

REPRINT

TRADE DISPUTES ACT (CAP. 75)

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 ESTABLISH A PANEL TO ENCOURAGE SETTLEMENT OF TRADE DISPUTES AND TO MAKE BINDING AWARDS WHERE NEGOTIATION FAILS; TO RESTRICT INDUSTRIAL ACTION WHILE THE PANEL CONSIDER THE DISPUTE; TO PROVIDE FOR THE ENFORCEMENT OF AWARDS AND COLLECTIVE AGREEMENTS AND FOR THE RECOVERY OF THE EXPENSES OF PROVIDING THE PANEL; TO REPEAL THE TRADE DISPUTES ACT 1976; AND FOR CONNECTED PURPOSES

TRADE DISPUTES ACT (CAP. 75)

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TRADE DISPUTES ACT (Cap. 75)

As in force at: 1 October 2009

1 Short title

- (1) This Act may be cited as the *Trade Disputes Act*.
- (2) The Schedule to this Act contains a glossary of terms; and in this Act unless the context otherwise requires any expression for which there is an entry in the first column of the Schedule:
 - (a) has the meaning given against it in the second column; or
 - (b) is to be construed in accordance with directions given against it in the second column.

2 Trade Disputes Panel

- (1) There shall be a Trade Disputes Panel.
- (2) The Panel shall consist of a Chairman, a Deputy Chairman and eight other members and four of those other members shall be persons who are elected officers of a trade union.
- (3) The Chairman and the Deputy Chairman shall be appointed by the Judicial and Legal Service Commission from among persons holding such legal qualifications as may seem appropriate to the Commission; and the members of the Panel other than the Chairman and the Deputy Chairman shall be appointed by the Minister.
- (4) Before appointing those members, the Minister shall:
 - (a) as to the four officers referred to in subsection (2) consult such trade unions as he considers appropriate; and
 - (b) as to the four other members, consult such employers' organisations as he considers appropriate.
- (5) The Chairman, Deputy Chairman and other members of the Panel:

- (a) shall hold and leave office in accordance with their terms of appointment (which shall not appoint them for a period of more than two years);
 - (b) may at any time resign in writing; and
 - (c) may be removed from office if (in the opinion of the person appointing them) they have become physically or mentally incapacitated or have failed to discharge their functions as members or have otherwise become unable or unfit to discharge their functions.
- (6) There may be paid to the members of the Panel such travelling and other allowances (including compensation for loss of remunerative time) as the Minister may from time to time determine.
- (7) Subject to section 8(3), the Panel shall not be subject to directions of any kind from any Minister as to the manner in which they are to exercise any of their functions; and membership of the Panel other than as Chairman or Deputy Chairman is not a public office for the purposes of the *Constitution*.

3 Meetings and procedure of Panel

- (1) Where any matter is referred to the Trade Disputes Panel under this Act or any other written law, the Chairman or the Deputy Chairman, as the case may be, shall select:
- (a) one of the members appointed after consultation under subsection (4)(a) of section 2, and
 - (b) one of the members appointed after consultation under subsection (4)(b) of that section,
- to consider the matter together with the Chairman or the Deputy Chairman, as the case may be.
- (2) In relation to any matter so referred, references in this Act or any other written law to the Panel are references to the Chairman or the Deputy Chairman, as the case may be, and those two members; and, subject to rules under this section, a member of the Panel selected to consider any matter shall be present during the whole of the

deliberations of the Panel on that matter.

- (3) The Rules Committee appointed under section 90 of the *Constitution* may by rules make such provision as appears to them to be necessary or expedient with respect to the proceedings of the Panel in the exercise of their powers under this Act or any other written law; and the rules may in particular include provision:
 - (a) for requiring persons to attend to give evidence and produce documents and for authorising the administration of oaths to witnesses;
 - (b) for granting discovery and inspection of documents;
 - (c) for the Panel to sit, with the consent of the parties to the matter in question, in the absence of one or both of the members other than the Chairman or the Deputy Chairman, as the case may be, and for the replacement of absent members of the Panel while any matter stands referred to them;
 - (d) for prescribing the procedure to be followed before the Panel, including provision as to the persons entitled to appear and be heard on behalf of the parties and provision enabling the Panel to review their decisions and revoke or vary their awards in such circumstances as may be determined in accordance with the rules;
 - (e) for the award of costs;
 - (f) for imposing fees for the performance by the panel or a conciliator of any of their functions;
 - (g) for a person who, without reasonable excuse, fails to comply with any requirement imposed by virtue of paragraphs (a) or (b) above (including any restriction on the disclosure of information) to be guilty of an offence and liable on conviction to a fine not exceeding 200 penalty units, or imprisonment for three months, or both;
 - (h) for the registration and proof of the Panel's awards; and
 - (i) for prescribing the procedure to be followed on an appeal under

section 13 and for limiting the time within which the right to appeal may be exercised.

