use or operation of persons at work (not being his or her workers), shall ensure that the premises, the means of access thereto or egress therefrom or the plant or substance, as the case may be, are or is safe and without risks to health.

6.1.4.d Duties of Manufacturers, Importers, Suppliers, and Installers

A person who manufactures, imports or supplies any plant or substance for use at a workplace is required to ensure that the plant, or substance is safe and without risks to health when properly used. He is also required to carry out or arrange for the carrying out of such research, testing and examination as may be necessary for the purpose of the discovery and the elimination or minimisation of any risks to health or safety to which the plant or substance may give rise. In addition, he is required to take such steps as are necessary to make available in connection with the use of the plant or substance at work adequate information about the use for which the plant is designed, and about any condition(s) necessary to ensure that when put to that use the plant will be safe and has been without risks to health. He is also required to inform the users about the results of any relevant tests which have been carried out on or in connection with the substance and about any conditions necessary to ensure that the substance will be safe and without risks to health when properly used.

‘Plant’ is defined as any machinery, equipment, appliance, implement or tool; any component, fitting or accessory used in conjunction with any machinery, equipment, appliance, implement or tool, and steam boilers, pressure vessels, hoists, lifts, cranes, lifting equipment, handling devices, amusement rides or scaffolding. ‘Plant for use at work’ is defined as any plant designed for use or operation (whether exclusively or not) by persons at work, and includes any article designed for use as a component in, or an accessory to, any such plant;

A person who erects or installs any plant for use at work in any workplace where that plant is to be used by persons at work shall ensure that nothing about the way in which it is erected or installed makes it unsafe or a risk to health when properly used.

A person who manufactures or imports or supplies a chemical product for use in a workplace shall have a Material Safety Data Sheet for that chemical product and such other details as are prescribed.
6.1.4.e Duties of Workers

Workers also have significant duties to ensure safety and health at workplace. At all times when at work, each worker is required to take all reasonable care to:

- not to take any action, or make any omission, that creates a risk, or increases an existing risk, to health or safety of any worker or of other persons (whether workers or not);
- to cooperate with the employer, or any other person, to the extent necessary to enable the employer or the other person to fulfill a duty or obligation imposed on the worker's employer or on any other person,
- to use equipment, in accordance with any instructions given by the worker's employer consistent with its safe and proper use, that is supplied to the worker by the employer and necessary to protect the health and safety of the worker, or of other persons (whether workers or not) at the worker's workplace.

6.1.4.f Duties Applicable to all Persons

The law disallows any person from intentionally or recklessly interfering with or misusing anything provided in the interests of health and safety in pursuance of this Act or the associated health and safety legislation.

6.1.5 Requirements at Workplace: Training, and Health and Safety Committee and Representatives

It is a requirement that at each workplace where there are 20 or more workers employed, there be established a health and safety committee for that workplace, and where there are less than 20 workers, the workers appoint a health and safety representative for that workplace. The Health and Safety at Work (Representatives and Committees) Regulations 1997 prescribe the details on the appointment/election of members of such committees. The Health and Safety at Work (Training) Regulations 1997 require that all persons working at a workplace undergo health and safety training so as to perform their task safely and without risk to their health. The regulation also prescribes the details on the mechanisms for such training.

6.1.5.a Health and Safety Representatives

A health and safety representative may for the purpose of health and safety at a workplace inspect the whole or any part of the workplace at any time after giving reasonable notice to the employer; as well as immediately in the event of any accident, hazardous situation, dangerous occurrence or immediate threat or risk to the health and safety of any person. In the latter case, he is required to facilitate necessary procedures for the elimination of the threat; the steps to be taken are given in s25 of the Act.

It is also a right of the representative to accompany any Inspector during an inspection of the workplace, and with the consent of the worker, be present at any interview between a worker and an Inspector or between the employer or the representative of the employer.
and a worker concerning health and safety. Additionally, the representative may:

- investigate complaints relating to occupational health and safety made by workers in the workplace;
- represent the workers in consultations with the employer concerning the development, implementation and review of measures to ensure the health and safety of the workers;
- consult and cooperate with his or her employer on all matters relating to the health and safety of persons in the workplace; and
- liaise with the workers regarding matters concerning the health and safety of persons in the workplace.

6.1.5.b Health and Safety Committees

A health and safety committee for a workplace is to consist of the person or persons elected by the workers from amongst the workers, and the person or persons nominated by the employer. The person or persons nominated by the employer shall be or include a person or persons having the authority of the employer to give effect to the matters the committee might reasonably resolve in connection with health and safety of persons at the workplace. At least half of the members of a health and safety committee shall be persons elected by the workers. The size and operation of a health and safety committee are to be in accordance with the *Health and Safety at Work (Representatives and Committees) Regulations 1997*.

Other than the functions prescribed by the Minister through regulations, a health and safety committee is required to,

- facilitate cooperation between the employer and the workers in relation to health and safety at work;
- assist in the formulation, review and dissemination (in such languages as are appropriate) to workers of the health and safety practices, procedures and polices that are to be followed at the workplace;
- investigate any matter at the workplace which a member of the committee or a person employed thereat considers is not safe or is a risk to health and which has been brought to the attention of the employer; and
- attempt to resolve any such matter but, if unable to do so, to request an Inspector to undertake an inspection of the workplace for the purpose.

6.1.5.c Responsibilities of Employers to Health and Safety Representatives and Committees

Employers are required to consult their health and safety representatives and health and safety committees on the occupational health and safety practices, procedures or policies that are to be followed at a workplace and on any proposed changes to these practices, procedures or policies. At the request of the worker, employers are to permit a health and safety representative or committee member to be present at any interview concerning occupational health or safety between the employer (or a representative of the employer) and a worker in the workplace that the health and safety representative or committee represents.
The employers are also to permit a health and safety representative or committee member to accompany an Inspector during an inspection of the workplace, and to have access to such information as the employer possesses relating to hazard, associated risks that arise and any matter concerning the health and safety of the workers. Employers, however, are not obliged to give to a health and safety representative or a committee member information that is privileged on the ground of legal professional privilege, personal information regarding the health of a worker without the consent of the worker, or information that is relevant to proceedings that have been commenced under this Act.

