

REPRINT

SOLOMON ISLANDS NATIONAL PROVIDENT FUND ACT (CAP. 109)

As in force at: 1 October 2009

STATUS: HISTORICAL

This version is that in force at the date stated above. It does not include amendments made since that date.

For list of amendments see Endnotes

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE SOLOMON ISLANDS NATIONAL PROVIDENT FUND AND FOR MATTERS INCIDENTAL THERETO AND CONNECTED THEREWITH

SOLOMON ISLANDS NATIONAL PROVIDENT FUND ACT (CAP. 109)

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PART I PRELIMINARY

1 Short title

This Act may be cited as the *Solomon Islands National Provident Fund Act*.

2 Interpretation

In this Act, unless the context otherwise requires:

“amount of wages for the month” means:

- (a) in respect of an employee paid monthly or at intervals of longer than a month, the amount of wages due to him in respect of the month;
- (b) in respect of any other employee, the aggregate amount of wages due to him on such pay days as fall within the month:

Provided that in computing the amount of wages any cents payable on each occasion of payment shall be ignored, unless on any such occasion the total amount payable is less than one dollar in which case it shall be deemed to be one dollar;

“auditor” means the Auditor-General or, where another person has been authorised under section 12(1) to audit the accounts of the Fund, that other person;

“Auditor-General” means the person appointed as Auditor-General pursuant to section 108 of the *Constitution*.

“Board” means the Solomon Islands National Provident Fund Board established under section 3(1);

“contribution” means any sum payable to the Fund under this Act;

“date of entitlement” means, in respect of any member of the Fund, the day (whichever shall first occur) on which it is proved to the satisfaction of the Board that such member:

- (a) has attained the age of fifty years; or
- (b) has died; or
- (c) is physically or mentally incapacitated from ever engaging in any further employment; or
- (d) is about to leave or has left Solomon Islands; or
- (e) has been unfairly dismissed or has been made redundant and has not, during the three months period immediately preceding the date on which he applies to withdraw the amount standing to his credit in the Fund, been engaged in employment; or
- (f) has attained the age of forty years and has satisfied the Board that he has retired from employment as an employee,

after the commencement of this Act;

“employee” means any person, not being a person of any of the descriptions specified in the First Schedule nor a person exempted by an order made under section 50(a) who:

- (a) is employed in Solomon Islands under a contract of service or apprenticeship, whether written or oral or whether express or implied; or
- (b) being in Solomon Islands, is under a contract for the performance of manual labour entered into by him either as an individual person or as one of a group of persons; or
- (c) being a resident of Solomon Islands, is employed in the manner specified in either of the two last preceding paragraphs outside Solomon Islands by an employer having a place of business in Solomon Islands; or
- (d) being a resident of Solomon Islands, is employed under a contract of service entered into in Solomon Islands as a master or member of the crew of any vessel, or as captain or member

of the crew of any aircraft, the owners of which have a place of business in Solomon Islands; or

- (e) is declared by the Minister, in his discretion by notice, to be an employee for the purposes of this Act of the Government or Her Majesty's Government in the United Kingdom; or
- (f) is a member of and is employed by a co-operative society registered under the *Co-operative Societies Act*;

“employer” means:

- (a) in respect of any employee as defined in paragraph (a) of the definition of “employee”, the person with whom such employee has entered into a contract of service of apprenticeship; or
- (b) in respect of any employee as defined in paragraph (b) of the definition of “employee”, the person with whom such employee has entered into a contract to perform manual labour; or
- (c) in respect of any employee as defined in paragraph (c) of the definition of “employee”, the Government or the employer having a place of business in Solomon Islands, as the case may be; or
- (d) in respect of any employee as defined in paragraph (d) of the definition of “employee”, the owners of the vessel or aircraft in which the employee as so defined is employed; or
- (e) in respect of any employee as defined in paragraph (e) of the definition of “employee”, the Government or Her Majesty's Government in the United Kingdom, as the case may be; or
- (f) in respect of an employee as defined in paragraph (f) of the definition of “employee”, the co-operative society by which he is employed;

“existing scheme” means any provident or pension fund or scheme to which any person is or has been contributing at or before the date of commencement of this Act;

“financial year” means the twelve months ending the thirtieth June

in any year”;

“Fund” means the Fund established under section 7;

“General Manager” means the General Manager appointed by the Board in accordance with section 5(1);

“marriage” includes customary marriages;

“maximum sum” means the sum declared by the Board under the provisions of section 9;

“member of the Fund” or **“member”** means any person to whose credit any amount is standing in the Fund;

“nominee” means a person nominated by a member of the Fund in accordance with section 32 to receive the whole or part of such member’s credit in the event of the death of such member;

“resident of Solomon Islands” means a person entitled to enter Solomon Islands without a permit under the provisions of the *Immigration Act*;

“voluntary contributor” means a person who enters the Fund under the provisions of section 18;

“wages” means all emoluments which would be due in money to an employee under his contract if no deductions were made therefrom whether in pursuance of any law requiring or permitting the making of any deduction or otherwise and whether such emoluments have been agreed to be paid monthly, weekly, daily, by the piece or otherwise:

Provided that any payments made to an employee for reimbursement of sums necessarily expended by him on behalf of his employer for the purposes of his employment shall be deemed not to be wages.

PART II CONSTITUTION, POWERS AND FUNCTIONS OF THE BOARD

3 Establishment and constitution of the Board

(1) There is hereby established a board to be called the Solomon Islands National Provident Fund Board consisting of:

- (a) two persons holding an office of emolument under the Crown;
- (b) two representatives of employers not being persons holding an office of emolument under the Crown or under the provisions of any Act otherwise than by virtue of the provisions of subsection (3) or appointment under this subsection;
- (c) two representatives of employees; and
- (d) not more than two other persons as the Minister thinks necessary,

to be appointed in his discretion by the Minister who shall appoint one of such persons to be Chairman of the Board.