3A Delegation of functions

- (1) Subject to this section, where the Chairman is required or permitted by this Act to perform any function, the exercise or performance of such function may be delegated by the Chairman to the Deputy Chairman.
- (2) A delegation under subsection (1) shall be by instrument in writing and may be made subject to such conditions as are specified in the instrument of delegation.
- (3) A function delegated under subsection (1) shall be exercised or performed in accordance with the instrument of delegation and is revocable at will by the Chairman.
- (4) Whenever the office of Chairman is vacant or the holder of the office is absent from Solomon Islands or is for any other reason unable to perform the functions of his office, those functions shall be performed by the Deputy Chairman.

4 Conciliation

- (1) A party to a trade dispute may at any time refer the dispute to the Trade Disputes Panel.
- (2) If it appears to the Minister:
 - (a) that, in connection with a trade dispute, any industrial action is being or is likely to be taken; and
 - (b) that the action concerned has caused or would cause an interruption in the supply of goods or the provision of services; and
 - (c) that the interruption is or would be of such a nature or on such a scale as to be likely to affect the national economy or national security, or create public disorder, or endanger the supply of essential goods or services, he may refer the dispute to the Panel.

- (3) On a reference of a dispute under this section, the Panel shall first consider whether the dispute is likely to be settled by negotiation between the parties.
- (4) If in their opinion it is likely to be so settled, they shall offer the parties to the dispute their assistance with a view to bringing about a settlement.
- (5) The assistance given by the Panel may include the appointment of any person ("a conciliator"), who may be a member of the Panel, to offer assistance to the parties with a view to bringing about a settlement.
- (6) In exercising their functions under this section, the Panel shall have regard to the desirability of encouraging the parties to the dispute:
 - (a) to use any collective agreement that exists between them; and
 - (b) where one of the parties is a trade union or an employers' association, to comply with any rules of the union or association.
- (7) If the Panel succeed in bringing about a settlement of the dispute, they shall, if the parties consent, incorporate the terms of the settlement in an order.
- (8) Where the Panel make an order under subsection (7), the order shall have effect as a legally enforceable collective agreement between the parties to whom the order applies.
- (9) There may be paid to a conciliator such travelling and other allowances, including compensation for loss of remunerative time, as the Minister may determine.

5 **Recognition issues**

- (1) In this Act, "**recognition issue**" means an issue arising from a request by a trade union for recognition by an employer, including (where recognition is already given to some extent) a request for further recognition.
- (2) Where a dispute including a recognition issue is referred to the Trade

Disputes Panel, the Panel may, in such manner as they think fit, consult the employees in respect of whom recognition is sought to be granted; and the consultation may take the form of a ballot of the employees.

- (3) The powers conferred by this section may be exercised by the panel either to assist the parties to reach a settlement by negotiation or to assist the Panel in making an award.

6

Arbitration

- (1) Where a trade dispute is referred to the Trade Disputes Panel and (whether or not they have offered assistance under section 4) the Panel are not of the opinion that the dispute is likely to be settled by negotiation, they shall themselves inquire into the dispute and shall make an award.
- (2) Where the Panel decide to enter on an inquiry under subsection (1), they shall forthwith give notice in writing to the Minister and the parties to the dispute of the date on which the inquiry is to begin.
- (3) In inquiring into a dispute under this section, the Panel shall, as well as giving the parties to the dispute an opportunity of submitting evidence (either orally or in writing), also give such an opportunity to the Minister, and may give such an opportunity to any person who, in their opinion, has an interest in the dispute.
- (4) The Panel shall, in considering what award to make in any trade dispute, take account not only of the interests of the parties to the dispute but also of the likely effect of the award on other persons and on the economy as a whole.
- (5) Where the dispute involves a recognition issue, the Panel shall, in deciding whether by their award to grant recognition, consider:
 - (a) whether the trade union would have the support of a substantial proportion of the employees in respect of whom recognition is sought to be granted; and
 - (b) whether the resources and organisation of the trade union are such as would enable it to represent those employees effectively.

Awards

- (1) Any award of the Trade Disputes Panel shall show the reasons for the award.
- (2) The award may vary any collective agreement between the parties to the dispute or an existing award of the Panel to which they are parties or revoke an award under the *Trade Disputes Act 1976* which is binding on them.
- (3) The award shall have effect for such period (not being less than one year) as may be specified in the award; and the period may begin before the date of the award.
- (4) Where any trade dispute referred to the Panel involves questions as to terms or conditions of or affecting employment which are regulated by any written law (other than this Act), the Panel shall not make any award which is inconsistent with the provisions of that law.