Employers are to immediately notify a health and safety representative or committee member of the occurrence of an accident, injury, dangerous occurrence, immediate threat or risk or hazardous situation that affects or may affect any worker that the health and safety representative or committee represents; and provide such other facilities and assistance to health and safety representatives or committees as are necessary or prescribed to enable them to perform their functions under this Act.

Employers are also required to permit health and safety representatives or members of a health and safety committee to take such time off work with pay as is necessary or prescribed for the purposes of performing their functions or duties or taking part in any course of training relating to occupational health and safety which is approved by the Minister on the recommendation of the Board.

6.1.5.d Disqualification of Health and Safety Representatives or Committee Members

An employer may seek, through the CEO, the removal of a representative or committee member on the ground, amongst others, that the representative or committee member performed any function or duty with the intention only of causing harm to the employer or the employer's undertaking, or did so unreasonably, capriciously or otherwise than for the purpose for which the power was conferred on the representative or committee member.

6.1.6 Discrimination Against Workers

An employer shall not dismiss a worker or act in any way detrimental to a worker in the worker's employment with the employer for the reason only that the worker assists or has assisted or gives or has given information to an Inspector; or makes or has made a reasonable complaint in relation to health and safety to the employer or one of the Inspectors; or has exercised his or her functions as a health and safety representative or a member of a health and safety committee, or ceases work where there is immediate threat to health and safety of workers, including himself.

6.1.7 Immediate threat

Where a worker has reasonable cause to believe that there is an immediate threat to health or safety unless the worker ceases to perform particular work, the worker is
required to inform a person supervising the worker or workers in the performance of the work of the threat to health or safety. If no supervisor can be contacted immediately, he is required to cease work in a safe manner, and as soon as practicable, inform a supervisor that the work has ceased.

It is the responsibility of the supervisor, upon being informed of a threat to the health or safety of one or more of the workers, to take such action as he or she considers appropriate to remove that threat, including directing the worker or workers to cease, in a safe manner, to perform the work.

Any disagreement between a worker and the supervisor on whether there was an immediate threat, or the action taken was sufficient to remedy the threat, is to be referred by either party to an Inspector for investigation, who is required to, as soon as possible after a request is made, carry out an investigation of the work and make such decisions as the Inspector considers necessary.

If a worker ceases work, the employer may assign him or her to alternative work within the worker's contract of service.

For workplaces on a ship or an aircraft, the ship captain or aircraft pilot is required to resolve any immediate threat issue in his capacity as a ship captain or aircraft pilot.

6.1.8 Occupational Health and Safety Statistics

It is the duty of the employer, or any other person as prescribed by the Minister to give to a person so prescribed a notice if an accident occurs at a workplace, whether or not it causes the death of, or bodily injury to, any person; or if there is any other matter which affects the health or safety of any person. S6 of the Health and Safety at Work (Administration) Regulations 1997 requires that where an accident, incident or disease occurs at a workplace, whether or not it causes the death of, or bodily injury to, any person, or any other matter occurs at or in relation to a workplace which affects the health or safety of any person, the employer shall as soon as possible, and in any event not later than 48 hours after the occurrence, give the Chief Health and Safety Inspector written notice of the occurrence of this. In case of a serious injury immediate notice by the most expedient means is to be given to the Chief Health and Safety Inspector followed by a written notice. Such notices are required to specify the full details of the event. The Inspector would then investigate the event if he so decided so as to determine the nature and cause of the accident, incident, disease or other matter and the nature and extent of the injury or illness it caused.

Every employer at the workplace (or such other prescribed person(s)), is required to maintain, in the prescribed form, a record of accidents and other matters as prescribed by the regulations. The Health and Safety at Work (Administration) Regulations 1997 lists the details of the accident whether or not it caused death of or bodily injury to any person, which are to be maintained.
6.1.9 **Occupational Health and Safety Education and Accident Prevention Fund**

The Act requires that within the Ministry responsible for Labour and Industrial Relations, a trust account called the ‘Occupational Health and Safety Education and Accident Prevention Fund’ be established. This fund is to consist of any fee income under this Act and funds allocated by the Parliament to this Fund.

The money standing to the credit of the Fund may be applied by the Minister, on advise of the Board, for the purposes of health and safety education or training or research; and ensuring or promoting the health and safety of persons at workplaces.

6.1.10 **National Occupational Health and Safety Advisory Board**

The HASAWA establishes a National Occupational Health and Safety Advisory Board, which consists of the CEO as its Chairperson and two Deputy Chairpersons one each nominated from the most representative employers’ and workers’ organisations, and not more than 15 other members appointed by the Minister of which 5 each are to be from the most representative workers' and employers' organisations. Other members may be on the recommendation from the Ministers responsible for Health, Mining, Agriculture, Transport and Civil Aviation, Environment or other relevant Ministers.

The functions of the Board are to:
- advise the Minister on matters relating to occupational health and safety;
- inquire into and report to the Minister on matters referred to it by the Minister;
- facilitate the development of national health and safety regulations, standards and approval of codes of practice for the Minister's consideration; and
- perform such other functions as are required of it under the HASAWA or any other Act.

6.1.11 **Health and Safety Inspectors**

The responsibility for the administration of the HASAWA is with the Chief Health and Safety Inspector, who is appointed by the Minister. The Inspector also advises the Minister on national, regional and international matters relating to health and safety administration and policy and related matters affecting Fiji. He also guides the Board in its deliberation on matters referred to the Board by the Minister.

