

REPRINT

LABOUR ACT (CAP. 73)

As in force at: 1 March 1996

STATUS: HISTORICAL

This version is that published in the Revised Edition of the Laws in force in Solomon Islands on 1st March 1996 [LN 24/96]. It does not include amendments made since that date.

AN ACT TO AMEND, DECLARE AND CONSOLIDATE THE LAW RELATING TO LABOUR

LABOUR ACT (CAP. 73)

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PART I PRELIMINARY

1 Short title

This Act may be cited as the *Labour Act*.

2 Interpretation

In this Act unless the context otherwise requires:

“agricultural undertaking” includes processes conducted on the undertaking for the preservation and despatch of the agricultural products of the undertaking, unless any such processes are specifically declared by order made by the Minister to be parts of an industrial undertaking;

“casual employee or worker” means an employee or worker employed on a temporary or irregular basis at an hourly or daily rate of wages payable at the end of each day or on completion of a task or piece of work specified at the time of engagement which task is capable of being completed in a shorter period than the normal working week or the statutory working week whichever is the lesser;

“commercial undertaking” includes:

- (a) commercial establishments and offices, including establishments engaging wholly or mainly in the sale, purchase, distribution, insurance, negotiation, loan, or administration of goods or services of any kind;
- (b) establishments for the treatment or care of the aged, infirm, sick, destitute, or mentally unfit;
- (c) hotels, restaurants, boarding houses, clubs, cafes and other refreshment houses;
- (d) theatres and places of public amusement; and

- (e) any establishment similar in character to those enumerated in sub-paragraphs (a), (b), (c), and (d) above;

“Commissioner” means the Commissioner of Labour;

“domestic servant” means any house, stable or garden servant or car driver employed in, or in connection with, the domestic services of any public or private dwelling-house, eating house, club or institution;

“employer” means any person by whom a worker is employed, and includes a prospective employer;

“family” includes the wife or wives of a worker and his children who are unmarried and under the age of fourteen years;

“Health Officer” means any public officer to whom the Minister has assigned the functions conferred by this Act on the Health Officer;

“immigrant worker” means any worker whose passage to Solomon Islands has been provided in consideration of a promise to perform work in Solomon Islands;

“industrial undertaking” includes:

- (a) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished or in which materials are transformed including undertakings engaged in shipbuilding, in the generation, transformation, or transmission of electricity, in the production or distribution of gas or motive power of any kind, in the purification or distribution of water, or in heating or cooling;
- (b) undertakings engaged in the construction, reconstruction, maintenance, repair, alteration or demolition of any one or more of the following:

buildings, railways, tramways, airports, harbours, docks, piers, works of protection against floods or coast erosion, canals, works for the purpose of inland, maritime or aerial navigation, roads, tunnels, bridges, viaducts, sewers, drains, wells, irrigation or drainage works, telecommunication installations,

works for the production or distribution of electricity or gas, pipelines, water-works, and undertakings engaged in other similar work or in the preparation for or laying the foundation of any such work or structure;

- (c) mines, quarries or other works for the extraction of minerals from the earth; and
- (d) undertakings engaged in the transport of passengers or goods, including the handling of goods at docks, quays, wharves and warehouses, but excluding transport by hand unless such undertakings are regarded as part of the operation of an agricultural or commercial undertaking;

“medical practitioner” means any person registered as such under the provisions of the *Medical and Dental Practitioners Act*;

“medical officer” means any person in the service of the government of Solomon Islands who is registered as a medical practitioner in accordance with the *Medical and Dental Practitioners Act*;

“non-indigenous worker” means any person who is not entitled to enter the Solomon Islands without complying with section 8 of the *Immigration Act*;

“member of the police force” means any member of the Solomon Islands Police Force established under the *Police Act*;

“seaman” means any person employed as a member of the crew of any vessel or boat whatsoever (other than a ship of war) engaged in maritime navigation whether privately or publicly owned;

“undertaking” means an undertaking whether public or private and, for the avoidance of doubt, it is hereby declared that an undertaking does not include a domestic establishment;

“worker” means any person who has entered into or works under a contract of service or apprenticeship with an employer whether by way of manual labour, clerical work or otherwise, whether the contract is expressed or implied, is oral or in writing, but does not include a domestic servant or seaman.

3 Term of contract

In default of any agreement to the contrary whether express or implied every contract of employment shall be deemed to be from month to month determinable by either party on one month's notice or by the payment of one month's wages in lieu of notice.

4 Supply of certificate to worker on termination of employment

At the request of a worker whose contract has expired or been terminated his employer shall give him a certificate indicating the dates of his commencing and leaving work and the nature of the work in which he was employed.

5 Rules relating to holiday leave etc.

- (1) The Minister may make rules in accordance with section 80 which shall have the effect of including in every contract of employment to which such rules apply terms relating to the provision of annual holiday leave (including payment of leave passage), sick leave and sickness benefits.
- (2) The Minister may make rules in accordance with section 80 which shall have the effect of including in every contract of employment terms relating to post-employment benefits which shall be due or payable to the employee.

PART II ADMINISTRATION

6 Commissioner of Labour and other officers

- (1) The Minister may assign to any public officer all or any of the functions of the Commissioner of Labour under this or any other Act.
- (2) Any reference in any enactment to the Commissioner of Labour, in relation to any function, is a reference to any person to whom the Minister has assigned that function under this section.
- (3) If any employer is aggrieved by any decision or order of the Commissioner under this Act, he may require that such decision or order be confirmed by the Minister who may confirm or rescind such decision or order or substitute therefor any decision or order which

could be lawfully given in accordance with the provisions of this Act.

- (4) Subject to such exceptions as may be prescribed, a person to whom the Minister has assigned any of the functions of the Commissioner:
- (a) shall not have any direct or indirect interest in any undertaking under his supervision;
 - (b) shall not reveal, either during the subsistence of his appointment or subsequently, any manufacturing or commercial secrets or working processes which may come to his knowledge in the course of his duties; and
 - (c) shall treat as absolutely confidential the source of any complaint bringing to his notice a defect or breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection has been made in consequence of the receipt of such a complaint.
- (5) Any officer who contravenes any of the provisions of subsection (4) shall be guilty of an offence against this Act and shall be liable to a fine of one hundred dollars or to imprisonment for three months or to both such fine and such imprisonment, and in the case of a second or subsequent offence, to a fine of two hundred dollars or to imprisonment for six months or to both such fine and such imprisonment.