(2) Members of the Board may be appointed for a term of three years or for such shorter period as the Minister may in his discretion in any case determine:

Provided that the Minister may, in his absolute discretion, terminate the appointment of any such member at any time.

(3) Where a member of the Board is temporarily unable to perform his functions as a member of the Board, he may authorise another person to act in his stead, and such person, whilst so acting, shall be deemed to be a member of the Board.

(4) No member of the Board shall communicate or reveal to any person any matter which shall be brought under his consideration or shall become known to him as a member of the Board except as may be required for the due discharge of his duties as such.

(5) Members of the Board shall be paid such remuneration and such travelling and subsistence allowances as may be fixed by the Board

with the approval of the Minister acting in his discretion.

- (6) The quorum of the Board shall be four.
- (7) The Board shall have power to make rules for the conduct of its proceedings.

4 Board to be a body corporate

- (1) The Board shall be a body corporate, having perpetual succession and a common seal and may sue and be sued in its corporate name and may enter into contracts and may acquire, purchase, take, hold and enjoy real and personal property of every description and may convey, assign, surrender, yield up, charge, mortgage, lease, demise, re-assign, transfer or otherwise dispose of or deal with any real or personal property or any interest therein vested in the Board upon such terms as to the Board seem fit.
- (2) Service of any document on the General Manager shall be deemed to be service on the Board.

5 Powers of the Board

- (1) The Board may, from time to time, with the prior approval in writing of the Minister, and on such terms as to remuneration and otherwise as the Board may think fit, appoint and employ a General Manager, a Secretary, and such other officers, agents, servants and advisers as it may deem necessary for the efficient discharge of its functions under this Act and may dismiss any person so appointed.
- (2) The Board shall have such powers and shall perform such duties, including the duty of enforcement, as are prescribed by or under this Act and may by instrument in writing under its common seal delegate to any person all or any such powers and duties:

Provided that, if the Board shall so delegate any such power or any such duty to any of its officers or servants, such delegation shall be by resolution of the Board.

- (3) The Board shall have power to appoint, as inspectors having the powers set out in section 47, any of the persons appointed under subsection (1).

- (4) Any inspector appointed under subsection (3) shall, on demand, produce such document of identification or such other evidence as may be reasonably sufficient to show that he is an inspector so appointed for the purposes of this Act.

6 Power to issue stamps

The Board may print, sell, issue and utter adhesive or impressed stamps for the purpose of payment of contributions under section 13(1) and may prescribe the design of such stamps and the circumstances and manner in which they shall be used.

PART III FINANCIAL PROVISIONS

7 Establishment of Provident Fund

- (1) For the purposes of this Act, there shall be a fund to be called the Solomon Islands National Provident Fund, hereinafter referred to as the Fund, into which shall be paid all contributions required to be made under the provisions of this Act and out of which shall be met all payments required to be made by the Fund under the provisions of this Act.
- (2) The Board shall be the Trustee of the Fund, and the moneys belonging to the Fund:
- (b) shall, subject to the directions of the Minister;
 - (i) be deposited in a bank or banks or any branch thereof in Solomon Islands; or
 - (ii) be invested in accordance with the provisions of any law relating to trusts; or
 - (iii) be invested in any other security or any other loan specifically approved as an investment for the purposes of this Act by the Minister or guaranteed by the Government under the *Public Finance and Audit Act*; and
 - (b) may, subject to the approval of the Minister, be used for acquiring shares or interests in or establishing any business or business entity that appears to the Board as likely to serve the

interests of all or a substantial portion of the members of the Fund:

Provided that it shall be lawful for the Board:

- (a) to make loans or advances to its officers or servants as part of their conditions of employment, or grants, payments, loans or advances for purposes relating to such conditions as aforesaid; and
- (b) to make loans to members of the Fund for such purposes as the Board may approve,

upon such terms as the Board may consider reasonable.

8 Rate of interest

At or before the end of each financial year, the Board shall, having considered the recommendation of the General Manager, declare a rate of interest in respect of that financial year, being not less than two and one-half *per centum* per annum and, subject to the proviso to section 22(2), interest shall be payable on the amount standing to the credit of members' accounts as calculated under section 22 at such rate:

Provided that:

- (a) no rate of interest exceeding two and one-half *per centum* per annum shall be so declared unless in the opinion of the Board the ability of the Fund to meet all payments required to be paid under this Act is not endangered by the declaration of such rate; and
- (b) no rate of interest exceeding two and one-half *per centum* per annum shall be so declared if any sums advanced by the Government under section 10 have not been repaid.

9 Special death benefit

As soon as possible after the end of each financial year the Board shall, having considered the recommendation of the General Manager, declare the maximum sum to be added to an entitled

member's credit on his death for the purposes of section 34:

Provided that the amount so declared shall be not less than five hundred dollars.

10 Advances by Government

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 shall be advanced to the Fund by the Government out of the Consolidated Fund and the Fund shall as soon as practicable repay to the Government the sum so advanced.

11 Expenses

- (1) All expenses incurred in carrying this Act into effect and in connection with the administration of the Fund shall be paid out of the moneys of the Fund.
- (2) For the purposes of this section, such expenses shall include such expenditure as the Board shall consider reasonably necessary or desirable for the benefit or credit of the Fund or the promotion of public or staff relations.

12 Accounts and audit

- (1) The Board shall keep or cause to be kept proper accounts of the Fund and such accounts shall be audited annually by the Auditor-General or such other fit and proper person as the Auditor-General may authorise in writing.
- (2) As soon as practicable after the end of each financial year, an account of the income and expenditure of the Fund, of contributions received and of withdrawals made and of interest credited to members of the Fund during the preceding financial year together with a statement of the assets and liabilities of the Fund and the report of the auditor thereon, and also a report by the Chairman of the Board on the activities of the Board during such financial year, shall be laid before the National Parliament.