The Minister is also empowered to appoint one or more suitably qualified persons to be the Deputy Chief Health and Safety Inspector(s) as appropriate, to assist the Chief Health and Safety Inspector in the daily administration of this Act. The Minister, on the recommendation of the Chief Health and Safety Inspector, may appoint such suitably qualified persons to be Health and Safety Inspectors as he considers appropriate.

The functions of the Inspectors are to:
- encourage employers and workers to consult with each other about safe or healthy work practices in the workplace;
- advise and assist employers and workers on health and safety matters generally
and particularly in the performance of the health and safety obligations under the HASAWA or any other Act and advise them of the assistance available to them in carrying out their obligations;

- provide information, advise, education and training to employer and worker groups and government departments and authorities on matters to which HASAWA relates;
- promote a co-ordinated and integrated approach by government authorities to inspection responsibilities in health and safety;
- assist in formulating policies and strategies relating to health and safety matters;
- assist in developing national health and safety regulations, standards and codes of practice for the deliberation, where appropriate, of the Board;
- assist the Board in the performance of its function under the HASAWA;
- facilitate the monitoring, collecting and analysing of national data on compensable injuries or diseases or other relevant data in Fiji for the purposes of reviewing the effectiveness of implemented policies and standards and recommending appropriate priorities;
- enforce compliance with the HASAWA and regulations required by or under the HASAWA to be observed;
- prosecute persons for offences against the HASAWA or the regulations; and
- carry out such other functions as are imposed on it by the HASAWA or any other Act.

Inspectors are given a wide range of powers to fulfill their functions; these include:

- enter any workplace at any time in performance of his or her functions;
- when entering any workplace, take with him or her such equipment and materials as he or she considers appropriate;
- conduct such examination and inquiry including the examination of any plant, substance or thing, as he or she considers necessary to ascertain whether there has been compliance with the HASAWA;
- take or remove samples of any substance or thing as may be required for analysis;
- take possession of any plant or thing for further examination or testing or for use as evidence;
- take photographs or measurements or make sketches or recordings;
- require the production of, examine, and take copies or extracts of, any document or part of any document;
- direct that the workplace, or any part of it, be left undisturbed for as long as the Inspector considers necessary;
- interview in the course of an inspection or investigation, either in private or otherwise, as he or she considers appropriate, any person whom he or she finds at a workplace or whom he or she has reasonable grounds to believe is, or was at any time during the past, a worker working at a workplace;
- require any person whom he or she interviews to answer any question put to him or her and, if the Inspector considers it appropriate, to verify any such answer by statutory declaration;
- require any person to provide proof of identity;
• require the employer or any person who works at a workplace to render such assistance to the Inspector as the Inspector considers necessary for the performance of his or her functions under the Act;
• exercise such other powers as may be conferred on him or her by the regulations or as may, be necessary for the performance of his or her functions under the Act; or
• by notice in writing, require a person to furnish to him or her such information, in such form, as he or she reasonably requires for the purposes of the Act.

In exercising any of his or her powers under the Act an Inspector may be accompanied by any other person, including a police officer, whose assistance the Inspector considers necessary in the performance of his or her duty.

6.1.12 Inspections and Notices

Where an Inspector is of the opinion that a person is contravening, or has contravened this Act in circumstances that make it likely that the contravention will continue or be repeated, the Inspector may issue to the person an improvement notice requiring the person to remedy the contravention.

Where an Inspector is of the opinion that at a workplace there is occurring or may occur an act which involves or will involve an immediate threat or risk to the health or safety of a person, the Inspector may issue to the person who has control over the act or the activity in which the act may occur a prohibition notice prohibiting the continuation of the act or the carrying out of the activity until the Inspector certifies in writing that the immediate threat or risk has been removed or, in his or her opinion, the act will not occur.

An Inspector may serve a penalty notice on a person if it appears to the Inspector that the person has committed an offence under the Act (or regulations under the Act) or a provision of the associated health and safety legislation.

6.1.13 Assessment and Control of Chemicals

The Minister may, on receiving a recommendation from the Chief Health and Safety Inspector, prohibit or restrict the import, export, manufacture, use or disposal of a chemical or pesticide.

The Act requires the establishment of a Fiji Chemical Inventory. The Minister may decide that those importing or manufacturing or supplying a chemical which is not listed on the Inventory, must notify and provide information on the health, safety or environmental effects of the chemicals to the Chief inspector. The Inventory is to be open for inspection by the public.

Where the Chief Health and Safety Inspector has reasonable grounds for believing that the manufacture, handling, storage, use or disposal of an industrial chemical gives, or may give rise to a risk of adverse health effects or adverse environmental effects, the
Chief Health and Safety Inspector may recommend to the Minister that the chemical be declared a ‘priority existing chemical’.

To assess a priority existing chemical, the Chief Health and Safety Inspector may require a person to whom the notice applies, to provide information or assessment about the chemical in accordance with the regulations. The Chief Health and Safety Inspector shall maintain a list of priority existing chemicals that have been priority existing chemicals, and may publish the lists in the Gazette at least once a year.

It is the duty of the Chief Health and Safety Inspector to make public an assessment report for a chemical no later than 18 months after it has been declared for priority assessment. Once a notice of its publication is made, the chemical no longer remains a priority chemical.

In May 2003, the Minister for Labour, Industrial Relations and Productivity issued a Gazette Notice to prohibit the import, export, manufacture, and use or disposal of 7 chemicals. This led to the amendment of regulations under the Customs Act 1986 through the Customs (Prohibited Imports and Exports) (Amendment) Regulations 2004.

The Pesticides Act, under the responsibility of Ministry of Agriculture, has provisions on the regulation and control of certain types of chemicals. The Ministry of Labour is now in the process of finalizing Health and Safety (Control of Hazardous Substances) Regulations, which will bestow the OHS aspects of the Pesticides Act to the OHS section of the Ministry of Labour.