7 Inspections, enquiries, etc.

For the purposes of this Act, the Commissioner or a Health Officer may enter at all times upon any place which he has reasonable cause to believe is a place of employment and into any house accommodation provided by an employer for workers, and put questions, either alone or in the presence of witnesses, concerning the workers to the employer or to any person who may be in charge of the workers or to the workers themselves and the employer or such person, or any such worker, shall be equally bound to answer such questions truthfully to the best of his ability:

Provided that:

- (i) the Commissioner or Health Officer shall not enter or

inspect a private dwelling-house without the consent of the occupier thereof; and

- (ii) on the occasion of a visit or inspection the Commissioner or Health Officer shall notify the employer or his representative of his presence, unless he has reasonable grounds for believing that such notification may be prejudicial to the performance of his duties.

8 Returns by employers, inspection of documents, etc.

- (1) Every employer shall furnish to the Commissioner such return or returns, which shall be accurate and complete in every particular, in such form or forms as shall be prescribed.
- (2) The Commissioner or Health Officer may call for and examine all contracts, registers, books of account and other documents and may call for any information concerning any workers or relating to their employment.
- (3) The Commissioner or Health Officer may take and remove for purpose of analysis, samples of materials and substances used or handled by any worker in the course of his employment, subject to the employer of such worker, or the representative of that employer being notified of any samples or substances taken or removed for such purpose.

9 Power of summons and institution of proceedings

- (1) Whenever the Commissioner has reasonable grounds for suspicion that any offence under this Act has been committed or wishes to enquire into any matter concerning disputes as to wages, alleged wrongful termination of agreement or contract, misconduct, food, medical attendance, death, mining usage and mining complaint, inspection, sanitation or any other matter relating to employer and worker dealt with under the provisions of this Act, the Commissioner may summon any person whom he has reason to believe can give information respecting the subject-matter of the enquiry, and the person so summoned shall be bound to attend at the time and place specified in the summons and to answer all questions which the Commissioner may put to him.

- (2) If the Commissioner is of opinion that an offence has been committed or that any complaint is well founded he may institute such proceedings criminal or civil for and in the name of the worker as he shall deem necessary in the circumstances.

10 Offences

Any person who hinders or obstructs any officer acting in the execution of his duty under this Act or who refuses to produce any document or give any information lawfully required of him, or who produces a document or gives information which he knows to be false, or who fails to comply with any lawful summons, order or demand of such officer under this Part is guilty of an offence and upon conviction shall be liable to a fine of one thousand dollars or to imprisonment for six months.

PART III WAGES AND HOURS OF WORK

11 Liability of worker for advances and loans

- (1) Subject to the provisions of section 12 the total amount of all loans and advances of wages made by an employer to a worker, or to a person in consideration of his taking up employment, shall not without the prior approval of the Commissioner exceed an amount equivalent to the wages earned during the previous month or the monthly wage offered.
- (2) No worker shall be held to be liable for that part of any loan or advance made to him by his employer which is in excess of the maximum amount that is authorised under subsection (1).
- (3) No employer shall make any deduction by way of discount, interest or any similar charge on account of any loan or advance of wages made to any worker.

12 Permissible deductions from wages

- (1) Except with the prior written permission of the Commissioner the maximum amount which may be deducted from the wages of a worker shall not exceed one-third of the total wages due for any pay period in respect of all or any of the following:

- (a) any sums loaned or advanced by the employer to the worker in anticipation of the regular period of payment of his wages;
- (b) the actual cost of any materials, tools or implements supplied by the employer to the worker at the latter's request to be used by him in his occupation;
- (c) the actual cost approved in writing by the Commissioner of any loss or injury to materials or other property of the employer caused by the wilful misconduct or negligence of the worker;
- (d) any other sum declared by notice to be deductible;

Provided that the maximum amount specified above may be exceeded by any attachment or assignment of wages ordered by a court.

- (2) Notwithstanding anything to the contrary in this Act contained, an employer may:
 - (a) with the consent of a worker make deductions from the wages of that worker and pay to the appropriate authority, person or account any amounts or subscriptions which the worker has agreed to contribute to any provident or pension fund, life or endowment insurance policy, or other scheme approved by the Commissioner; or
 - (b) make deductions from the wages of a worker and pay to the appropriate authority, person or account in respect of rates or taxes for which the worker is liable as notified to the employer; or
 - (c) make deductions from the wages of a worker of any amount which forms, or is a part of, any collective agreement or an award within the meaning of the *Trade Disputes Act* provided that the employee gives his written consent to the employer.

13 Days and hours of work

- (1) Subject to any lower maximum number of hours of employment applicable to him by virtue of any regulation, rules, contract or agreement negotiated on his behalf:

- (a) the normal weekly hours of any worker shall not exceed forty-five hours;
 - (b) the normal daily hours of work of any worker in an industrial or agricultural undertaking shall not exceed nine hours;
 - (c) a worker whose hours of work exceed six hours daily shall be given a break of at least thirty minutes arranged so that the worker does not work continuously for more than five hours;
 - (d) hours of work and breaks from work shall be so arranged as not to require the worker's presence at the place of work for more than twelve hours daily;
 - (e) a worker shall be given a weekly rest of at least twenty-four continuous hours, which shall, where practicable, include Sundays or other customary rest days; and
 - (f) no worker shall be required to work on a gazetted public holiday or on more than six days in one week, unless such worker is employed in a service to which the *Essential Services Act* applies or in an occupation in which work on public holidays or customary rest days is expressly provided for in his contract of service.
- (2) The above limits on hours of work may be exceeded in those processes which by reason of their nature are required to be carried on continuously by a succession of shifts, subject to the condition that the average working hours shall not exceed nine daily and forty-five weekly over a period of three weeks;
- (3) Workers engaged on shift work shall be given at least twenty-four continuous hours of rest weekly notwithstanding that the incidence of shift rotas may be such that this rest period does not coincide with the normal or customary weekly rest days.
- (4) In order to ensure continuity of operations an employer may require workers engaged on shift work to remain on duty until relieved by the succeeding shift or until permitted to leave by the supervisor responsible:

Provided that such workers shall be paid at overtime rates for any

additional hours so worked.