PART IV CONTRIBUTIONS TO THE FUND

13 Payment of contributions

- (1) Every employer shall pay to the Fund in respect of each of his employees in every month during which such employee is employed by him and in the month following the termination of such employment a contribution calculated upon the amount of wages payable to such employee by such employer for the preceding month at the appropriate rates set out in the Second Schedule:

Provided that:

- (a) no contribution shall be payable in any one month for an employee who in the preceding month:
- (i) earned less than \$20.00; or
 - (ii) worked for fewer than 6 days;
- (b) in respect of an employee engaged in any prescribed employment, the Board may direct that payment of contributions in respect of him shall be made at intervals other than a month and, notwithstanding any other provisions of this Act, may direct the manner in which such contributions shall be calculated and paid, whereupon the last preceding paragraph shall be deemed to be of no effect, and the Board may further direct that payment shall be made by some other person on behalf of and to the exclusion of the employer, whereupon such other person shall be deemed to be the employer for the purposes of subsection (2).
- (2) Notwithstanding the provisions of any Act or any contract to the contrary, an employer who pays a contribution in respect of any employee in accordance with the provisions of subsection (1) shall, subject to section 15, be entitled to recover from the wages of such employee, and not otherwise, the portion of such contribution shown in the Second Schedule to be so recoverable.
- (3) Notwithstanding the provisions of any Act to the contrary and without prejudice to the provisions of subsections (1) and (2):

- (a) any employee may contribute voluntarily to the Fund monthly a sum additional to that shown in the Second Schedule as payable by the employer and, if he so desires to contribute, he shall give to his employer written notice to deduct such excess monthly contributions from his wages, and thereafter so long as he is employed by that employer the employer shall, subject to section 15, make such excess deductions from his wages for each month until such time as he shall give further written notice to his employer of his desire to cease to have such excess monthly contributions deducted from his wages, and the amount of any such excess deductions shall be paid to the Fund by the employer in addition to the appropriate monthly contributions;
- (b) any employer may, in any month, pay to the Fund contributions in respect of any of his employees at a rate in excess of the appropriate rate set out in the Second Schedule:

Provided that:

- (i) the total contribution paid in respect of any employee in any month shall exceed the appropriate rate set out in the Second Schedule by ten cents or a multiple of ten cents;
 - (ii) notice of the payment of such voluntary contributions shall be given to the Board in such manner as may be prescribed.
- (4) Notwithstanding any contract to the contrary, an employer shall not be entitled to recover in any way from an employee, in respect of contributions payable under the provisions of this Act, any sum in excess of that permitted to be recovered under subsection (2) together with any sum contributed voluntarily by such employee under subsection (3).

14 Contracts

- (1) Where any person (in this section referred to as the principal) contracts with any other person (in this section referred to as the contractor) for the execution by or under the supervision of the contractor of the whole or any part of any work undertaken by the principal, any employee engaged on such work shall be deemed to

be the employee of the principal unless and until such contractor in respect of such work has been assessed as an employer and has paid all assessment due by him to the Fund, and any reference in this Act to the employer shall be deemed to be a reference to the principal.

- (2) Where the principal has paid contributions which, but for the provisions of subsection (1), he would not have been liable to pay, he shall be entitled to reimbursement by the contractor to such extent as the Board, on application made by the principal, finds that such contractor would have been liable had he been deemed under this Act to be the employer.
- (3) It shall be the duty of the principal to ensure that any contribution for which the contractor is liable is paid, and if such principal fails to make such payment, he shall be personally liable to pay such contribution to the Fund, and the provisions of this Act with regard to enforcing payment shall apply to him, but such principal shall be entitled to reimbursement by the contractor of any sum paid under this subsection.
- (4) Where a principal has paid to the Fund any contributions under the provisions of subsections (2) or (3) he shall, unless he has been reimbursed by the contractor, be entitled to deduct an amount determined in accordance with subsection (2) from any moneys due by him to the contractor.

15 Recovery of employee's portion

The portion of any contribution recoverable from the wages of an employee in accordance with subsections (2) and (3) of section 13 may, notwithstanding the provisions of any other Act to the contrary, be recovered by the employer from the wages in respect of which such contribution is calculated at the time of payment of those wages and not otherwise.

16 Surcharge on late payment

Where any contributions which an employer is liable to pay under section 13(1) are not paid in the month during which they are due to be paid, the employer shall be liable to pay a surcharge on the total amount of all contributions not so paid to the Fund by him at the rate

of two *per centum* in respect of each month or part of a month after the expiration of the earliest month during which any such contribution was due to be paid:

Provided that:

- (a) if the amount of surcharge so calculated is less than two dollars, the surcharge payable shall be two dollars; and
- (b) if the amount of surcharge exceeds two dollars, the surcharge payable shall be calculated to the next highest multiple of two dollars; and
- (c) the Board may in any case in which it thinks fit remit in whole or in part the payment of any surcharge due under the provisions of this section.

17 Unpaid contributions deemed to be paid in certain circumstances

If any employer fails to pay any contribution which he is required to pay under section 13(1), the Board may, if it is satisfied:

- (a) that such failure was not due to the consent or connivance of the employee concerned; and
- (b) that there is no prospect of recovering the amount unpaid within a reasonable time,

credit to the employee the amount of the contributions which should have been paid in respect of him and shall charge the amount so credited to the general revenues of the Fund:

Provided that nothing in this section shall prejudice the right of the Board to recover the amount of such contribution together with any surcharge due under section 16 from the employer, and any amount so recovered shall be credited to the general revenues of the Fund.

