

# **Tonga**

## **A National Retirement Benefits Fund for Tonga**

### **Phase II: Report on the Draft National Retirement Benefits Scheme Bill**

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International Labour Office  
Social Security Department, Geneva  
Subregional Office for South-East Asia and the Pacific, Manila  
Office for the South Pacific, Suva

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ILO Social Security Department, Geneva / ILO Sub-regional Office for South-East Asia and the Pacific, Manila / ILO Office for the South Pacific, Suva / UNDP

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## **Acronyms**

CLO	Crown Law Office
ILO	International Labour Organization
NRBS	National Retirement Benefits Scheme
UNDP	United Nations Development Programme

## **Exchange rate**

1 US\$ = 2.075 Tonga Pa'anga (as of 30 November 2006)

# Introduction

This report summarises the conclusions of the Phase 2 of the National Retirement Benefits Scheme (NRBS) project (TON/98/001).

The aim of this report is to present the revised text of the NRBS Bill and to provide detailed explanations of the proposed changes to assist the Law Committee in its review of the legislation.

In 1985, at the Government's request, the ILO drew up plans to introduce a National Pension Scheme for Tonga but the draft legislation was not introduced. The need for a Retirement Benefit Scheme was raised again in 1997. A technical project on the feasibility of setting up a National Retirement Benefits project was then agreed between the Government of Tonga and the UNDP as funding agency, with the ILO undertaking the project.

The Tongan National Retirement Benefits Scheme (NRBS) project was set-up in 1999, which was planned to be implemented in three phases:

- Phase 1: Development and assessment of feasible scheme options
- Phase 2: Preparing legislation to establish the scheme
- Phase 3: The organisational setting up for the implementation of the new National Retirement Benefits Scheme.

Key findings and recommendations in Phase 1 are summarised in the project report<sup>1</sup>, which was submitted to the Government. Following the completion of Phase 1 of the project in 2001, the legislation of the National Retirement Benefit Scheme was drafted and submitted in October 2002. This was subject to review by the Law Committee and, after amendment, was forwarded to Parliament as the National Retirement Benefit Scheme Bill 2004. However, some objections were raised by Parliamentarians to the amendment excluding daily paid staff, the composition of the Board and whether sufficient consultations had taken place.

The Minister of Finance decided to withdraw the Bill in order to meet these points and UNDP/ILO arranged a mission to Tonga (from 25 to 28 October 2004) for the purposes of assisting the authorities in resolving the situation. Following consultations with stakeholders, a Technical Report was submitted containing a review of the Bill and proposals for 32 amendments for consideration by the Crown Law Office and stakeholders respectively. The Minister had stated that his intention was to reintroduce the Bill in July 2005 immediately after the Budget and considered that it would be useful to arrange additional consultations on the new scheme prior to the submission to Parliament.

In the event, there has been very slow progress due to a number of unforeseen external factors. A programme of consultations was undertaken by a national consultant in 2006 but as by August 2006 the proposed amendments to the legislation had not yet been considered by the relevant authorities, UNDP/ILO then arranged another mission to Tonga (from 7 to 11 August, 2006) in order to assist the authorities to complete the consultation programme and to advise on the revision of the legislation. The Terms of Reference are found in the Annex to this report. Following further consultations in August 2006, the NRBS Bill has been amended to reflect the updated views of the stakeholders.

At the end of the August 2006 mission, it was decided that the project would be closed down at the conclusion of the Phase 2 activities. When the legislation is approved it will be open to the Government of Tonga to make a request for the resumption of the next Phase 3 project activities.

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<sup>1</sup> ILO/UNDP, "Tonga: A National Retirement Benefits Fund for Tonga" (ILO/UNDP/Tonga/R.3), 2001

**The National Retirement Benefits Scheme has been carefully designed to meet specific needs identified by Tongans in different sectors and areas of the country and has been subject to extensive and wide-ranging consultations at all stages. There is no doubt that this long-awaited scheme warrants priority attention in order to minimise the effects of lengthy delays. The revised NRBS Bill presented in this report has been produced as a result of further consultations with stakeholders. It is hoped that the revised NRBS Bill will be re-submitted to Parliament as a priority matter and that final consideration will be made so that implementation of this important programme can be envisaged at the earliest stage.**

The remainder of this report has been organised as follows. Part I provides an overview of the development of the NRBS legislation following Phase 1 of the project, and summarises the consultation meetings with key stakeholders regarding the amendments of the NRBS Bill. Part II presents the revised NRBS Bill and accompanying notes which provide detailed explanation of the proposed amendments.