- (5) The limit on hours of work specified in this section may be exceeded subject to the total hours worked (including hours of overtime) not, without the approval of the Commissioner, exceeding fifty-seven hours in any work weekly or two hundred and twenty-eight hours in any calendar month.
- (6) The onus of showing the necessity to extend hours of work beyond those provided for in subsections (2) and (5) shall lie on the employer in any particular case and shall be subject to approval by the Commissioner.
- (7) Employers shall notify workers, by posting notices in conspicuous places in the work premises or other appropriate places or by such other method as may be approved, of the hours at which work begins and ends, including shift work, the rest intervals during the period of work which are not reckoned as part of the working hours, and the weekly rest period to be accorded to workers.
- (8) The Minister may by Order suspend the provisions of this section at any time when Solomon Islands is at war or when a declaration has been made under section 16 of the *Constitution* that a state of public emergency exists.

14 Overtime

- (1) An employer shall have the right to call upon his workers to undertake a reasonable amount of work in excess of the normal working hours to the extent specified in sub-sections (2), (4) and (5) of section 13.
- (2) Workers other than those covered by subsection (3) undertaking such overtime work at the request of, and by prior agreement with their employer, shall be paid for such extra work at the following rates:
 - (a) for time worked in excess of the normal daily working hours established in the undertaking - at a rate of not less than one and a half times the regular hourly rate of pay;
 - (b) on Saturdays and Sundays or other agreed rest days substituted therefor - at a rate of not less than one and a half

times the hourly rate of pay;

- (c) on gazetted public holidays - at a rate of not less than twice the regular hourly rate of pay.
- (3) An employer and a worker may agree to the assignment of a task to be performed by the worker as being the equivalent of work for a day of nine hours and the performance of such task shall for the purposes of this Act, be equivalent to working for a day.
- (4) Nothing in this Part contained shall prevent any employer from agreeing with any worker in his employment that the wages of such worker shall be paid at an agreed rate in accordance with the amount of work done and not by the month or by the day.

15 Records to be kept by employers

- (1) Every employer shall keep records concerning his workers containing sufficient information to form a full record of the workers and of the terms and conditions of their employment and shall keep a register or check roll, showing the names of the workers, place of recruitment, nature of employment, rate of wages, amount and value of rations (if any), amount earned, advances, deductions, net amount due, amount paid and any bonus due whether paid monthly or at the end of the contract.
- (2) Every worker in respect of whom a record, register or check roll is kept under the preceding subsection shall be entitled at all reasonable times to refer to such portions thereof as relate to him.
- (3) In this section “**workers**” includes domestic servants.

16 Payment of wages

- (1) Where the wages of a worker are payable monthly they shall be paid not later than seven days after the expiration of the period in respect of which they are due.
- (2) All wages due to a worker whose contract is terminated by expiry of the period for which it was made shall be paid to him on the day on which such agreement or contract terminates.

- (3) All wages due to a worker whose contract is terminated by his employer shall be paid to him on the day on which such contract is terminated, or, if this is not possible, on the first day, not being a rest day or public holiday, after the day on which such agreement or contract is terminated.
- (4) All wages due to a worker who terminates his contract with his employer after he has given due notice to such employer as required under section 3 shall be paid to him on the day on which such agreement or contract is terminated.
- (5) If a worker terminates his contract without giving notice to his employer as required by the terms of any contract or if the required notice having been given the worker terminates his contract without waiting for the expiry of such notice, all wages due shall be paid to him before the expiry of the tenth day after the day on which he terminates his contract:

Provided that the employer may, subject to any order made by a court or the Commissioner to the contrary, deduct from the wages due to the worker such sum as the worker is liable to pay in lieu of notice according to the terms of his contract, if any.

17 Joinder in cases of non-payment of wages

- (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, on a complaint or suit against an employer in respect of wages due to more than one of his workers, the court may permit one complaint or one plaint to be made or filed by the Commissioner or by one of such workers on behalf of all such workers and their claims to be proved by the Commissioner or by such worker accordingly:

Provided that the complaint or plaint shall have annexed thereto a schedule setting forth the names of such workers, their addresses and descriptions and the details of wages due to each such worker.

- (2) All such claims shall rank equally between themselves, and shall be paid in full, unless the amount recovered from the employer is less than the total amount of the claims with costs, in which case, after payment of the costs, all such claims shall abate in equal proportions among themselves and be paid accordingly; costs given against the

workers shall be paid by such workers or by any of them in such proportions as the court may direct.

- (3) The provisions of section 193 of the *Criminal Procedure Code Act* shall not apply to any criminal proceedings instituted under this Act for the non-payment of wages to any worker.

18 Payment in stores, taverns, etc., prohibited

No wages shall be paid to any worker:

- (a) at or within any shop or store;
- (b) at any place or premises where intoxicating liquors are sold; or
- (c) at any place of amusement:

Provided that this section shall not apply to any worker who is normally employed in any such store, shop, place or premises.

19 Wages to be paid in legal tender

- (1) Except where otherwise expressly prescribed the entire amount of the wages earned by, or payable to, any worker in respect of any work done by him shall be actually paid directly to him in legal tender and every payment of, or on account of, any such wages made in any other form shall be illegal, null and void.
- (2) Nothing contained in this section or in section 20, shall be construed to prevent or to render invalid any contract for the payment to the credit of any bank account in the name of the worker, any payment in pursuance of such contract or any actual payment by cheque made payable to, or to the order of, any worker of the whole or any part of his wages unless the employee has, by notice in writing to his employer, requested him not to make the payment in that manner.

20 Contracts to pay wages otherwise than in legal tender, illegal

In all contracts for the employment of any worker or for the performance by any worker of any work, the wages of such worker, subject to subsection (2) of section 19, shall be made payable in legal tender and not otherwise and if in any contract provision is made for the whole or any part of such wages to be made payable in any other

manner, such provision shall be null and void.

21 Stipulation as to place and manner of spending wages illegal

No employer shall provide in any contract for the employment of any worker any terms as to the place at which, or the manner in which, or the person with whom, any wages paid to the worker are to be expended and any such provision in a contract between an employer and a worker shall be illegal, null and void.