18 Voluntary contributions

- (1) Any person not being an employee or a person described in subsection (2) and being not less than sixteen or more than thirty-five years of age may, provided he gives notice to the Board in the

prescribed manner, become a voluntary contributor to the Fund and contributions paid by such voluntary contributor shall be dealt with under the provisions of section 22 as though he were an employee:

Provided that any member who, having been an employee and having had contributions paid in respect of him under section 13(1) in two successive contribution half-years, ceases to be an employee, may, provided he gives notice to the Board in the prescribed manner not more than six months after ceasing to be an employee, be entitled to become a voluntary contributor irrespective of age.

- (2) The following classes of persons shall not be entitled to become voluntary contributors:
 - (a) persons exempted under section 27 or section 50(a); and
 - (b) persons who, having been members of the Fund, have withdrawn from membership of the Fund.
- (3) A person becoming a voluntary contributor may commence payment of contributions not earlier than the half-year in which he gives notice to the Board in accordance with subsection (1).

19 Religious organisation

- (1) Any religious organisation which desires to make contributions under this Act in respect of any minister of religion engaged in the service of that religious organisation in Solomon Islands and who is registered under the *Births, Marriages and Deaths Registration Act* may apply to the Board for approval to so contribute on such terms as may be prescribed, or otherwise as are provided for by this Act.
- (2) If the Board approves an application under subsection (1), it shall cause the religious organisation to be registered as an employer for the purposes of this Act and shall notify the organisation of such registration.
- (3) A religious organisation registered under subsection (2) shall notify the Board of the prescribed particulars of any minister of religion to which this section applies and shall become a contributing employer in relation to that minister of religion on the first day of the month following the month in which notification is made under this

subsection and thereafter such minister of religion shall for the purposes of this Act be deemed to be an employee.

20 Amount standing to credit of member

The amount standing to the credit of a member of the Fund for the purposes of sections 22, 28, 29, 30 and 33 shall be a sum equal to the aggregate of all contributions made in respect of that member and such interest as may have been credited thereon to such member under section 22(2).

21 Cessation of employment

- (1) Where any person who is exempt under any provision of this Act ceases to be employed (otherwise than by reason of death) without having become entitled to such pension, gratuity or allowance as may be payable from time to time under the *Pensions Act*, his former employer shall, in such manner as the Board may approve and within a period of one month from the cessation of the employment, pay to the Fund a sum equal to the contributions which the employer would have been required to pay to the Fund had the employment not been exempted employment.
- (2) Any person to whom subsection (1) applies shall (unless he is already registered as a member of the Fund) be registered as such member within one month after he ceases to be employed in such exempted employment as aforesaid, and his former employer shall supply to the Board such information as the Board may require for the purpose of securing such registration.
- (3) The provisions of section 16 shall apply in relation to the late payment of any sum required to be paid under subsection (1) of this section as they apply in relation to the late payment of a contribution required to be paid under section 13.

PART V ALLOCATION OF PAYMENTS INTO THE FUND

22 Contributions to be paid into the Fund and credited to members

- (1) All sums recovered or collected on account of contributions to the Fund under the provisions of this Act shall be paid into or carried to

the Fund in such manner as the Board may direct.

- (2) The Board shall cause to be credited to the account of each member of the Fund the amount of the contributions paid during each financial year in his respect and, upon the declaration by the Board under section 8 of a rate of interest for the financial year, interest at that rate on the amount standing to his credit in the Fund at the commencement of such financial year in such manner as the Board may direct, and shall deduct from the amount of each member the sum of five dollars, or if the amount standing to such member's account shall be less than five dollars, the amount so standing, and such sums shall be carried to the general revenues of the Fund:

Provided that, where the authority of the Board is granted under section 28 for the withdrawal from the Fund of any amount standing to the credit of a member of the Fund, the amount of interest due from the first day of the financial year in which such authority is given to the last day of the month preceding that in which such authority is given shall be calculated at the rate of interest declared by the Board for the previous financial year and credited to such member before such withdrawal notwithstanding that the rate of interest subsequently declared by the Board in respect of that financial year may be greater or less than the amount so calculated.

- (3) For the purpose of calculating any interest due under subsection (2) any fraction of one dollar in the amount standing to the credit of a member of the Fund shall be disregarded.

23 Revenue other than contributions

All surcharges collected under section 16, together with any other sums which shall from time to time become payable to the Board otherwise than on account of contributions under the provisions of this Act, shall be credited to the general revenues of the Fund.

24 General Reserve Account

- (1) There is hereby established an account which shall be known as the General Reserve Account into which shall be paid:
 - (a) any income of the Fund remaining unappropriated at the end of any financial year; and

- (b) any other moneys prescribed to be so paid by regulations made under this Act.
- (2) The moneys in the General Reserve Account shall form part of the Fund and any interest arising from the investment thereof shall be placed to the general revenue of the Fund.
- (3) The Board may, from time to time, authorise the expenditure of moneys held in the General Reserve Account for the furtherance of such social security measures as may be approved from time to time by the Minister.

PART VI ELDERLY EMPLOYEES AND MEMBERS RE-EMPLOYED AFTER WITHDRAWAL

25 Attainment of fifty years

- (1) When any member of the Fund attains the age of fifty years, contributions shall, subject to the provisions of this Act, continue to be payable to the Fund in respect of him, in accordance with the provisions of section 13(1), at any time when he is an employee.
- (2) Any employee who has attained the age of fifty years and has withdrawn any amount standing to his credit in the Fund on the ground that he has reached that age, shall not be entitled to withdraw from the Fund any further amount standing to his credit therein until five years have elapsed from the date of the last withdrawal.
- (3) No employee who has attained the age of forty years and has withdrawn any amount standing to his credit in the Fund on the ground that he has reached that age and retired from employment shall be entitled to withdraw from the Fund any further amount standing to his credit therein until he has attained the age of fifty years notwithstanding that the employee has become entitled to withdraw such further amount on any other ground.