6.1.14 Regulations and Codes of Practice

The Minister is empowered to make regulations to carry out and give effect to this Act. Such regulations may be on:

- regulating or prohibiting the manufacture, supply or use of any plant; the manufacture, supply, use, storage or transport of any substance; or the carrying on of any process or the carrying out of any operation;
- the safety and health of workers engaged in particular industries or other workplaces;
- the certification of operators in prescribed plant or machinery;
- the registration of a workplace or any plant or substance;
- the licensing of a person carrying out processes or activities under this Act;
- conditions applying to registrations and licenses (including conditions by prescribed persons);
- the service of notices under this Act;
- the powers of the Inspectors in relation to investigations at workplaces;
- procedures for the appointment of health and safety representatives;
- composition, election or appointment of persons to health and safety committees;
- labeling requirements for chemicals and Material Safety Data Sheets;
- notification and record keeping of accidents and other matters;
- prescribing of fines, not exceeding $20,000, for a breach of the regulations;
• prescribing matters to be dealt with penalty notices; or
• any matter relating to the progressive replacement of any of the associated health
  and safety legislation.

The regulations may provide that a prescribed employer or a member of a prescribed
class of employers shall monitor the health of his or her workers; keep information and
records relating to the health and safety of his or her workers; engage a person who is
able to provide advice to the employer in relation to the health and safety of the
employer's workers; and monitor conditions likely to affect the health and safety of his or
her workers at a workplace.

6.1.15 Codes of Practice

To provide practical guidance on any matter relating to the Act, the Minister is required
to approve a national code of practice. Such a code may comprise a code, standard, rule,
specification or provision relating to matters in this Act, and may apply, incorporate or
refer to a document formulated or published by a body or authority as in force at the time
the code of practice is approved or as amended, formulated or published from time to
time. The codes ought to take into account any current and relevant international or
overseas codes of practice in its development.

The approved code of practice and all documents incorporated or referred to in the code,
are open for inspection by members of the public without charge.

6.1.16 Immunities: Civil liability not affected by duties on Employer, Employee or
Other Persons

The Act specifies that the duties imposed, or a contravention of the duties and
requirements by the employer, employee or any other person, respectively, do not confer
a right of action in any civil proceedings in respect of any contravention, or confer a
defense to an action in any civil proceedings or as otherwise affecting a right of action in
any civil proceedings, or even affect the extent to which a right of action arises or civil
proceedings with respect to breaches of duties imposed by or under the associated health
and safety legislation.

A health and safety representative incurs no civil liability arising from his or her
performance of, or his or her failure to perform, any function of a health and safety
representative under this Act.

The provision of this Act can not be construed as imposing any duty upon a health and
safety committee or its members in the capacity of health and safety committee or its
members. A member of a health and safety committee incurs no civil liability arising
from his or her performance of, or his or her failure to perform, any function of a health
and safety committee under this Act.

Inspectors are immune from any civil or criminal proceedings for anything done or
omitted to be done in good faith in the exercise or purported exercise of a function of an
Inspector or body under this Act.
6.1.17 Regulations

The Health and Safety at Work (General Workplace Conditions) Regulations 2003, repeals s10-32, s54-61, and s63-65 of the Factories Act. These sections dealt with the conditions of employment in factories and other places. The sections repealed, and replaced by the General Workplace Conditions Regulations deal with the general requirements on factory conditions, requirements on fire safety, and requirements on safety dealing with electricity, explosive or inflammable dust, gas, vapour, or substance, dangerous fumes, corrosive liquids, noise, etc. The rest of the Factories Act is still in force.

The Health and Safety at Work (General Workplace Conditions) Regulations came in force from July 2003. It applies to all workplaces to which the provisions of the HASAWA apply. The regulations make provisions on health and safety in relation to:

- Access, Exit and movement
- Cleanliness and Hygiene
- Facilities for Personal Belongings
- Facilities for Dining
- Nursing and Daycare Facilities
- Sanitary Conveniences
- Washing Facilities
- Common Facilities for Two or More Workplaces
- Drinking Water
- Rest Facilities
- Ergonomics
- Seating
- Floors and Stairs
- Fragile Roofing Materials
- Space per Person
- Confined spaces - hazard identification and risk assessment, control of risk, entry permit, control of fire and explosion risk, rescue arrangements for confined spaces
- Dangerous Substances, explosives, and hazardous work
- Electrical Installations and Equipment
- Emergency facilities and procedures, including rescue arrangements
- Fire Prevention
- Lighting
- Risks faced by manual labour (including working with loads)
- Noise, including duties of designers, manufacturers, suppliers, and employers
- Occupational health and first aid (including first aid supply, and sick bay)
- Personal Protection and use of Air Supplied Respiratory Equipment
- Prevention of Falls
- Remote or Isolated Work
- Storage
- Traffic Control
• Ventilation
• Thermal Environment
• Consumption of Substances
• Application of Standards
• Provisions in existing buildings, new buildings and alternations
• Penalties, and
• OHS Risk Management

Areas outside this scope are covered by the *Factories Act.*

### 6.1.18 Regulations in Progress

The Ministry of Labour is in the process of finalizing the following regulations under the HASAWA:

- *Health and Safety (Ionisation Radiation) Regulations*
- *Health and Safety (Control of Hazardous Substance) Regulations*
- *Health and Safety at Work (Diving) Regulations and its Code of Practice*

In addition, the Ministry of Labour is in the process of drafting the following regulations under the HASAWA:

- *Health and Safety (Plant & Machinery) Regulations*
- *Health and Safety (Construction) Regulations*
- *Noise Code of Practice*
- *HIV/AIDS Code of Practice for Workplaces*
- *Conflict Resolution Regulations*
6.2 Factories Act

This legislation was enacted in 1971. Its aim was to regulate the conditions of employment in factories and other places, and to protect the health, safety and welfare of persons employed. The HASAWA repealed many sections of the Factories Act. However, some crucial ones still remain as no regulation has so far been made under HASAWA that would override the remaining provisions of the Factories Act.