22 Worker's right to recover

Every worker shall be entitled to sue for and recover by legal process so much of his wages exclusive of sums lawfully deducted in accordance with the provisions of this Act as shall not have been paid to him in accordance with section 19.

23 Interests on advances forbidden

No employer shall make any deduction by way of discount, interest or any similar charge on account of any advance of wages made to any worker.

24 Deductions for fines, etc.

- (1) Except where otherwise expressly permitted by the provisions of this Act no employer shall make any deduction or make any agreement or contract with a worker for any deduction from wages to be paid by the employer to the worker or for any payment to the employer by the worker for or in respect of any fine, or of bad or negligent work or of injury to the materials or other property of the employer:

Provided that, with the prior approval in writing of the Commissioner, a deduction may be made in respect of any loss or injury to materials or other property of the employer occasioned by the wilful misconduct or negligence of the worker.

- (2) No worker shall be required to make a direct or indirect payment for the purpose of obtaining or retaining employment and no deduction may be made from the wages of a worker for this purpose by an employer or his representative or a recruiter.

25 Remuneration other than wages

- (1) No contract with any worker containing a provision that he shall receive food, or a dwelling place in addition to a monetary wage as remuneration for his services shall be illegal by reason only of such a provision, but the value of any food or dwelling place so provided shall be expressed in monetary terms in any such contract.
- (2) No employer shall give, or agree to give, any intoxicating liquor or any noxious drug to any worker by way of remuneration.

26 Employer's shop

- (1) Nothing in this Part shall prevent an employer from establishing a shop for the sale of food and domestic goods to his workers at prices which are in the opinion of the Commissioner fair and reasonable and which are marked or exhibited in such manner as the Commissioner may require but such employer shall not compel any worker to purchase food and domestic goods at such shop.
- (2) No employer shall trade with any worker or establish or keep a shop on any place of employment otherwise than in accordance with the preceding subsection.
- (3) No person employed on any place of employment as an assistant or overseer shall traffic on his own account with any worker employed under or together with him nor shall such person be either directly or indirectly financially concerned in the management of any shop wheresoever it be situated which is used or maintained for the purpose of supplying commodities of any kind whatsoever to those employed under or together with such person.

27 Exemption of employer if not actual offender

- (1) When an employer is charged with an offence under this Part he shall be entitled, upon information duly laid by him and on giving to the Commissioner not less than three days notice in writing of his intention, to have any other person whether or not employed by him whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved the employer proves to the satisfaction of the court:

- (a) that he has used due diligence to enforce the provisions of this Part and of any relevant order made thereunder; and
- (b) that the said other person had committed the offence in question without his consent or wilful default,

that other person shall be summarily convicted of the offence and the employer shall not be guilty of the offence and the person so convicted shall in the discretion of the court be also liable to pay any costs incidental to the proceedings.

- (2) Where an employer seeks to avail himself of the provisions of the preceding subsection, the prosecution, as well as the person whom the employer charges with the offence, shall have the right to cross-examine him, if he gives evidence, and any witnesses called by him in support of his pleas, and to call rebutting evidence.
- (3) When it appears to the Commissioner at the time of discovering an offence that the employer has used due diligence to comply with the provisions of this Part and that the person who committed the offence did so without the knowledge, consent or connivance of the employer, then the Commissioner may proceed against that person in the first instance without first proceeding against the employer; in any such proceedings the said person who committed the offence may be charged with, and on proof that the contravention was due to his act or default be convicted of, the offence with which the employer may have been charged.

28 Penalties

Any employer who:

- (a) fails to pay wages in accordance with the provisions of this Part; or
- (b) gives any remuneration for services contrary to the provisions of this Part, or makes any deductions from the wages of any worker or receives any payment from any worker contrary to the provisions of this Part; or
- (c) trades with his workers or keeps a shop otherwise than in accordance with the provisions of this Part; or

- (d) contravenes or fails to comply with any order of the Commissioner made under this Part;

and any person employed on a place of employment who contravenes the provisions of subsection (3) of section 26 shall be guilty of an offence and shall be liable, on conviction, to a fine of one thousand dollars or in default of payment thereof to imprisonment for six months.

PART IV MINIMUM WAGE

29 Interpretation

In this Part, unless the context otherwise requires, the term “**minimum wage**” means the minimum rate of wages fixed as in this Part provided in respect of the particular occupation followed by the person concerned and applicable to that person.

30 Fixing of minimum wage

- (1) The Minister may by order fix minimum rates of wages for workers in any occupation or in any class or grade of any occupation in Solomon Islands, either generally or in any specified area or province, in any case in which he is satisfied that the minimum rate of wages being paid to any persons employed in any such occupation is unreasonably low.
- (2) Before making any order under this section fixing a minimum rate of wage for any workers the Minister shall consult with the representatives of the employers and workers concerned.

31 Penalty for not paying wages in accordance with minimum rate

- (1) Where any minimum rate of wages has been fixed under this Part, an employer shall in cases to which the minimum rate is applicable pay wages to the person employed at not less than the minimum rate, and if he fails to do so shall be liable on conviction in respect of each offence to a fine of five hundred dollars, and to a fine of twenty dollars for each day on which the offence is continued after conviction therefor.
- (2) On conviction of an employer under this section for failing to pay

wages at not less than the minimum rate to a person employed, the court may by the conviction adjudge the employer convicted to pay in addition to any fine such sum as appears to the court to be due to the person employed on account of wages, the wages being calculated on the basis of the minimum rate, but the power to order the payment of wages under this provision shall not be in derogation of any right of the person employed to claim recovery of wages due to him by civil proceedings.

32 Miscellaneous provisions with regard to legal proceedings

- (1) Where an employer has been convicted for failing to pay wages at not less than the minimum rate to any person employed by him, and notice of intention so to do has been served with the summons, evidence may be given of any failure on the part of the employer to pay wages at not less than the minimum rate to such person at any time during the two years immediately preceding the date on which the complaint was made, and on proof of the failure the court may order the employer to pay to such person such sum as in the opinion of the court represents the difference between the amount which having regard to the provisions of this Part ought properly to have been paid by way of wages during those years and the amount actually so paid.
- (2) Where it appears to the Commissioner that any sum is due by an employer to any person by reason of the fact that wages have been paid to him at less than the minimum wage applicable, and that it is not possible to recover the sum so appearing to be due or some part of that sum by means of proceedings under this section, the Commissioner may, if it appears expedient so to do by reason of the refusal or neglect of such person to take the necessary proceedings, on behalf of and in the name of such person institute civil proceedings before any court of competent jurisdiction for the recovery of the said sum.