PART VII EXISTING SCHEMES

26 Existing schemes

- (1) No employer may claim or be entitled to exemption under this Act in respect of any person in his employment by reason only of the fact

that such person is a participant whether on a contributory or non-contributory basis in an existing scheme.

(2) Where an employer:

- (a) is liable to make contributions under this Act in respect of any employee; and
- (b) is by himself or in association with others operating a scheme to provide benefits comparable to the benefits provided by this Act for such employer or employees,

he, or, as the case may be, the person operating that scheme may, by virtue of this subsection and whether or not the rules of the scheme allow, amend the scheme to take into account contributions made to the Fund and provide for a reduction of the contribution made to the existing scheme.

(3) Nothing in subsections (1) and (2) shall be construed so as to:

- (a) authorise the amendment of a scheme in such a way that the benefits, excluding annual interest, to an employee under that scheme and this Act are reduced below those to which he would have been entitled if this Act had not been enacted; or
 - (b) require an employer to contribute to both the scheme and the Fund an amount in excess of that paid by the employer to the scheme for any comparable period before he became an employer, liable to contribute to the Fund.
- (4) Subject to the provisions of subsection (5), an authority responsible for the administration of any existing pension scheme or provident fund may, with the approval of the Board, make a payment of any sum to the Fund in respect of any person who is or has been a member of or contributor to that scheme or fund, and the Board shall cause that sum to be credited to the account of such person in the Fund and for this purpose shall, if no such account exists, cause an account to be opened in the name of that person.
- (5) An authority making any payment in accordance with the provisions of subsection (4) shall furnish with such payment:

- (a) a certified copy of its resolution or other authority authorising the payment; and
- (b) such information as to the identity of the person in respect of whom the payment is made as the Board may require.

27 Exemptions

If the Board is satisfied on the application of an employee or his employer that:

- (a) the employee is employed by an employer whose principal registered office is outside Solomon Islands, under a contract of employment entered into outside Solomon Islands; and
- (b) the employee is contributing to a social security scheme of some country other than Solomon Islands or will be entitled under a scheme associated with his employment to benefits which are, in the opinion of the Board, comparable with those provided by this Act; and
- (c) the employee is not a resident of Solomon Islands,

it may issue to such employee a certificate of exemption, and he shall thereupon be deemed not to be an employee for the purpose of this Act in respect of employment by that employer during such time as paragraphs (a), (b) and (c) continue to be applicable to him.

PART VIII WITHDRAWAL OF CONTRIBUTIONS

28 Withdrawal to be approved by Board

No amount standing to the credit of a member of the Fund may be withdrawn from the Fund except with the authority of the Board and such authority shall not be given before the date of entitlement of the member of the Fund.

29 Withdrawal otherwise than upon death

- (1) Subject to subsection (2), the Board shall after the date of entitlement of any member of the Fund otherwise than upon his death, and upon his application or that of any person having care or custody of him

under the provisions of the *Mental Treatment Act*, pay to the applicant the amount standing to the credit of such member in the Fund.

(2) When making payments under subsection (1), the following rules shall apply, that is to say,:

(a) where the application is made on the ground that the member:

- (i) has attained the age of fifty years;
- (ii) has attained the age of forty years and has retired from employment as an employee; or
- (iii) being a non-citizen of Solomon Islands, is about to leave or has left Solomon Islands and he has satisfied the Board that he has no intention of returning to Solomon Islands,

the Board shall pay to the applicant the whole of the amount standing to the credit of the member in the Fund;

(b) where the application is made on the ground that the member, being a citizen of Solomon Islands, is about to leave or has left Solomon Islands and has no intention of returning to Solomon Islands, the Board shall pay to the applicant the amount standing to the credit of the member as follows:

- (i) one-half of the amount to be paid upon such application; and
- (ii) the other half of the amount to be paid at the expiration of one year after the payment made under sub-paragraph (i); and

(c) where the application is made on the ground that the member has been unfairly dismissed or has been made redundant and has not, during the three months period immediately preceding the date on which he makes the application, been engaged in employment, the Board shall pay to the member the amount standing to his credit in the Fund as follows:

- (i) where the amount is less than ten thousand dollars, the

amount shall be paid in full to the member upon application therefor; and

- (ii) where the amount is ten thousand dollars or more, one-third of the amount shall be paid to the member upon application and, if at the expiration of one year from the date of payment of the said one-third sum the member has not been re-employed, one-half of the remaining amount shall be paid to the member upon the expiration of that one year period and the other half shall be paid to the member at the expiration of two years after the date of payment of the said one-third sum where the member has not been re-employed within that period.

30 Withdrawal by nominee

The Board shall after the death of any member of the Fund and upon the application of a person nominated under section 32 pay to the applicant such part of the amount standing to the credit of such member as shall have been set out in the memorandum executed in accordance with that section.

31 Evidence

All applications for withdrawal shall be supported by such evidence as may be prescribed and by such further evidence as the Board may reasonably require.

32 Nomination

Any employee or member of the Fund may by a memorandum executed in the prescribed manner nominate a person or persons to receive in his or their own right such portions of the amount payable out of the Fund under section 30 on his death as such memorandum shall indicate, and any employee who does not nominate such a person may be required by the Board to declare in writing that he does not desire to do so:

Provided that the subsequent marriage of a nominator shall render any nomination made by him null and void.