‘Factory’ is defined as any premise in which, or within the close or curtilage or precincts of which, persons are employed in manual labour in any process for or incidental to the making, altering, repairing, ornamenting, finishing, cleaning or washing, or the breaking up or demolition or adapting for sale, of an article. It includes any premise in which work is carried on by way of trade or for the purposes of gain. The Act lists other types of activities which fall under the definition of factory. However, the activities excluded from the definition of factory are mining and non-profit employment sectors.

6.2.1 Exclusions

The Factories Act specifically excludes two types of businesses: mining and quarrying, and preparation or sun-drying of copra.

The Minister has the power to, by order, apply all or any of the provisions of this Act to any of the following premises: shops, offices, premises other than a single private dwelling house in which steam boilers, pressure vessels, hoists or lifts are used, institutions, docks, wharves, quays (including any warehouses in connexion therewith), and other warehouses, ships on which work is being carried out in a yard, harbour or dock, electrical substations and fairgrounds.

The Act binds the state.

The Act, as of now, covers health and safety in relation to machinery, plant and equipment.

6.2.2 Machinery, Plant and Equipment

The sale, lease or hire of machinery, plant or equipment is prohibited unless every part of that machinery, plant or equipment complies with the requirements of approved standards. All parts and working gear of all machinery and apparatus and all foundations on or to which such appliances are anchored or fixed are to be of good construction, sound material, adequate strength, and free from patent defect. These are also required to be properly maintained.

The Act makes detailed provisions on various types of plant and machinery; these include provisions on:
- Construction and sale of machinery, plant or equipment
- Stability of machines
- Dangerous machinery
- Unguarded machinery, including construction and maintenance of guards
- Safety devices
- Self-acting machines
- Stock-bars
- Chains, ropes and lifting tackle
- Cranes and other lifting machines
- Hoists and lifts
- Passenger hoists
- Steam boilers attachments and construction
- Steam boilers—maintenance, examinations and use
- Steam boilers—restrictions on entry
- Steam receivers and steam containers
- Air receivers
- Gas cylinders and acetylene generators, and
- Radiations and vibrations.

6.2.3 Employee Responsibilities

Employees, on their part, are required not to willfully interfere with or misuse any means, appliance, convenience or other things provided in pursuance of this Act for securing the health, safety or welfare of the persons employed in such factory or place. Furthermore, where any means or appliance for securing health or safety is provided for the use of any such person under this Act, he is required to use the means or appliance. They are also required not to willfully and without reasonable cause do anything likely to endanger himself or others.

6.2.4 Administrative Requirements

The Act requires that at the principal entrance of every factory, an approved abstract of the Act be posted. It also provides for the posting, and/or holding of any other relevant document as directed by the factory inspectors, as well as regulations made under the Act. The Act places certain administrative duties on the occupiers of factories in terms of informing factory inspectors and/or submitting forms on aspects of the factory. The chief inspector is required to keep a register of factories.

The Act bestows ample powers on factory inspectors to carry out the objectives of the Act. Inspectors can, inter alia, enter, inspect and examine, by day or by night, a factory, and every part thereof. They are entitled to take with them police officers if they have reasonable cause to suspect the existence of any serious obstruction in the execution of their duty. They can conduct any inquiry as may be necessary to ascertain whether the provisions of the Act are complied with. They can prosecute and defend in any legal
proceedings arising under this Act or in the discharge of their duties. The Chief Inspector is also empowered to issue orders prohibiting the use of any machinery, plant, appliance or fitting therein or any process or work therein as long as the Chief Inspector is convinced that the use of the same involves imminent danger of grave bodily injury.

### 6.2.5 Welfare regulations

The Minister for Labour has the power under the Act to make regulations for securing the welfare, health and safety of the persons employed or any class of persons. Such regulations may, inter alia, prohibit the employment of or modify or limit the hours of employment of, all persons or any class of persons in connection with any manufacture, machinery, plant, process, or description of manual labour, or prohibit, limit or control the use of any material or process; or impose duties on owners, employed persons and other persons, as well as on occupiers; require medical supervision or medical examination of the persons, or any class of persons, employed at a factory or class of factory; and prescribe the type of training for any class or description of machines.

### Recommendations

**Recommendation No. 1**: The Ministry of Labour needs to take out regulations under the HASAWA on machinery, plant and equipment so that all safety and health laws are consolidated under the HASAWA. At the moment, the *Factories Act* covers the safety aspects of machineries. (This includes the safe working loads of machines and lifting gears, basic safety components that need to be checked on commissioning new plants including lifts, safe working pressure and capacity of pressure vessels including boilers, air receivers, and the like). Bringing them under one legislation would generate less confusion.

**Recommendation No. 2**: The mining and quarrying industries, which record the highest number of deaths per worker, need to be brought under the ambit of the HASAWA. Under s3(2) of the HASAWA, the Minister for Labour has the authority to extend the coverage of HASAWA to the mining and quarrying industry. While, thus, the initial exclusion of the mining and quarrying industry (and others covered under the *Explosives Act and the Petroleum Act*) was questionable, bestowing the power to the Minister for Labour (and the Minister for Mineral Resources) provides an opening for the inclusion of the mining industry. The issue, therefore, is one of political will of the two ministers to apply the health and safety at workplace legislation to the mining industry.

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21 According to the Ministry of Labour, it intends to draft the *Health and Safety (Plant & Machinery) Regulations*, and *Health and Safety (Construction) Regulations* to be endorsed by the National OHS Advisory Board and Cabinet by June 2008 before its gazettal.