33 Offence by agent

Where an employer who is charged with an offence against this Part proves to the satisfaction of the court that he has used due diligence to enforce the execution of this Part and that the offence was in fact committed by his agent or some other person without his knowledge, consent or connivance, he shall in the event of the conviction of that

agent or other person for the offence be discharged in respect of the offence, without prejudice however to the power of the court under this Part to adjudge him to pay any sum which appears to the court to be due to the person employed on account of wages.

34 Employers not to receive premium where minimum rates in force

- (1) Where a person employed in any occupation being a person to whom a minimum wage 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:

Provided that nothing in the foregoing provisions shall apply to any such payment duly made in pursuance of any instrument of apprenticeship executed within three months of the commencement of the employment.

- (2) If an employer acts in contravention of the provisions of this section he shall be liable on conviction in respect of each offence to a fine of forty dollars, and the court may upon conviction in addition to imposing a fine adjudge him to repay to the person by whom the payment was made the sum improperly received by way of premium.

35 Prevention of evasion

Any shopkeeper, dealer or trader who by way of trade makes any arrangement, express or implied, with any person in pursuance of which the person performs any work for which a minimum wage has been fixed, shall be deemed for the purpose of this Part to be the employer of such person, and the net remuneration obtainable by such person in respect of the work, after allowing for his necessary expenditure in connection with the work, shall be deemed to be wages.

36 Exemption

- (1) The Commissioner may issue permits of exemption to infirm or disabled persons authorising the employment of such persons at less than the minimum wage fixed in respect of the occupation in which such persons are employed, and such permits may specify the conditions under which such persons may be so employed and the

wage conditions specified in such permit shall, for the purposes of this Part, be deemed to be the minimum wage.

- (2) Any minimum rate of wages may, with the written permit of the Commissioner, be subject to abatement by collective agreement; and thereupon during the continuance of such collective agreement the wage and conditions specified in such permit shall be deemed to be the minimum wage fixed in respect of the employed persons who are a party to such collective agreement.
- (3) Save as in this section provided, any agreement for the payment of wages at less than the minimum fixed under this Part shall be void.

PART V WRITTEN CONTRACTS OF EMPLOYMENT

37 Work permit requirements for non-indigenous workers and penalties

- (1) No person shall employ an immigrant or non-indigenous worker unless such worker has obtained from the Commissioner a work permit and the employment relates to the conditions of such work permit.
- (2) No immigrant or non-indigenous worker whether employed or self-employed shall work in Solomon Islands without a work permit from the Commissioner which shall specify the work which such immigrant or non-indigenous worker may undertake.
- (3) Any immigrant or non-indigenous worker who wishes to work in Solomon Islands shall, in addition to the provisions of section 8 of the *Immigration Act*, make application in the prescribed form to the Commissioner for a work permit provided that such application may be made on behalf of an immigrant or non-indigenous worker by any prospective employer.
- (4) Any application for a work permit to, or any work permit obtained from, the Commissioner shall be in such form and subject to such conditions and requirements (including the payment of fees) as may be prescribed.
- (5) Any person who employs an immigrant or non-indigenous worker in breach of subsection (1) shall be guilty of an offence and liable to a

fine of one thousand dollars.

- (6) Any immigrant or non-indigenous worker who works in Solomon Islands either without a work permit or in breach of the conditions of any subsisting work permit shall be guilty of an offence and liable to a fine of five hundred dollars.
- (7) Nothing in this section shall require persons otherwise entitled to enter Solomon Islands without a work permit in accordance with section 7(1)(e) of the *Immigration Act* to obtain a work permit.
- (8) Any person aggrieved by the decision of the Commissioner to refuse the issue of a work permit as required by this section may appeal against such decision in writing to the Minister within fourteen days of the notification of a refusal and the Minister may hear and determine the appeal either by confirming the decision or varying it or over-ruling it as he shall in his absolute discretion think fit and shall notify the person aggrieved within twenty-eight days of receipt of the appeal.

PART VI EMPLOYMENT OF WOMEN

38 Interpretation

For the purposes of this Part:

“night” means the interval between seven o’clock in the evening and six o’clock the next morning;

“woman” includes all persons of the female sex.

39 Prohibition of employment of women at night

Women shall not be employed during the night in any undertaking, except where the night work:

- (a) has to do with raw materials or materials in course of treatment which are subject to rapid deterioration; or
- (b) is necessitated by an emergency which it was impossible to foresee and which is not of a recurring character; or
- (c) is that of a responsible position of management held by a

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woman who is not ordinarily engaged in manual work; or

- (d) is that of nursing and of caring for the sick, or other health or welfare work; or
- (e) is carried on in a cinematograph or other theatre while such theatre is open to the public; or
- (f) is carried on in connection with a hotel or guest house, or with a bar, restaurant or club; or
- (g) is carried on by a registered pharmacist; or
- (h) is not prohibited by an international convention applying to Solomon Islands and is specifically declared by the Minister by order to be work upon which women may so be employed.

40 Restriction on employment of women in mines

- (1) Women shall not be employed in underground work in any mine:

Provided that this subsection shall not apply:

- (a) to women holding positions of management who do not perform manual work; or
 - (b) to women employed in health or welfare services.
- (2) In this section the expression “*mine*” shall include any undertaking, whether public or private, for the extraction of any substance from under the surface of the earth.

41 Suspension of prohibition

The Minister may by order from time to time suspend the prohibition of the employment of women during the night when in case of serious emergency the public interest so demands.