33 Procedure where there is a nominee or no person is nominated

Where a member of the Fund dies, the amount standing to his credit in the Fund shall be dealt with by the Board in the following manner:

- (a) if his widow or any person over eighteen years is nominated to receive the amount (or any portion of it) under section 32 then the amount or that portion shall be paid to the widow or that person, as the case may be;
- (b) if any person under eighteen years (other than his widow) is nominated to receive the amount (or any portion of it) under section 32 then the amount or that portion shall remain in the Fund and shall be deemed to be held by the Board in trust for that person until he reaches the age of eighteen years:

Provided that the Board may from time to time allow the withdrawal by the guardian of the person under eighteen years of age of such portion of the amount of contributions as may be necessary for the education or welfare of that person;

- (c) if no person is nominated to receive the amount or the portion, then the amount or the portion shall, notwithstanding any law to the contrary, be distributed in accordance with the custom of the member to the children, spouse and other persons entitled thereto in accordance with that custom:

Provided that where at the time of his or her death a member was living with another person as husband or wife of that person, without proper marriage in law or in custom and had so lived for a period of not less than one year then any child born to the member and that other person as a result of their living together shall, for the purposes of this paragraph, be deemed to be a legitimate child of the member and shall be entitled to a share of the amount or portion in accordance with this paragraph.

34 Payment of special death benefit

- (1) On the death of a member the amount standing to his credit in the Fund shall be increased by such proportion of the maximum sum as may be prescribed in accordance with subsection (2) and the amount

of such increase shall be paid from the general revenues of the Fund.

- (2) The amount to be added to the deceased member's credit for the purpose of subsection (1) shall be related to the member's period of membership of the Fund and to the number and amount of contributions paid on his behalf and standing to his credit in such manner as may be prescribed.
- (3) The amount payable under subsection (1) shall not be taken into consideration in the assessment of compensation or damages payable to the dependants or beneficiaries of the deceased member under the provisions of the *Workmen's Compensation Act*.

PART IX PROTECTION OF SUMS CONTRIBUTED AND WITHDRAWN

35 Member's credit not subject to sequestration

- (1) Subject to subsections (2) and (3), no contribution to the Fund, nor any amount standing to the credit of a member in the Fund nor interest on any such contribution or amount, nor withdrawals made by the authority of the Board from the Fund under section 28, nor the rights of any member of the Fund acquired thereunder, shall be assignable or transferable or liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever.
- (2) The amount standing to the credit of a deceased member in the Fund shall not form part of the estate of such deceased (except for the purposes of section 33(a) and cannot be charged with any debt or liability except as provided in subsections (3) and (4) of this section.
- (3) A member may pledge up to two-thirds of the contributions credited to his account in the Fund by way of guarantee for a loan from:
 - (a) a bank licensed under section 6 of the *Banking Act*;
 - (b) the Development Bank of Solomon Islands;
 - (c) the Home Finance Corporation; or
 - (d) the Fund.

- (4) An amount pledged under subsection (3) shall be realisable by the lender only where the member dies or withdraws from the Fund under section 29, or has, for a period of not less than six months, refused or wilfully neglected to pay the lender such part of the loan as the lender may require him to pay each month in respect of the loan, whichever first occurs.

36 Exemption from tax etc.

All the income of the Fund, all interest paid or credited in respect of any members under any of the provisions of this Act and all sums (including annuities) withdrawn from or paid out of the Fund under any of the provisions of Part VIII, and every instrument made or executed by or on behalf of the Fund shall be exempted from all taxes, levies or charges imposed by law.

37 Bankruptcy of employee

The bankruptcy of an employee shall not affect the payment of contributions from the wages of the employee in accordance with the provisions of this Act, but such payments shall continue to be made notwithstanding the provisions of any other law and the portion of wages so paid shall be deemed not to form part of his after-acquired property.

38 Bankruptcy, liquidation, etc. of employer

- (1) Where any trustee in bankruptcy, liquidator, receiver, personal representative or other such person is dealing with the property, business or estate of any employer who has failed to pay any contributions payable by the employer under this Act, such person shall pay such contributions in such manner as may be determined by the Board before making any distribution of such property, business or estate.
- (2) Any trustee in bankruptcy, liquidator, receiver, personal representative or other such person shall, before distributing any assets under his control, obtain from the General Manager of the Fund a certificate to the effect that all contributions payable under this Act by such person out of any estate under his control have been paid.

- (3) If any distribution is made by any trustee in bankruptcy, liquidator, receiver, personal representative or other such person without first obtaining a certificate under subsection (1), then such person shall be personally liable for the contributions which the employer has failed to pay.
- (4) In this section, the word “**contributions**” includes surcharges under section 16.

39 Secrecy

Notwithstanding the provisions of any other Act, the Board shall not be required to divulge, save to the member, or if the member is dead, to his nominee, any matter relating to the amount standing to the credit of a member of the Fund nor any particulars of such member or of any employer save with the consent of such member or employer:

Provided that nothing in this section shall prevent the Board or its officers from giving evidence relating to any such matter in any criminal proceedings.

PART X OFFENCES, PENALTIES AND PROCEEDINGS

40 Offences and penalties

- (1) If any person:
 - (a) for any purpose connected with this Act:
 - (i) knowingly makes any false statement;
 - (ii) produces or furnishes or causes or knowingly allows to be produced or furnished any document which he knows to be false in a material particular;
 - (b) fails to pay to the Fund in any month any amount which, under section 13(1), he is liable to pay in that month in respect of any employee;
 - (c) obstructs any officer or servant of the Board in the discharge of his functions as such;

- (d) fails to pay to the Board within such period as may be prescribed any surcharge which he is liable to pay under section 16;
- (e) being or ever having been a member, officer, servant or agent of the Board directly or indirectly communicates or reveals to any person any matter relating to the business of the Board which shall have become known to him in his capacity as member, officer, servant or agent, except as may be required for the due discharge of his duties as such member, officer, servant or agent or as may be permitted by the Board;
- (f) procures any member, officer, servant or agent of the Board or any person who had ever been such member, officer, servant or agent to communicate or reveal any such matter as is set out in paragraph (e);
- (g) fails to pay any contribution or surcharge which he is required to pay under section 38; or
- (h) fails to produce at the time specified, any document required to be produced by notice in writing under section 47(c),

he shall be guilty of an offence and liable to a fine of 500 penalty units or to imprisonment for one year, or to both such fine and such imprisonment.