22 According to the Ministry of Labour some of the OHS aspects of the *Petroleum Act* are being addressed under a draft ‘Fuel Specification and Handling Bill’ drafted by the Department of Energy, while the Ministry of Labour’s draft of the Health and Safety (Control of Hazardous Substance) Regulations also incorporates the OHS aspects of the Act.
6.3 Ionising Radiations Act

This Act came into being in 1969 as the *Ionising Radiations Ordinance*, and amended in 1974. It aims to protect workers against ionising radiations. ‘Ionising radiation’ refers to electromagnetic radiation (i.e. X-ray or gamma-ray photons or quanta) or corpuscular radiation (i.e., alpha particles, beta particles, electrons, positrons, photons, neutrons or heavy particles) being electromagnetic radiation or corpuscular radiation capable of producing ions and emitted from a radio-active substance or from a machine or apparatus in which electrons are accelerated by a voltage of not less than five kilovolts.

The Act prohibits a person from installing or causing to be installed any machine or apparatus which is capable of producing or emitting ionising radiations unless he has obtained a license from the CEO for Health permitting him to install or cause to be installed such machine or apparatus.

The OHS section of the Ministry of Labour, under the *Heath and Safety at Workplace Act*, is drawing up a *Health and Safety (Ionisation Radiation) Regulations* to take over the occupational health and safety components of the *Ionising Radiations Act*. 
6.4 Workmen's Compensation Act

The *Workmen's Compensation Act* came into being first as the *Workmen's Compensation Ordinance* in 1964. Since then, it has been amended in 1966, 1975, 1996 and 1999. It aims to provide for compensation to workmen for injuries suffered in the course of their employment.

6.4.1 Scope

The term ‘workman’ means any person who has entered into or works under a contract of service or apprenticeship with an employer. Such work may be by way of manual labour, or otherwise; the contract may be expressed or implied, or oral or in writing; the remuneration may be calculated by time or by work done, and it may be calculated by the day, week, month or any longer period. From 1996, under the *Workmen's Compensation (Amendment) Act 1996*, the term included personnel and officers in the Fiji Police Force, the Prisons Service, the Fiji Military Forces and Fiji Military Forces personnel and officers engaged in military duties in foreign countries.

Those whose employment is of a casual nature and who are employed otherwise than for the purposes of the employer's trade or business, are excluded from the definition and the scope of coverage of the Act. Also excluded are outworkers\(^{23}\), members of the employer's family dwelling in the employer's house or the curtilage thereof, and any class of persons whom the Minister may, by order, declare not to be workmen for the purposes of this Act.

Where in a proceedings for the recovery of compensation it appears to the court that the contract of service or apprenticeship under which a person was working when the injury was sustained, was illegal, the court may, having regard to all the circumstances of the case it thinks proper to do so, deal with the matter as if the injured person had at such time been a person working under a valid contract of service or apprenticeship.

The Act binds the Government, and applies to workmen employed by the Government in the same way and to the same extent as if the employer were a private person.\(^ {24}\)

In 1999, through the *Workmen’s Compensation (Amendment) Act 1999*, provisions were made for compensation payments if external compensation were also paid. For an officer or soldier of the Republic of the Fiji Islands Military Forces who suffers injury or death while engaged in, or as a result of being engaged in, military peacekeeping operations overseas; and external compensation is payable to the officer or soldier, or to his or her estate or dependants, for the injury or death, then no compensation is paid under this Act.

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\(^{23}\) An ‘outworker’ means a person to whom articles or materials are given out to be worked on in his own home or on other premises not under the control or management of the person who gave out the materials or articles.

\(^{24}\) Members of the Legislature are covered by *Personal Accident Compensation for Members of Parliament Act, 1997*. 
if the external compensation paid equals or exceed the compensation payable under this Act. If, however, the external compensation paid is less than the compensation payable under this Act for the injury or death, an additional amount is to be paid so as to bring the total amount of compensation paid up to the amount payable under this Act. If compensation for death or injury has been paid under this Act but the amount of external compensation payable for the death or injury exceeds the amount so paid, the balance of the external compensation so payable remains payable.

6.4.2 Compensation for Injury

6.4.2.a General Provision

The Act provides for payment of a compensation by the employer to any workman who suffers personal injury at work by accident if the accident incapacitates the worker for a period of at least 3 consecutive dates from earning full wages at the work. The cause of accident is not a matter or consideration; compensation is due even if the accident was due to the workman acting in contravention of any statutory or other regulation applicable to his employment, or of any order given by or on behalf of his employer, or that he was acting without instruction from his employer. The key matter is that the work being done was for the purpose of and in connection with his employer's trade or business.

Three exceptions are provided for. No compensation is payable if the accident was due to serious and willful misconduct of the worker, or deliberate self-injury, or if the workman had at any time represented in writing to the employer that he was not suffering from an injury or had not previously the injury or a similar injury, knowing that the representation was false.

6.4.2.b Compensation for Death

For death or serious and permanent incapacity, the employee’s dependants may waive the right to payment under this Act and seek civil remedies through the courts. The sum payable to the dependents under this Act for a death is equivalent to two hundred and eight (208) weeks' earnings, but not less than nine thousand dollars and not more than twenty four thousand dollars.\footnote{These sums became effective from 1994, under the Workmen’s Compensation (Amendment) Act 1994, and haven’t been revised since. Prior to this, since 1975, the respective figures were four thousand dollars and twelve thousand dollars.} If, however, the workman leaves no dependants, an amount of four hundred and twenty dollars is payable by the employer to the person by whom the funeral expenses of the deceased workman are incurred.\footnote{This sum became effective from 1994; prior to this the figure was two hundred and ten dollars.}

6.4.2.c Permanent Total Incapacity

Where the injury leads to permanent total incapacity, the amount of compensation payable is a sum equal to two hundred and sixty (260) weeks' earnings, but it shall not
be less than six thousand dollars or more than thirty two thousand dollars. If, however, the incapacity is of such a nature that the injured workman must have the constant help of another person as certified by a medical practitioner, the employer is required to pay additional compensation amounting to one-quarter of the amount which is otherwise payable to him.

