



Tuvalu

TRADE UNIONS ACT

2008 Revised Edition

CAP. 40.64



Tuvalu

TRADE UNIONS ACT

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Tuvalu

TRADE UNIONS ACT

AN ACT TO REGULATE TRADE UNIONS¹

Commencement [1st April 1946]

PART I - PRELIMINARY

1 Short title

This Act may be cited as the Trade Unions Act.

2 Interpretation

In this Act, unless the context otherwise requires —

“**employer**” includes the Government;

“**trade union**” means any combination whether temporary or permanent, the principal purposes of which are under its constitution the regulation of the relations between workmen and masters, or between workmen and workmen, or between masters and masters whether such combination would or would not if this Act had not been enacted have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade:

Provided that nothing in this Act —

- (a) shall affect —
 - (i) any agreement between partners as to their own business;
 - (ii) any agreement between an employer and those employed by him as to such employment;

- (iii) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft;
or
- (b) shall preclude any trade union from providing benefits for its members;
- “registered”** means registered under this Act;
- “the Registrar”** means the Registrar of Trade Unions;
- “workman”** means any person other than a police officer who has entered into or works under a contract with an employer, whether the contract be by way of manual labour, clerical work or otherwise, be expressed or implied, oral or in writing, and whether it be a contract of service or apprenticeship or a contract personally to execute any work or labour.

PART II - TRADE UNIONS

3 Trade unions not criminal

The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

4 Trade union not unlawful for civil purposes

The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render voidable any agreement or trust.

5 Trade unions prohibited from carrying on business unless registered

- (1) No trade union or any member thereof shall perform any act in furtherance of the purposes for which it has been formed unless such trade union has first been registered.
- (2) Any trade union or any officer or member thereof who contravenes the provisions of this section shall be liable to a fine of \$50.

6 Registrar of trade unions

The Minister may appoint an officer to be the Registrar of Trade Unions.

7 Registration of trade unions

Any 7 or more members of a trade union may, by subscribing their names to the rules of the union and otherwise complying with the provisions of this Act with respect to registration, register such trade union under this Act:

Provided that if any one of the purposes of such trade union be unlawful such registration shall be void.

8 Compulsory registration

- (1) Every trade union shall be registered in accordance with the provisions of this Act or be dissolved within 3 months of the date —
 - (a) of its formation; or
 - (b) of any notification by the Registrar that he has refused under section 10 to register the trade union; or
 - (c) of the commencement of this Act whichever is the later date.
- (2) Every trade union which is not registered or dissolved within the period prescribed in the preceding subsection and every officer thereof shall be liable to a fine of \$10 for every day it remains unregistered after the expiration of such period.

9 Rules of registration

With respect to the registration under this Act of a trade union, and of the rules thereof, the following provisions shall apply —

- (a) an application to register the trade union and its rules shall be sent to the Registrar with copies of the rules and a list of the titles and names of the officers of the trade union;
- (b) the Registrar upon being satisfied that the trade union has complied with the rules respecting registry in force under this Act shall, subject to the provisions of section 10, register the trade union and rules;
- (c) no trade union shall be registered under a name identical with that by which any other existing trade union has been registered or so nearly resembling such name as to be likely to deceive the members of the public;
- (d) the Registrar upon registering a trade union shall issue a certificate of registration.

10 Refusal of registration

- (1) If the Registrar is satisfied that —
 - (a) the applicants have not been duly authorised to apply for registration; or

- (b) the purposes of the trade union are unlawful; or
 - (c) the application is not in conformity with the provisions of this Act;
- he may refuse registration.
- (2) When the Registrar refuses to register a trade union, he shall notify the applicants in writing of the grounds of such refusal and the trade union shall be deemed to be dissolved, but such dissolution shall not take effect prior to the expiry of the period limited by section 13(1) for the bringing of an appeal and then —
 - (a) if no appeal is brought under the said subsection within that period, the dissolution shall take effect at the commencement of the day following the day on which that period expired, and
 - (b) if an appeal is brought within that period, the dissolution shall not take effect prior to the determination of the appeal, but, if the appeal is dismissed, shall take place within 1 month of the determination thereof.
 - (3) If any trade union the dissolution of which is required by subsection (2) be not dissolved within the time allowed, then the trade union and every officer thereof and any person acting or purporting to act as an officer thereof shall be liable to a fine of \$500 and in the case of a continuing offence to a fine of \$5 for each day during which the offence continues:

Provided that it shall be no offence for a person to act on behalf of such a trade union for the purpose of —

- (a) any proceedings brought by or against such trade union; or
- (b) dissolving such trade union and disposing of its funds in accordance with its constitution and rules.

11 Cancellation of registration

- (1) The Registrar may cancel the registration of any trade union —
 - (a) at the request of the trade union, to be evidenced in such manner as he may direct;
 - (b) on proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake, or that such trade union has wilfully, and after notice from the Registrar, violated any of the provisions of this Act or has ceased to exist.
- (2) Not less than 2 months' previous notice in writing specifying briefly the grounds of the proposed cancellation, except where cancellation is required by the trade union or the trade union has ceased to exist in which case notice of cancellation may be given forthwith, shall be given by the Registrar to the trade union before such cancellation is effected.
- (3) A trade union served with a notice under subsection (2) may, at any time within a period of 2 months from the date of such notice, show cause in

writing against the proposal to cancel each registration; and if such cause is shown the Registrar may hold such enquiry as he may consider necessary in the circumstances.