Procedure for making award

- (1) Any award of the Trade Disputes Panel may be the award of the majority of the Panel.
- (2) The Panel shall submit a draft of their award to the Minister within the period of twenty-one days beginning with the date on which they entered on the inquiry or such longer period as the Minister may by notice in writing to the panel specify.
- (3) So far as the draft relates to the pay of any employees, the Minister may, within the period of seven days beginning with the date on which the draft is submitted to him, by directions in writing to the Panel, vary the terms of the draft if, in his opinion, it is necessary to do so in the interests of the economy as a whole.
- (4) Where the Minister gives directions under subsection (3), he shall give also a statement of the considerations taken into account in giving the directions.
- (5) At the end of the period referred to in subsection (3), the award shall take effect in terms of the draft or, as the case may be, the draft as varied under subsection (3).

- (6) In this section, “**pay**” includes any benefit that may be received in right of employment.

9 Enforcement of awards

- (1) Where the Trade Disputes Panel make an award, the award shall be enforceable in accordance with this section as between the parties to the award.
- (2) For the purposes of this section, the following are parties to the award (whether it is an award on a dispute between an employer and his employees, or between groups of his employees):
- (a) the employer;
 - (b) the employees, whether or not they were employees at the time of the award;
 - (c) where the employees, or some of them, are members of a trade union, that trade union; and
 - (d) where the employer is a member of an employers’ association, that association.
- (3) It shall be the duty of every party to the award to take all such steps as are reasonably practicable to comply with the award and not to seek to induce any other party to the award to break any of its terms.
- (4) Any party to the award may apply to the High Court for an order under this section on the ground that another person (“the respondent”) is in breach of the duty referred to in subsection (3).
- (5) If the High Court finds that the ground on which the application is made is well-founded, the Court may, if it considers that it would be just and equitable to do so, grant relief to the applicant in one or more of the following forms.
- (6) Those forms are:
- (a) an order declaring the rights of the applicant and the respondent in relation to the subject-matter of the application;
 - (b) an order requiring the respondent to pay compensation to the

applicant in respect of the breach of duty; and

- (c) an order directing the respondent to take such steps for implementing the award as may be specified in the order.

10 Restriction on industrial action where dispute is before Panel

- (1) At any time when a trade dispute has been referred to the Trade Disputes Panel and the Panel have neither:
 - (a) succeeded in bringing about a settlement of the dispute by negotiation, nor
 - (b) made an award in the dispute,no person shall do any of the things mentioned in subsection (2).
- (2) Those things are:
 - (a) calling, organising, procuring or financing a strike or other industrial action short of a strike in furtherance of the dispute, or threatening to do so;
 - (b) instituting, carrying on, authorising, organising or financing a lock-out or other industrial action short of a lock-out in furtherance of the dispute, or threatening to do so; or
 - (c) terminating (for whatever reason) the contract of employment of any employee whose conditions of service are in issue in the dispute.
- (3) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of 1000 penalty units, or six months imprisonment, or both.
- (4) Any person may apply to the High Court for an order under this section on the ground that:
 - (a) another person (“the respondent”) has contravened subsection (1), and
 - (b) the applicant has suffered loss by reason of the contravention.

- (5) If the Court finds that the ground on which the application is made is well-founded, the Court may, if it considers that it would be just and equitable to do so, grant relief to the applicant in either or both of the following forms.
- (6) Those forms are:
 - (a) an order requiring the respondent to compensate the applicant for the loss suffered;
 - (b) an order directing the respondent not to continue with the contravention and, where the contravention involves the termination of the contract of employment of any person, the order may require him to be reinstated.

11 Expenses of Panel

- (1) Where any dispute is referred to the Trade Disputes Panel and either:
 - (a) the dispute is settled with the assistance of the Panel, or
 - (b) the Panel make an award,the Panel shall, if they think it appropriate, order all or any of the parties to the dispute to contribute towards the expenses of the Panel in respect of the dispute.
- (2) For the purposes of this section, the expenses of the Panel in respect of a dispute are so much of the Government's expenditure incurred in maintaining the Panel or under section 4(9) as is attributable to the settlement of the dispute or the making of an award in the dispute; and a certificate of the Minister as to the amount of the expenses of the Panel in respect of a dispute shall be conclusive.
- (3) The amount of any contribution to be made under this section shall be such as the Panel thinks fit, taking account of the financial circumstances of the party concerned and any other relevant circumstances.
- (4) In deciding whether or not to make a contribution order in respect of any party under this section, and in determining the amount of the contribution, the Panel shall have regard to that party's conduct in

the dispute and, in particular:

- (a) whether or not the party has tried to use any existing collective agreement; and
- (b) if the party is a trade union or employers' association, whether or not the rules of the union or association have been complied with.