42 Maternity leave

- (1) Notwithstanding any agreement to the contrary, express or implied, a female worker other than a casual worker shall, on production of a medical certificate stating the anticipated date of her confinement,

be entitled to up to twelve weeks' maternity leave from her employer including a period of at least six weeks' compulsory leave after her confinement during which it shall be an offence for her employer or any other employer to give her employment, and acceptance by a female worker of such employment from any other employer shall be deemed to be a breach of her previous contract. The remainder of the period of maternity leave shall not be compulsory but may be provided before the presumed date of confinement or following expiration of the compulsory leave period of partly before the presumed date of confinement and partly following the expiration of the compulsory leave period if certified to be necessary by a medical practitioner.

- (2) The leave before the anticipated date of confinement shall be extended by any period elapsing between the anticipated date of confinement and the actual period of compulsory leave to be taken after confinement shall not be reduced on that account.
- (3) In case of illness arising out of pregnancy the leave entitlement before confinement shall be of such duration as is certified to be necessary by a medical practitioner: in case of illness arising out of confinement, any extension of leave in addition to the period of compulsory leave, shall be of such duration as is certified to be necessary by a medical practitioner:

Provided that any additional leave certified as necessary which exceeds the twelve weeks of maternity leave may be deducted from the annual leave or sick leave entitlement of the worker. During the period of maternity leave the employee shall be entitled, for a maximum period of twelve weeks, to be paid not less than twenty-five per centum of the wages she would have earned had she not been absent from work and for any period of additional annual or sick leave at the full rate to which she is entitled during such leave.

- (4) A female worker shall, whilst absent from work on maternity leave in accordance with the provisions of this section, be entitled to such medical benefits, including pre-natal, confinement and post-natal care and hospitalisation where necessary, as may be provided by government or private medical services, and her freedom of choice of doctors and between a public and private hospital shall be respected by the employer.

- (5) An employer shall allow a female worker who is nursing a child to leave her work for this purpose for up to an hour twice a day during her working hours. Such interruptions of work shall be counted as working time and shall be remunerated accordingly.

43 Restriction on dismissal of female worker

- (1) During the period that a female worker is absent from work on maternity leave taken in accordance with the provisions of section 42 it shall not be lawful for her employer to give her notice of dismissal, or to give her notice of dismissal at such a time that the notice would expire during her absence or to give her notice of dismissal until such absence has exceeded the normal period of maternity leave and any additional leave which may have been certified to be necessary by a medical practitioner.
- (2) If a female worker who has received the wages due to her during the period of maternity leave or additional leave approved by her employer, should fail without reasonable cause to return to work for her employer she shall be regarded as having abandoned her employment without due notice and shall be required to pay to her employer an amount equivalent to the wages payable during the period of notice specified by section 3 or equivalent to the wages payable during the period of notice for which express or implied provision is made in her contract or service, whichever is the greater.

44 Penalty

Any person who acts in contravention of, or fails to comply with, any of the provisions of this Part commits an offence and upon conviction shall be liable to a fine of five hundred dollars.

PART VII EMPLOYMENT OF CHILDREN AND OTHER YOUNG PERSONS

45 Interpretation

- (1) For the purposes of this Part:

“night” means the interval between six o’clock in the evening and six o’clock the next morning; and

“ship” means any vessel or boat whatsoever (other than a ship of war) engaged in maritime navigation, whether privately or publicly owned.

- (2) The Minister for the purposes of this Part may by notice in the *Gazette* exclude from the definition of **“industrial undertaking”**:
- (a) processes conducted for the preservation and despatch of the agricultural products of any particular undertaking or class of undertaking; and
 - (b) undertaking in respect of which, from their nature and size, adequate supervision may be impracticable.

46 Employment of children under 12

No child under the age of twelve years shall be employed in any capacity whatsoever:

Provided that the provisions of this section shall not apply to any such child employed by and in company with his parents (or one of them) or his guardian on light work of an agricultural, domestic or other character which has been approved by the Commissioner.

47 Employment of persons under 15

A person under the age of fifteen shall not be employed or work:

- (a) in any industrial undertaking, or in any branch thereof, except in employment approved by the Minister; or
- (b) on any ship:

Provided that nothing contained in this section shall apply to or prevent the employment of a person under the age of fifteen years upon work in a school-ship or a training-ship or a technical school or college when such work is approved and supervised by a public authority.

48 Employment of persons under 16

A person under the age of sixteen shall not be employed underground in any mine.

49 Employment of persons under 18

A person under the age of eighteen shall not be employed or work:

- (a) underground in any mine unless, being a male person, he has attained the age of sixteen and produces a medical certificate of a medical practitioner or a person approved for that purpose by the Health Officer attesting his fitness for such work;
- (b) on any ship as a trimmer or stoker except on a ship mainly propelled by means other than steam:

Provided that a male person between the ages of sixteen and eighteen may be employed as a trimmer or stoker on a ship exclusively engaged in the coastal trade if he is certified by a medical practitioner to be physically fit for such work;

- (c) on any kind of work on a ship unless certified by a medical practitioner to be fit for such work:

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

- (d) during the night in any industrial undertaking:

Provided that a male person over the age of sixteen may be so employed with the permission in writing of the Commissioner.

50 Register of young persons

Every employer in an industrial undertaking and every master of a ship shall keep a register of all persons under the age of eighteen years employed in such undertaking or on such ship, and shall enter therein the names of such employed young persons, the dates of their birth and the dates when their employment begins and ceases.

Such register shall at all reasonable times be open to inspection by the Commissioner or other officer authorised by him.

51 Presumption of age

- (1) If in the case of proceedings in respect of an offence under the provisions of this Part it is alleged by the person conducting the prosecution that the person in respect of whom the offence was committed was under the age of eighteen, sixteen, fifteen or twelve, as the case may be, at the date of the commission of the alleged offence the magistrate shall, after such inquiry as he may think necessary and after hearing any evidence that may be tendered by either party to the proceedings, determine the age of the said person and such determination shall be final.
- (2) It shall be a sufficient defence to any charge against an employer or master of a ship for contravening or failing to comply with any provision of this Part if it shall be made to appear to the court before which the charge is brought that the person so charged had reasonable cause to believe that the child or other young person employed was of an age at which the child or other young person could be employed without contravening this Part.

52 Penalty

Any person who acts in contravention of, or fails to comply with, any of the provisions of this Part, is guilty of an offence and upon conviction shall be liable to a fine of five hundred dollars.