6.4.2.d Permanent Partial Incapacity

For a permanent partial incapacity the amount of compensation payable is a percentage of 260 week’s earnings depending on the nature of incapacity. A schedule to the Act specifies the ratios for different types of incapacities. For injuries not specified in the Schedule, the ratio is the same as the loss of earning capacity permanently caused by the injury. The maximum amount payable for partial incapacity is twenty four thousand dollars and the minimum is to be no less than the percentage specified in the schedule of three thousand dollars.

Where more injuries than one are caused by the same accident, the amount of compensation payable is to be aggregated. However, compensation so payable is not to exceed the amount which would have been payable if permanent total incapacity had resulted from the injuries.

6.4.2.e Temporary Incapacity

For temporary incapacity, whether total or partial, the payments are two-thirds of the worker’s weekly earnings, net of any benefits received by the worker, or as the court may order.

6.4.2.f Diseases

Where a medical practitioner grants a certificate that a workman is suffering from a disease causing disablement, or that the death of a workman was caused by a disease that was due to the nature of the workman's employment and was contracted within the twenty-four months previous to the date of such disablement or death, the workman (or, if he is deceased, his dependants) is (are) entitled to claim compensation as if such disablement or death had been caused by an accident, unless at the time of entering into the employment the workman willfully and falsely represented, in writing, to the employer in reply to a specific question that he had not previously suffered from the disease.

If a workman who becomes disabled by or dies of any prescribed disease, was within the period of twenty-four months immediately preceding such disablement or death employed in any prescribed employment, it is presumed, unless or until the contrary is proven, that the disease was due to the nature of such employment.

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27 These sums became effective since 1994. Prior to this, the figures were three thousand and sixteen thousand, respectively.
28 These sums became effective from 1994; prior to this, the respective figures were twelve thousand dollars and one thousand five hundred dollars.
6.4.3 Notice Requirements and Medical Attention

To claim compensation for an injury, workers have to follow certain requirements on reporting the injury. Employers also have an obligation to report to the CEO all accidents which cause an injury to a workman of such a nature as would entitle him to compensation under the provisions of this Act, and for all deaths of workers at work.

Where a workman has given notice of an accident, the employer is obliged to arrange his medical examination free of charge to the workman by a medical practitioner. The medical report should state whether the worker is unable or not in a fit state to attend work. If a worker fails to submit himself for the medical examination, his right to compensation is suspended until such examination has taken place. If such failure continues for fifteen days from the date scheduled for the examination, no compensation is payable, unless ordered by the court. If the worker failed unreasonably to submit himself to examination by a medical practitioner when so required, or having submitted himself for such treatment unreasonably disregarded the instructions of the medical practitioner, and death occurs, the death is not deemed to have resulted from the injury. In this case no compensation is payable in respect of the injury.

The Act describes the procedures for employees and employers to follow in cases of disagreements on the nature of the injury, the reporting requirements, or the quantum of compensation.

6.4.4 Liability in case of workmen employed by contractors

Where a person (the principal) contracts with any other person (the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal is liable to pay to any workman employed in the execution of the work any compensation under which he would have been liable to pay if that workman had been immediately employed by him. However, where the principal is liable to pay compensation, he shall be entitled to be indemnified by any person.

On the other hand, a workman is not prevented from recovering compensation under the provisions of this Act from the contractor instead of the principal.

6.4.5 Minister may by order require employers to insure

The Minister is empowered to order any employer or class of employers to insure and keep himself or themselves insured, with such insurers as may be approved by the Minister in respect of any liability which he or they may incur under the provisions of this Act to any workmen employed by him or them.

6.4.6 Contracting out

Any contract or agreement made whereby a workman relinquishes any right or compensation from an employer for injury arising out of and in the course of his
employment, is regarded as null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under the provisions of this Act.

6.4.7 Medical expenses

The employer is required to defray the reasonable expenses related to medical, medicinal, surgical, hospital, or skilled nursing services, incurred by a workman as the result of an accident which would entitle the workman to compensation under the provisions of this Act to an amount up to twelve hundred dollars, and in respect of the supply, maintenance, repairs and renewal of any artificial appliances or apparatus for a period of up to five years dating from the time of the accident to an amount not exceeding six hundred dollars in all. Reasonable transport charges, not exceeding the sum of five hundred dollars, incurred in the transfer of a workman to and from a place where the necessary treatment is available, are also payable by the employer.

6.4.8 Ministerial Powers and Regulations

The Minister is empowered to make regulations for the purpose of giving better effect to the purposes and provisions of the Act.

Recommendation: The compensation payable for various types of injuries need to be periodically revised. It is recommended that the Act be amended to provide for statutory adjustments in these sums periodically.
6.5 Fiji National Training Act


This Act establishes the Fiji National Training Council, renamed the Training and Productivity Authority of Fiji Islands (TPAF) in 2002. The TPAF aims to provide for training and to provide for the imposition of levies connected therewith.

The Authority consists of the CEO of Labour as its chairperson, two Vice-Chairpersons (one to represent employers and one to represent employees), and upto 8 members appointed by the Minister, of which one-half are to represent employers and one-half to represent employees, and upto 3 other members representing such ministries as the Minister considers appropriate.

The functions of the Authority are to, inter alia, provide, arrange for or regulate appropriate training of persons or classes of persons to assist them in connection with employment; to arrange for employment of such persons or classes of persons who are under training or who have completed appropriate training; to advise on, and to disseminate information about training; and to provide consultancy services to employers and other persons.