12 Collective agreements

Every provision of a collective agreement which:

- (a) is made in writing after the commencement of this section, or
- (b) was registered under section 29 of the *Trade Disputes Act 1976*,

shall be conclusively presumed to be intended by the parties to be legally enforceable, unless it is stated in the agreement that the agreement, or that provision, is intended not to be legally enforceable.

13 Appeals

An appeal shall lie to the High Court on any question of law arising from any decision of, or arising in any inquiry before, the Trade Disputes Panel under this Act.

14 Government employment

This Act shall have effect in relation to the Government and to persons in the service of the Government or otherwise in the service of the Crown as it has effect in relation to employers and employees.

15 Regulations, rules and parliamentary procedure

- (1) The Minister may by regulations make administrative and procedural provisions for the purpose of carrying this Act into effect.
- (2) Where regulations are to be made under this section, or rules are to be made under section 3(3), the following provisions (and not section 62 of the *Interpretation and General Provisions Act*) shall have effect:

- (a) a copy of the regulations or rules shall be laid before Parliament; and
 - (b) the copy shall be laid before the regulations or rules come into effect; and
 - (c) if, within the period of twenty days beginning with the day on which the copy is laid, Parliament resolves that the regulations or rules be annulled, the regulations or rules shall cease to have effect as from the date of the resolution, but without prejudice to the validity of anything previously done under them or to the making of new regulations or rules.
- (3) In reckoning any period of twenty days for the purposes of subsection (2)(c), no account shall be taken of any time during which Parliament is prorogued or dissolved or is adjourned for more than four days.

SCHEDULE

Section 1

GLOSSARY

Collective Agreement.....	An agreement made by or on behalf of a trade union and an employer or an employers association or by or on behalf of two or more trade unions and relating to or connected with one or more of the matters specified in the definition of "trade dispute".
Collective bargaining.....	Negotiations relating to or connected with one or more of the matters specified in the definition of "trade dispute".
Contract of employment.....	A contract of service or apprenticeship, whether express or implied, and (if it is express) whether it is oral or in writing.
Employee.....	An individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.
Employer.....	In relation to an employee, means the person by whom the employee is (or, in a case where the employment has ceased, was) employed.
Lock-out.....	Action which, in contemplation or furtherance of a trade dispute, is taken by an employer, whether a party to the dispute or not, and which consists of the exclusion of employees from one or more factories, offices or other places of employment or of the suspension of

	work in one or more such places or of the collective, simultaneous or otherwise connected termination or suspension of employment of a group of employees.
Recognition.....	In relation to a trade union, means the recognition of the union to any extent by an employer for the purpose of collective bargaining.
Recognition issue.....	See section 5.
Strike.....	A concerted stoppage of work by a group of employees in contemplation or furtherance of a trade dispute, whether they are parties to the dispute or not, whether (in the case of all or any of those employees) the stoppage is or is not in breach of their terms and conditions of employment, and whether it is carried out during, or on the termination of, their employment.
Trade dispute.....	<p>A dispute between employees and employers, or between groups of employees, which is connected with one or more of the following matters:</p> <ul style="list-style-type: none"> (a) terms and conditions of employment or the physical conditions in which employees are required to work; (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more employees; (c) allocation of work as between

- employees or groups of employees;
- (d) matters of discipline
- (e) membership or non-membership of a trade union; and
- (f) machinery for negotiation or consultation, and other procedures relating to any of the matters mentioned above, including the recognition of any trade union by an employer.

Trade union.....

A trade union registered under the *Trade Unions Act*.

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
It = 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 75 of the Revised Edition of the Laws of Solomon Islands, together with amendments made to the Act from that date to 1 October 2009.

2 LIST OF LEGISLATION

Trade Disputes Act (Cap. 75)

Constituent legislation:	3 of 1981 (Commenced 1 July 1981)
	8 of 1982
	11 of 1987

Trade Disputes (Amendment) Act 1999 (No. 8 of 1999)

Assent date	10 December 1999
Gazetted	29 December 1999
Commenced	29 December 1999

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

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

3 LIST OF AMENDMENTS

s 2	amd by Act No. 8 of 1999
s 3	amd by Acts No. 8 of 1999; No. 14 of 2009
s 3A	ins by Act No. 8 of 1999
s 10	amd by Act No. 14 of 2009