PART VIII APPRENTICES

53 Interpretation

In this Part:

“guardian” includes any person lawfully having charge of a person under the age of sixteen.

54 Contracts of apprenticeship of persons over 14 and under 16

The parent or guardian of a person above the age of fourteen years and under the age of sixteen years may, with the consent of such

person, apprentice him to an employer to train him or have him trained systematically for a trade or employment in which art or skill is required, for any term not exceeding five years.

55 The Commissioner may appoint person to execute contract of apprenticeship

Whenever any person above the age of fourteen years and under the age of sixteen years is without known parents or guardian, the Commissioner may, with the consent of such person, appoint some fit and proper person to execute a contract of apprenticeship on his behalf.

56 Contracts of apprenticeship of persons over 16

Any person of the age of sixteen years or upwards, not being under any contract of apprenticeship may apprentice himself for any term not exceeding five years to any trade or employment in which art or skill is required.

57 Assignment of contract of apprenticeship

A contract of apprenticeship may, with the consent of the parties endorsed thereon and with the permission of the Commissioner, be assigned.

58 Attestation of contract of apprenticeship

A contract of apprenticeship shall not be valid unless it is in writing and is approved and attested by the Commissioner.

59 Duties of Commissioner on attesting contracts of apprenticeship

Before attesting any contract of apprenticeship the Commissioner shall satisfy himself:

- (a) that the apprentice has freely consented to the contract;
- (b) that the apprentice has been medically examined and certified by a medical practitioner to be physically and mentally fit to be employed and trained in the trade or employment specified in the contract;

- (c) that both parties to the contract have fully understood the terms of the contract;
- (d) that provision has been made in the contract as to how the apprentice's remuneration is to be determined, and as to the scale of increments, if any;
- (e) that provision has been made for payment of such remuneration during illness and holidays, if any;
- (f) that in any case where the apprentice is unable to return to his home at the conclusion of each day, the contract contains adequate provision to ensure that the apprentice is supplied with food, clothing, accommodation and medical attention; and
- (g) that the terms of the contract are in accordance with the provisions of this Act.

60 Retention of apprentices after expiry of contract

If any person retains an apprentice in his service after the stipulated period of service has expired without making any agreement for the payment of wages, the apprentice shall be entitled to recover from such person wages at the current rate payable for service similar to that performed by such apprentice.

61 Powers of Commissioner

The provisions of this Act relating to the powers of the Commissioner in connection with the termination and cancellation of contracts shall apply to contracts of apprenticeship.

62 Exemption of employer from provisions of this Part

The Commissioner may by writing under his hand exempt from the provisions of this Part contracts of apprenticeship made or to be made by any employer who satisfies him that the terms and conditions of such contracts are not less favourable to the apprentice than those provided for by this Part.

63 Cancellation of exemption

An exemption made under the provisions of the preceding section

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may at any time be revoked by the Commissioner.

PART IX CARE OF WORKERS

64 Interpretation

In this Part the expression “*dependant*” means any person dependent upon the worker who is living with him at the place of employment in pursuance of an agreement between the parties to the contract of employment.

65 Rations

An employer shall, if required by the Commissioner, or may by agreement with the worker, provide a worker with rations on the prescribed scale:

Provided that where rations are provided by the employer, the Commissioner shall, notwithstanding the provisions of sections 19, 20 and 21, prescribe the cash equivalent of the rations which may be deducted from the wages.

66 Protection of workers from malaria

Every employer shall take such measures as the Commissioner or a Health Officer may require for the protection of workers and their dependants from malaria.

67 Workers to be supplied with water

Where no public water supply is readily available to his workers, every employer shall, at his own expense, provide for the use of such workers and their dependants living with them on the employer's property, an adequate and easily accessible supply of wholesome water for drinking, washing and other domestic purposes to the satisfaction of the Commissioner or Health Officer, and shall take all such measures as are necessary and practicable and as the Commissioner or Health Officer may reasonably require to maintain such supply and to protect it from pollution:

Provided that:

- (a) this section shall apply only in relation to workers and dependants who are living on the employer's property with the consent of the employer; and
- (b) nothing in this section shall be construed as preventing an employer from levying a charge upon his workers in respect of water used by them or their dependants, at such rate as may be approved from time to time by the Minister of Finance.

68 Sanitary arrangements

Every employer shall make or cause to be made sufficient and proper sanitary arrangements for workers and their dependants.

69 Provision of housing

Where an employer's undertaking is so located that a worker cannot reasonably be expected to return to his home at the conclusion of his daily work, the employer shall cause such worker, together with his wife and children, to be adequately and properly housed in or near the undertaking, or pay to such worker a housing allowance:

Provided that:

- (a) nothing in this section shall be deemed to confer upon the worker a right to free housing for himself and his family; and
- (b) in the event of an employer charging rent for housing supplied to the worker under this section, such rent shall not exceed such rate as may from time to time be approved by the Commissioner

70 Medical care and treatment

- (1) At every place of employment the employer shall provide for all workers such medical attention and treatment with medicines of good quality, first-aid equipment and appliances for the transportation of sick or injured workers as may be required by the Commissioner or a Health Officer.
- (2) Every employer shall take, or cause to be taken, for treatment with as little delay as possible every worker injured or falling ill during the

course of his employment and every resident worker and resident dependant on a place of employment requiring medical attention at a hospital or dispensary to the hospital or dispensary maintained for the workers at such place of employment, or, if there is no such hospital or dispensary, to the nearest hospital or dispensary maintained by the Government or approved by the Commissioner or a Health Officer and shall also provide any transport necessary therefor.

- (3) The cost of maintenance and treatment in hospital of a worker and his dependants residing on the place of employment shall be borne or paid by the employer as long as the worker remains in his employment:

Provided that if the employer continues to pay the worker wages or part wages amounting to not less than half his usual wages he may recover by deduction from the wages of such worker the cost of his maintenance in hospital, at such rate as may be prescribed.

- (4) Where such worker or dependant has been admitted to a Government hospital the cost of his maintenance and treatment at such rate as may from time to time be prescribed and in the event of the death of such worker or dependant in such hospital any reasonable burial expenses incurred shall be recoverable from the employer at the suit of the medical officer in charge.