- (2) Any person who deducts from the wages of an employee any sum greater than that permitted to be recovered under this Act or, having made any deduction, fails to pay to the Fund in the time required by section 13(1) the contribution in respect of which such deduction has been made, shall be guilty of an offence and liable to a fine of 1,000 penalty units or to imprisonment for two years, or to both such fine and such imprisonment.
- (3) Notwithstanding the provisions of any other Act, proceedings may be taken for any offence under this Act within three years of the date of commission of such offence.

41 Notice of unpaid contributions

If notice of intention so to do is served by the prosecuting officer upon

the defendant, evidence may be given, at any trial for an offence under section 40(1)(b) or section 40(2) of other contributions unpaid at the date of the service of the summons upon the defendant, in respect of other employees, in the form of a certificate under the hand of the General Manager and, if the defendant is convicted of such offence, the court by which he is so convicted may, without prejudice to any right under section 46, order the defendant to pay to the Fund the amount of such unpaid contributions together with any contributions unpaid at the date of trial in respect of each employee referred to in the charge upon which the defendant has been convicted, and the provisions of the *Penal Code* relating to fines shall apply to any such contributions or any portion thereof so ordered to be paid.

42 Further powers of court

Where any person is convicted under the provisions of paragraphs (d) and (g) of section 40(1) of failing to pay any surcharge, the court by which he is so convicted may, without prejudice to section 46, order the defendant to pay to the Fund the amount required to be paid as a surcharge in the same way as is provided in relation to the payment of contributions under section 41.

43 Liability of officers of corporations

Where an offence under this Act has been committed by a body corporate, firm, society or other body of persons, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer or a partner of the body corporate, firm, society or other body of persons or was purporting to act in such capacity shall, as well as such body corporate, firm, society or other body of persons, be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

44 Prosecutions

- (1) Prosecutions in respect of any offence under this Act may be instituted by any officer, servant or agent of the Board authorised in

writing in that behalf by the General Manager, and any such officer, servant or agent may conduct such prosecutions.

- (2) Nothing in subsection (1) shall be deemed to derogate from the powers of the Director of Public Prosecutions in relation to prosecution of criminal offences.

45 Evidence in proceedings

In any criminal or civil legal proceedings under the provisions of this Act, a copy of an entry in the records or accounts of the Fund duly certified under the hand of the General Manager shall be *prima facie* evidence of such entry having been made and of the truth of the contents thereof, and a certificate under the hand of the General Manager that there is no entry shall be *prima facie* evidence that no entry has been made.

46 Civil proceedings

- (1) All contributions payable under the provisions of this Act may, without prejudice to any other remedy, be recoverable by the Board as a debt due.
- (1A) If payment of any contribution has not been made on or before the due date, a lien shall arise in the employer's property to secure the payment of the amount of contribution, and the Board, or any officer, servant or agent authorized by the Board, may file a notice of such lien in the Filing Office authorized by the *Secured Transactions Act* to establish the priority date and time of such lien.
- (2) Proceedings for the recovery as civil debts of any contribution may, notwithstanding anything in any other law to the contrary, be brought at any time within six years from the date when the contribution becomes due.
- (3) Proceedings for the summary recovery as civil debts of contributions may be instituted by any officer, servant or agent of the Board authorised in writing in that behalf by the General Manager and any such officer, servant or agent may conduct such proceedings.
- (4) In this section the word "**contributions**" shall be deemed to include any surcharge under section 16.

PART XI POWERS OF INSPECTORS AND OFFICERS OF THE FUND

47 Powers of Inspectors

An inspector appointed under section 5(3) may at any reasonable time:

- (a) enter any premises or place where persons are believed to be engaged as employees;
- (b) make such examination and inquiry as may be necessary for ascertaining whether the provisions of this Act are being or have been complied with in any such premises or place;
- (c) require the production of any document which an employer is required to keep under the provisions of this Act or of the *Labour Act* or any other document which the inspector may reasonably require for the purpose of ascertaining whether the provisions of this Act are being or have been complied with and the inspector may make a copy or an extract from any such documents and, for this purpose, may by notice in writing sent by registered post to an employer's address, require such production at any place reasonably accessible to such employer on a date and at a time specified in such notice:

Provided that the date so specified shall not be less than twenty-one days from the date of service of such notice and the notice shall be deemed to have been served upon the employer when the notice would have been delivered or received in the ordinary course of post; and in proving such service it shall be sufficient to prove that the envelope containing the notice or other document was properly addressed and was posted;

- (d) examine, either alone or in the presence of any other person, 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 respecting the subject-matter of the inquiry, and require such person to be examined, and for the purposes of such examination may summon any such person to attend at the time and place specified in such summons;

- (e) exercise such other powers as may be necessary for carrying into effect the provisions of this Act.

48 Powers of officers of the Fund

An inspector, or any person appointed under section 5(3) and so authorised in writing by the General Manager, may make such examination and inquiry as may be necessary for ascertaining the truth of any statement made for the purpose of establishing the date of entitlement of any member of the Fund and may, for that purpose:

- (a) examine, either alone or in the presence of any other person, 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 respecting the subject-matter of the inquiry, and require every such person to be examined, and for the purposes of such examination may summon any such person to attend at the time and place specified in such summons;
- (b) require any person who makes any such statement to sign a declaration as to its truth.