- (4) The Registrar may, after the period of 2 months specified in subsection (3), cancel the registration of any trade union which has failed to show cause under that subsection or which, having so shown cause, has failed to satisfy him that its registration should not be cancelled.
- (5) An order made by the Registrar under this section cancelling the registration of any trade union shall be dated as of the date on which it was made and shall specify the grounds for the cancellation of the registration and shall forthwith be served on the trade union affected thereby.

12 Effect of cancellation of registration

- (1) Subject to the provisions of subsection (2), a trade union the registration of which has been cancelled under this Act shall in addition to any, other liability —
 - (a) cease to enjoy any of the rights, immunities or privileges of a registered trade union but without prejudice to any liability incurred by the trade union which may be enforced against the trade union or its assets, whether such liability is incurred before, on or after the date of the cancellation of registration;
 - (b) forthwith be dissolved and its funds shall be disposed of in accordance with the rules of the trade union and no person shall, except for the purpose of defending proceedings against the trade union or of dissolving it and disposing of its funds in accordance with the rules thereof, take any part in its management or organisation or act or purport to act on behalf of the trade union or as an officer thereof.
- (2) Where the registration of a trade union is cancelled, the cancellation shall not take effect for the purposes of subsection (1) prior to the expiry of the period limited by section 13(1) for the bringing of an appeal and then —
 - (a) if no appeal is brought under the said subsection within that period, the cancellation shall take effect for those purposes at the commencement of the day following the day on which that period expired; and
 - (b) if an appeal is so brought within that period, the cancellation shall not take effect prior to the determination of the appeal, but, if the appeal is dismissed, shall take effect for those purposes, on the determination thereof.
- (3) Any officer or person acting or purporting to act as an officer of a trade union who contravenes the provisions of subsection (1)(b) shall be liable to a fine of \$500 and in the case of a continuing offence to a fine of \$5 for each day during which the offence continues.

13 Appeals from decision of Registrar

- (1) Any person aggrieved by the refusal of the Registrar under section 10 to register a trade union, or by an order by the Registrar under section 11 cancelling the registration of any trade union, may within one month of the date of such refusal or such order, as the case may be, appeal against such refusal or order to the Senior Magistrate's Court and upon such appeal the said Court may order as it thinks proper, including any directions as to the costs of the appeal and any such order shall be final and conclusive and shall not be subject to any appeal.
- (2) The Chief Justice may make rules of court governing such appeals, providing for the method of giving evidence, prescribing the fees to be paid, the procedure to be followed and the manner of notifying the Registrar of the appeal.
- (3) The Registrar shall be entitled to be heard on any appeal under this section.

14 Officers of trade union to account

- (1) Every treasurer or other officer of a registered trade union at such times as by the rules thereof he should render such accounts as hereinafter mentioned, or having been required so to do, shall render to the members thereof, at a meeting of the trade union, a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance remaining in his hands, and of all bonds and securities of such trade union.
- (2) Such account shall be audited by some fit and proper person or persons to be appointed by the trade union.
- (3) Upon the account being audited the treasurer or other officer as the case may be shall, if thereupon required, hand over to the trade union the balance which on such audit appeared to be due from him, and shall also if required hand over to the trade union all securities and effects, books, papers and property of the trade union in his hands or custody.
- (4) If the treasurer or other officer fails to hand over such things and documents as in subsection (3) required, the committee of management of the trade union or any member for and on behalf of the trade union may sue him in any competent court for the balance appearing to have been due from him upon the account last rendered by him, and for all moneys since received by him on account of such trade union and for the securities and effects, books, papers and property, in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of such trade union; and in any such action the plaintiff shall be entitled to recover full costs of suit to be taxed as between solicitor and client.

15 Injunction to restrain misuse of funds

An injunction restraining any expenditure of funds of a trade union on anything, or in any manner, not authorised by the rules of the trade union or by any provisions of this Act, may be granted by the Senior Magistrate's Court on the application of any officer or member of the trade union or of the Registrar or of the Attorney-General.

16 Audited accounts to be sent to Registrar

- (1) Every registered trade union shall transmit to the Registrar the account prepared and audited in accordance with section 14 within 1 month of its submission to the members of the trade union.
- (2) Every officer of a registered trade union which fails to comply with the provisions of this section shall be liable to a fine of \$50.

17 Rules of registered trade unions

With respect to the rules of a registered trade union, the following provisions shall have effect —

- (a) the rules of every such trade union shall contain provisions in respect of the several matters mentioned in the Schedule;
- (b) a copy of the rules shall be delivered by the trade union to every person on demand on payment of a sum not exceeding 10 cents.

18 Alteration of rules of trade unions

- (1) Every alteration of the rules of a registered trade union shall be registered with the Registrar and shall take effect from the date of registration unless some later date is specified in the rules.
- (2) The rules of a registered trade union shall not be altered so that they cease to contain provisions in respect of the several matters in the Schedule.