6.5.1 Funding

The Minister responsible for finance may seek an appropriation from the government’s annual budget for the Authority.

In addition, the Minister for Labour is empowered to make a levy on employers. He is also empowered to vary the levy rate, and to provide for a differential rate for different categories of employers.

Currently the levy is fixed at 1% of the total gross wage and salary bill of all employers in the country except for the wages and salaries of the following:

- employees based and paid overseas as long as their employment in Fiji do not exceed in the aggregate three months in any period of twelve months;
- officers of the Fiji Military Forces, Police Force and Prisons Service;
- employees or supervisor of a recognised school;
- employees of a co-operative society;
- employees employed by organisations or states with diplomatic privileges and immunities;
- domestic servants; and
- employees actively engaged in agriculture, forestry, and fishing; scientific and cultural research; medical, dental, para-medical and health inspection work; credit
union work; welfare and charitable work; religious work; and in the provision of live entertainment and cultural services as artists or performers.

6.5.2 Apprenticeship and Training

The Minister for Labour is empowered to make orders, known as training orders, in relation to or regulating the employment, training and minimum remuneration of apprentices in any designated trade or occupation.

6.5.2.a Apprenticeship - Minimum remuneration

By ministerial order, last amended in 1982, minimum rates of remuneration of apprentices were established; these are as follows:

- during the first year of apprenticeship—85c per hour.
- during the second year of apprenticeship—95c per hour.
- during the third year of apprenticeship—$1.04c per hour.
- during the fourth year of apprenticeship—$1.17c per hour.
- during the fifth year of apprenticeship—$1.32c per hour.

These rates are applicable for the following trades: aircraft maintenance; automotive (electrical and mechanic); boilermaking; carpentry; electrical, fitter and mechanic; electronics; fitting and machining; joinery and cabinet making; marine engineering; navigation and seamanship; panel beating; plumbing; printing; refrigeration and airconditioning; saw doctor; shipwright; and welding and fabricating.

The order also specifies the minimum entry qualifications for the trades. A minimum entry age is specified as fifteen years. Working conditions are also specified in the order.

6.5.3 Trade Testing Regulations

The Fiji National Training (Trade Testing) Regulations (1976/1977) under the Act provides detailed minimum qualification requirements and standards for trade tests in various areas of trades.

Workers who are employed in sectors where the training levy is paid, are entitled to training by the TPAF without loss of pay as the employers can claim from the TPAF what it costs them to send the workers on training. However, workers who are not covered by the levy need to pay for the training provided, as well as could possibly undergo loss of earning during the training period.
Fiji’s labour market has undergone significant transformation over the past 15 years. A large part of the transformation is a result of the major political and institutional changes within Fiji. An equally strong influence on the market has also been from the rapidly globalising economy. The transformations are expected to continue in the near future as the impact of the changing international production and trading systems continue to impact Fiji.

Fiji’s labour laws, on the other hand, have largely remained as they were originally adopted and/or enacted. Most of the crucial labour laws – like the Employment Act, the Trade Unions Act, the Trade Disputes Act, and the laws regulating working hours and wages – were put in place well before Fiji found its political and economic bearing after independence. Many of these laws were from the pre-independence days as well.

A recent enactment, however, is the Trade Unions (Recognition) Act. But this still has certain fundamental weaknesses as concerns the rights of workers to unionise, take up issues of grievances, and bargain collectively. The only law of significance which has recent origins and which seems to be modern in its approach is the Health and Safety at Work Act. But still, it is an incomplete legislation as concerns regulation of occupational health and safety at workplaces in Fiji.

Detailed examinations of the various labour laws show various areas of lapses which have remained unaddressed for long. These areas have been highlighted in this report, and possible recommendations suggested. These recommendations could go some extent towards streamlining these laws to meet the challenges of the contemporary and evolving labour market. They would, however, not prove totally satisfactory.

A major problem that would remain, even if the recommendations proposed here were to be adopted, that other than the principal labour legislations, there are numerous other laws in Fiji which have important bearings on aspects of the functioning of the labour market. In all, there are over 20 such other laws. This report has not examined/analysed them here.

Added to the various somewhat discrete principal legislation, the presence of aspects of employment, remuneration, and working conditions scattered in a wide range of legislations, makes it almost impossible for employees and employers alike to easily grasp the entirety of labour laws in the country. So much so, it is entirely possible that the public sector institutions responsible for the various laws are themselves not quite clear and consistent on their roles and responsibilities. This may explain the reasons for at least some of the agencies’ lack of interest in enforcing the labour laws in full, or in a timely and/or efficient manner.
Contributing to this state of affairs is the lack of any revision of labour laws since 1985. Over the past 20 years, there have been numerous amendments, some minor and some relatively major, to the principal acts and subsidiary legislations. For an employer or a trade union to keep track of these and revise their own holding of the labour laws, is a daunting task. In Fiji, very few employer, employee or state institutions have up-to-date holding of the entire set of labour laws in place today.

The above, therefore, call for a thorough revision of all the labour legislation in place now.

Second, and more importantly, there is an urgent need to consolidate all laws relating to employment, remuneration and working conditions into one or at least significantly fewer legislations than what is presently found in the country. This will not only make labour laws more easily understood and abided by in the country, but would also lift one of the important hurdles frustrating the rise of more harmonious and satisfactory institutional environment for the functioning of the labour market in the modern era.

It is precisely in this direction that the Ministry of Labour has been trying to move since the mid 1990’s. However, to date, it has not been successful. More recently, an Employment Relations Bill, which consolidated 6 labour legislation and introduced aspects of modern labour market management in it, was tabled in the House of Representatives. After over 4 months of deliberation on this, the Bill lapsed as the Parliament was prorogued. The fate of the bill now rests with the new government to be elected in May 2006.
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Acknowledgements

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