This report has been prepared by Kenneth Thompson, ILO Social Security Legislation Consultant. Technical comments have been provided by Kenichi Hirose, Social Protection Specialist, ILO Subregional Office for South-East Asia and the Pacific, and by Social Security Department of the ILO. ILO Office for the South Pacific provided administrative support to the consultant.

## **Part I**

# **Overview of the National Retirement Benefits Scheme**





# 1. Development of the National Retirement Benefits Scheme legislation

## 1.1. Introduction

In Tonga, only Government employees are covered by the Government Retirement Fund scheme although private sector employees have exactly the same needs for such a system of financial support on retirement. Only a few employer-operated schemes have been established to meet this need.

The need for national efforts to organise a system of guaranteed financial support in old-age has been recognised worldwide. There are few countries without any type of scheme for the private sector employees as well as the schemes for civil servants and public sector workers and some occupational pension schemes in sectors such as banking.

Table 1 below shows the dates on which 6 other Pacific Island countries first approved legislation for the introduction of national provident funds. It can be seen that Fiji was the first in 1966 and the last was Vanuatu in 1986.

**Table 1. Salient features of National Provident Funds in Pacific Island countries**

Country	Date of legislation	Coverage	Employee Contribution	Employer Contribution	Total
Fiji	1966	Employees of the public and private sectors	8%	8%	16%
Kiribati	1976	Employees of the public and private sectors	7.5%	7.5%	15%
Papua New Guinea	1980	Employees in firms with 20 or more workers	5.5%*	7.7%*	13.2%*
Samoa	1972	Employees of the public and private sectors	5%	5%	10%
Solomon Islands	1973	All private sector employees	5%	7.5%	12.5%
Vanuatu	1986	Employees of the public and private sectors	4%**	4%**	8% **

Source: Social Security Programs throughout the World: Asia and the Pacific, 2004

\* From 2008, employee contribution 6%, employer contribution 8.4%, total 14.4%.

\*\*6% each by employees and employers until 2001 when Government reduced the rates to 4% each: some private sector employers continue to maintain a 12 % total contribution)

These are all self-financing schemes to which the covered persons and employers contribute for the purpose of providing financial support according to the amounts accumulated in individual accounts of each member at the date they retire. No Government subsidy is involved.

These funds are managed by tripartite boards, consisting of representatives of employees, employers and Government, acting as trustees and supervising the administrative organisation which is established to register members, collect contributions, maintain records, and pay out

benefits. Although they function independently, each Fund comes under a Government Ministry to ensure accountability and allow Parliamentary scrutiny, as required.

The main objectives of setting-up such schemes are:

(a) **to provide a measure of financial security and to alleviate financial hardship in old-age** which occurs when workers are unable to save individually for their retirement, that is more and more the situation of the majority especially as life expectancy increases and family members find it increasingly difficult to provide sufficient support over extended periods, and

(b) **to raise national saving levels in order to increase the availability of investment capital and boost the economy**, which, in turn, can improve employment creation for the private sector workforce.

The Board is responsible for deciding on investment guidelines to be followed by professional staff or financial organisations charged with investing the reserves in accordance with investment principles of security, yield and liquidity and declaring an annual rate of interest for crediting to each member's account. The administrative expenses are met out of the interest received on the investments.

## **1.2. Summary of Phase 1 activities**

In 1985, at the Government's request, the ILO drew up plans to introduce a National Pension Scheme for Tonga but the draft legislation was not introduced. The need for a Retirement Benefit Scheme was raised again in 1997 and UNDP agreed to finance the present project.