19 Rules

The Minister may make rules respecting registration under this Act and in particular but without prejudice to the generality of the foregoing power with respect to —

- (a) the seal, if any, to be used by the Registrar for the purpose of registration under this Act;
- (b) the forms to be used for such registration;
- (c) the inspection of registers and documents kept by the Registrar and the making of copies of any entries therein;
- (d) the fees to be charged for registration and inspection and any other service or matter prescribed or permitted by this Act; and

- (e) generally for carrying this Part into effect.

PART III - TRADE DISPUTES

20 Definitions

In this Part —

“**to intimidate**” means to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependants or of violence or damage to any person or property;

“**injury**” includes injury to a person in respect of his business, occupation, employment or other source of income, and includes any actionable wrong;

“**trade dispute**” means any dispute between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or with the terms of the employment, or with the conditions of labour of any person.

21 Freedom of association of workmen

- (1) No employer shall make it a condition of employment of any workman that such workman shall neither be nor become a member of any or a particular trade union or other organization representing workmen in any trade or industry, and any such condition in any contract of employment entered into before or after the commencement of this Act shall be void.
- (2) Subject to this Act nothing contained in any law shall prohibit any workman from being or becoming a member of any trade union or subject him to any penalty by reason of his membership of such trade union.
- (3) Any employer who contravenes subsection (1) and every person who, whether acting on his own behalf or on behalf of a trade union or of an employer, and whether or not acting in contemplation or furtherance of a trade dispute, compels, persuades or induces, or attempts to compel, persuade or induce, any employer to contravene subsection (1) shall be liable to a fine of \$100 and to imprisonment for 6 months.

22 Immunity of trade unions from actions of tort

- (1) An action against a trade union, whether of workmen masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union shall not be entertained by any court.

- (2) Nothing in this section shall affect the liability of a trade union or any official thereof to be sued in any court touching or concerning the property or rights of a trade union, except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute.

23 Conspiracy in relation to trade disputes

- (1) An agreement or combination of 2 or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be triable as a conspiracy if such act committed by 1 person would not be punishable as a crime.
- (2) An act done in pursuance of an agreement or combination by 2 or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.
- (3) Nothing in this section shall exempt from punishment any person guilty of a conspiracy for which a punishment is awarded by any law in force in Tuvalu.
- (4) Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace or sedition or any offence against the State or the Sovereign.
- (5) A crime for the purposes of this section means an offence for the commission of which the offender is liable to be imprisoned, either absolutely or at the discretion of the court as an alternative for some other punishment.
- (6) Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed 3 months, or such longer time, if any, as may have been prescribed by the law for the punishment of the said act when committed by 1 person.

24 Removal of liability for interfering with another person's business actionable

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

25 Intimidation or annoyance

- (1) Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority —

- (a) uses violence to or intimidates such other person or his wife or children, or injures his property; or
- (b) persistently follows such other person about from place to place; or
- (c) hides any tools, clothes or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or
- (d) watches or besets the house or other place where such other person resides or works or carries on business or happens to be or the approach to such house or place; or
- (e) follows such other person with 2 or more other persons in a disorderly manner in or through any street or road,

shall be liable to a fine of \$40 or to imprisonment for 3 months.

- (2) Attending at or near any house or place in such numbers or in such manner as is by section 26(b) declared to be unlawful shall be deemed to be a watching and besetting of that house or place within the meaning of this section.

26 Peaceful picketing and prevention of intimidation

Notwithstanding anything contained in this Act —

- (a) it shall be lawful for 1 or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working;
- (b) it shall not be lawful for 1 or more persons (whether acting on their own behalf or on behalf of a trade union or of an individual employer or firm, and notwithstanding that they may be acting in contemplation or furtherance of a trade dispute) to attend at or near a house or place where a person resides or works or carries on business or happens to be, for the purpose of obtaining or communicating information or of persuading or inducing any person to work or to abstain from working if they so attend in such numbers or otherwise in such manner as to be calculated to intimidate any person in that house or place, or to obstruct the approach thereto or egress therefrom, or to lead to a breach of the peace; and any person who acts in contravention of this paragraph shall be liable to a fine of \$40 or to imprisonment for 3 months.

SCHEDULE*(Section 17)*

1. The name of the trade union.
2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby and the fines and forfeitures to be imposed on any member of the trade union.
3. The manner of making, altering, amending and rescinding rules.
4. A provision for the appointment and removal of a general committee of management, of a treasurer and other officers.
5. A provision for the keeping of full and accurate accounts by the treasurer.
6. A provision for the investment of the funds or their deposit in a bank and for an annual or periodical audit of accounts.
7. The inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union.
8. The manner of the dissolution of the trade union and the disposal of the funds thereof available at the time of such dissolution.

ENDNOTES

¹ 1990 Revised Edition, Cap. 82 – Acts 2 of 1946, 12 of 1964, 1 of 1967, 10 of 1967, 3 of 1968, 6 of 1968, 8 of 1968, 33 of 1974