PART XII REGULATIONS

49 Regulations

- (1) The Board may make regulations for any purpose for which regulations may be made under the provisions of this Act and for prescribing anything which may be prescribed thereunder and otherwise for the purpose of carrying this Act into effect, and, in particular, but without prejudice to the generality of the foregoing, may make regulations with respect to any of the following matters:
 - (a) to provide for the registration of employers and employees in anticipation of the coming into force of any of the provisions of this Act;
 - (b) to provide for the manner of payment and collection of contributions and any matters incidental thereto;
 - (c) to provide for the disposal of amounts which are unclaimed,

unpaid or otherwise remain in the Fund;

- (d) to provide for:
 - (i) the return of contributions under the provisions of this Act, or any part of such contributions, paid in error;
 - (ii) the payment of contributions under the provisions of this Act, or of any part of such contributions, omitted to be paid in error;
- (e) to provide for the keeping of books, accounts or records by employers;
- (f) to provide for the appointment of medical boards for the purposes of paragraph (c) of the definition of “**date of entitlement**” in section 2 and for such other purposes as may be prescribed;
- (g) to prescribe the procedure for the withdrawal of amounts from the Fund;
- (h) to prescribe the evidence to be produced and the person, officer or authority to whom such evidence is to be produced for the purposes of section 32;
- (i) to prescribe the procedure to be followed when contributions are paid by an employer into the Fund;
- (j) to prescribe the form and period of any notice to be given by an employee to his employer under section 13(3)(a);
- (k) to prescribe the procedure to be followed when any voluntary contribution is paid to the Fund;
- (l) to prescribe the returns to be made by employers and the forms and registers to be used in carrying out the provisions of this Act;
- (m) to prescribe the amount, frequency of payment and duration of any annuity payable under the provisions of section 50(b);
- (n) to provide for the manner of repayment of any loan made to

members under this Act.

- (2) Any regulations made under subsection (1) may provide that contravention or breach thereof shall be punishable by such fine not exceeding 300 penalty units or by such term of imprisonment not exceeding six months as may be specified in such regulations, or by both such fine and such imprisonment.
- (3) Regulations made under subsection (1)(n) may impose obligations upon the employer of a member to whom a loan has been made under this Act for the deduction from the member's salary and for payment to the Board such sum as the member is obliged to pay to the Board under the terms of the loan agreement:

Provided that an employer who fails to perform any obligation imposed upon him by such regulations shall be personally liable for any unpaid sum that he is obliged under the regulations to deduct from the member's salary for payment to the Board.

PART XIII POWERS OF THE MINISTER

50 Exemptions and annuities

The Minister may, in addition to any other powers conferred by this Act, after consulting the Board:

- (a) exempt by order any person or class of persons from all or any of the provisions of this Act;
- (b) provide by order that notwithstanding the provisions of sections 29, 30, 33 and 34 any person entitled under the provisions of those sections to receive the whole or part of the amount standing to the credit of a member in the Fund may receive, in place of all or part of any sum due to him, an annuity based upon that sum or part thereof.

51 Reciprocal agreements

- (1) The Minister, after consulting the Board, may enter into a reciprocal agreement with the government of any other country or territory in which a fund similar to the Fund has been established and such agreement may provide amongst other matters that:

- (a) any period of work for an employer in that country or territory shall be treated as a period of work in Solomon Islands for that employer for the purpose of the definition of **“employee”** contained in section 2; and
- (b) subject to such conditions as may be laid down in the reciprocal agreement, any amount standing to the credit of any member of the Fund who works for any employer in that country or territory may be transferred to his credit in such fund, and any amount standing to the credit in such fund of any person who becomes a member of the Fund may be transferred to his credit in the Fund,

and if any such reciprocal agreement containing such provisions shall be entered into, the definition of **“employee”** contained in section 2 shall be deemed to be modified accordingly, so however that no person shall be required to contribute to the Fund in respect of any period during which he did not work in Solomon Islands and no employer shall be required to contribute in respect of any such employee during such period, and the transfer by the Board of credits to and from the Fund in such manner shall be permitted.

- (2) Any reciprocal agreement made under subsection (1) shall be published in the *Gazette* and shall come into force on the date of such publication or on such later date as may be provided in the agreement.

FIRST SCHEDULE

EXEMPTIONS

(Section 2)

1. Any child under the age of fourteen years.
2. Any outworker as defined in the *Workmen's Compensation Act*.
3. Any person detained in any prison, approved school, mental hospital or leper asylum.

SECOND SCHEDULE

RATES OF CONTRIBUTIONS

(Section 13)

The monthly contribution by an employer under section 13(1) shall be twelve and one half cents in respect of each complete dollar in the amount of the wages of the employee for the preceding month, provided that for the total amount payable in respect of each employee for a month a half cent shall be rounded up to the next complete cent, and the amount which the employer may recover under section 13(2) from the employee's wages for the preceding month shall be five cents in respect of each complete dollar in the amount of such wages.

ENDNOTES

1

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 109 of the Revised Edition of the Laws of Solomon Islands, together with amendments made to the Act from that date to 1 October 2009.

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LIST OF LEGISLATION

Solomon Islands National Provident Fund Act (Cap. 109)

<i>Constituent legislation:</i>	3 of 1973 (Commenced ss 2,3,5 & 51: 1 January 1976 (LN 16/1976); Rem: 1 October 1976 (LN 86/1976))
	11 of 1976
	LN 46A of 1978
	LN 88 of 1978
	8 of 1981
	4 of 1982
	8 of 1988
	13 of 1990
	1 of 1993

Secured Transactions Act 2008 (No. 4 of 2008)

Assent date	22 August 2008
Gazetted	5 September 2008
Commenced	31 August 2009

Penalties Miscellaneous Amendments Act 2009 (No. 14 of 2009)

Assent date	29 July 2009
Gazetted	1 October 2009
Commenced	1 October 2009

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LIST OF AMENDMENTS

s 46(1A)	ins by Act No. 4 of 2008
s 40	amd by Act No. 14 of 2009
s 49	amd by Act No. 14 of 2009