71 Hospital maintained by employers

- (1) Any employer may be required in writing by the Commissioner or a Health Officer, having regard to the situation of any place of employment and the number of workers employed and resident thereon, at his own expense to provide and maintain:
- (a) a room properly equipped as a sickroom with accommodation for not less than ten per cent of his workers; or
 - (b) a separate building properly equipped as a plantation hospital with accommodation for not less than ten per cent of his workers; and
 - (c) the services of a medical practitioner or such other person as may be approved by a Health Officer.

- (2) Every employer who is required by the provisions of subsection (1) to maintain a sickroom or plantation hospital shall keep a register of all patients admitted thereto. The register shall be produced for inspection on demand of the Commissioner or a Health Officer.

72 Directions in regard to housing and sanitation

Every employer shall observe all reasonable directions given to him by the Commissioner or a Health Officer in regard to the housing of workers and the sanitation of the buildings and provision of medical facilities and attendance.

73 Reporting of deaths

An employer shall forthwith report the death of a person in his employment to the Commissioner and such report shall whenever possible be accompanied by a medical certificate stating the cause of death.

74 Penalty

Any person who contravenes or fails to comply with any provisions of this Part of this Act is guilty of an offence and shall be liable upon conviction to a fine of one thousand dollars or to imprisonment for six months or to both such fine and imprisonment.

PART X GENERAL

75 Criminal proceedings

The Commissioner may institute and conduct the prosecution in any proceedings for an offence against the provisions of this Act.

76 Civil proceedings

In any civil proceedings between an employer and a worker in his employment the Commissioner may appear on behalf of the worker.

77 Court fees

No fees of court shall be charged in any proceedings whether civil or criminal arising out of the provisions of this Act.

78 Application to the Crown

This Act shall bind the Crown save and except that nothing in this Act contained shall apply or be construed to apply to or in relation to the following persons:

- (a) persons in the naval, military or air services of the Crown (other than locally engaged civilian employees); and
- (b) members of the Solomon Islands Police Force.

79 Power to exempt persons from the provisions of this Act

The Minister may by order exempt any person or class or group of persons from all or any of the provisions of this Act or of any rule or order made thereunder.

PART XI RULES

80 The Minister may make rules

- (1) The Minister may make rules generally for the better carrying out of the provisions of this Act and, without derogation from the generality of the foregoing, for all or any of the following purposes:
 - (a) the appointment and regulation of advisory boards to advise on labour matters generally, and in particular to advise on fair minimum rates of wages and size of tasks;
 - (b) prescribing registers of wage payments to be kept by employers, requiring the issue to workers of statements of wage payments, prescribing the intervals at which wage payments shall be made and generally to ensure the proper payment of all wages earned;
 - (c) prescribing the maximum size of tasks;
 - (d) the establishment of a fund or other method to make provision for securing the expenses of recruitment, transport or repatriation of workers upon such terms and conditions and subject to such control as he deems necessary, and for the administration of such a fund;

- (e) prescribing conditions under which women may be employed during the night in cases where such employment is permitted by this Act and providing for the health and safety of women employed;
- (f) restricting or prohibiting the employment of women in any specified class of undertaking;
- (g) providing generally for the protection of employed children and other employed young persons under the age of eighteen;
- (h) in the case of unhealthy, dangerous or onerous work, prescribing higher minimum ages than those specified in sections 46 and 47;
- (i) prescribing the form of contracts of apprenticeship and the terms and conditions upon which such contracts may be lawfully entered into, and the rights and obligations of apprentices and their masters;
- (j) the registration of contracts of apprenticeship;
- (k) the number of apprentices who may be apprenticed during a specified period in any specified trade or employment;
- (l) forbidding the taking of apprentices by persons not possessing specified qualifications;
- (m) the provision, by such means as he may deem expedient, of adequate supervision over the employment and training of apprentices;
- (n) the holding of examinations of apprentices and the issue of certificates based on the results thereof;
- (o) prescribing scales for rations where such are provided by the employer under the provisions of section 65;
- (p) prescribing minimum standards of housing, furniture, sanitation and water supply for workers;
- (q) prescribing scales of medicines and sick room and hospital equipment;

- (r) prescribing records to be kept by employers and forms to be used for the purposes of this Act and the rules made thereunder;
 - (s) making provision for persons employed in undertakings generally, or in a particular undertaking, to be entitled to holidays with or without pay and, in such circumstances as may be specified therein, making provision for the payment of passages to enable workers to return from their place of employment to their home island during such holidays or at the termination of their employment;
 - (t) prescribing the circumstances and conditions under which leave with or without pay and other benefits may be granted to workers in the event of casual sickness, or long term sickness certified by a medical practitioner in circumstances not covered by the *Workmen's Compensation Act*;
 - (u) applying all or any of the provisions of this Act to all seamen, domestic servants and to all or to either such categories of persons, and providing generally for the engagement, repatriation and working conditions of seamen and domestic servants;
 - (v) prescribing any fee, rate, matter or thing which is required, or appears to be expedient, to be prescribed under or in connection with this Act and to provide for the remission of fees;
 - (w) providing generally for the protection of workers.
- (2) Rules made by the Minister under this Act may provide for the imposition of a penalty for a breach thereof, not exceeding a fine of forty dollars or imprisonment for three months, or to both such fine and imprisonment.

ENDNOTES

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KEY

amd = amended	Pt = Part
Ch = Chapter	rem = remainder
Div = Division	renum = renumbered
exp = expires/expired	rep = repealed
GN = Gazette Notice	Sch = Schedule
hdg = heading	Sdiv = Subdivision
ins = inserted	SIG = Solomon Islands Gazette
lt = long title	st = short title
LN = Legal Notice	sub = substituted
nc = not commenced	

NOTE

This Reprint comprises the Act and amendments as in force on 1 March 1996 and published as Chapter 73 of the Revised Edition of the Laws of Solomon Islands.

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LIST OF LEGISLATION

Labour Act (Cap. 73)

<i>Constituent legislation:</i>	3 of 1960 (Commenced 1 June 1960)
	20 of 1964
	3 of 1970
	8 of 1973
	1 of 1978
	LN 46A of 1978
	LN 88 of 1978
	18 of 1979
	1 of 1981
	3 of 1982
	8 of 1982

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LIST OF AMENDMENTS