The Tongan National Retirement Benefits Scheme (NRBS) project was set-up in 1999 and consists of three phases. Phase 1 has been completed in 2001. The main activities in Phase 1 are summarised as follows.

### **(i) Research**

Four research projects and surveys were undertaken:

- (a) A sample survey of older people in Tonga conducted by the Statistics Department.
- (b) A sample survey of persons who had received employment-linked retirement benefits which was also conducted by the Statistics Department.
- (c) Collection of information from fishermen on their attitudes to a National Retirement Benefits Scheme.
- (d) Assessment of the attitudes of a sample of Tongan emigrants to participating in a National Retirement Benefits Scheme.

### **(ii) Statistics**

A substantial amount of information was collected on the Tongan population and economy, including financial savings, for the purposes of the study.

### **(iii) Discussion documents**

Two public discussion documents were distributed and also were used in the main consultation workshops. The first was a bilingual leaflet entitled "National Retirement Benefits Scheme" which was designed to inform the public about the project and the nature of the Retirement Benefits scheme being considered. The second was a more comprehensive and bilingual report "Consultation paper on a Retirement Benefits Scheme for Tonga".

#### **(iv) Consultation workshops**

Following initial discussions and workshops in December 1999 and January 2000, the main series of consultation workshops were held in March and April 2000 and in July 2000, respectively. The first series involved four sector groups in Tongatapu (workers, farmers, the Chamber of Commerce, and the Tongan Small Business Association) plus two mixed composition groups in Vava'u. These workshops highlighted a number of concerns and issues which were addressed in the main consultation paper. The second series of meetings in July 2000 involved six sector groups in Tongatapu (workers, farmers, Chamber of Commerce and the Tongan Small Business Association, women and youth) plus two mixed composition groups in Vava'u and one in Ha'apai. Briefings on the progress of these studies and possible implications for the choice of a suitable system for the country were also given to Cabinet Ministers and Members of Parliament.

The main purpose of these activities was to identify, analyse and elucidate the available options in close consultation with different groups in different areas of Tonga in order to identify the most suitable system for the country. Key findings and recommendations in Phase 1 are provided in the project report<sup>2</sup>, which was submitted to the Government.

### **1.3. Development of the scheme**

In November 2000, His Majesty's Cabinet agreed to the establishment of a National Retirement Benefits Fund. The proposed Retirement Benefit Fund approved by Cabinet had the following main features.

#### **(i) Coverage**

Coverage will be compulsory for all full time employees (daily, weekly or monthly paid) who are not already members of existing retirement benefit funds which meet conditions for exemption from NRBS. These schemes will be "complying" retirement benefit funds. For other people, including Tongans living abroad, membership would be voluntary. The latter will be entitled to open an account for themselves and or to pay on behalf of their parents or other family members.

#### **(ii) Contributions**

The scheme will be financed by contributions by employers and employees. Initially, the contribution rate will be set at 10 per cent of salaries and wages (the same as in the Government employee scheme) with each side paying 5 per cent. These are very similar to the amounts payable in the other countries included in the above Table 1. The method of collection will be deductions from wages and salaries at the date of payment with the employers matching their share and remitting the amounts to the NRBS.

By 2009 the contribution rate is to increase to 15 per cent<sup>3</sup>. Government will be liable for contributions for any of its personnel not already covered by the Government employee retirement benefits scheme, if any, but no Government subsidy would be required for the NRBS itself.

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<sup>2</sup> ILO/UNDP, "Tonga: A National Retirement Benefits Fund for Tonga" (ILO/UNDP/Tonga/R.3), 2001

<sup>3</sup> In view of the delay in starting the scheme the date 2009 will be changed to a later date when the legislation is finalised.

### **(iii) Benefits**

Retirement benefits will comprise

- A pension payable for life from age 60 calculated on amounts in the individual accounts (all contributions and interest earnings); however, if the account balance is insufficient for financing a pension the full amount will be refunded.
- Entitlement to take up to one-third of the balance as a cash lump-sum before the pension is calculated.
- If a member dies before reaching 60, their accumulated balance in their account would be paid to their prescribed relatives (spouse or children, or parents, or a nominee) or to their estate if there is no such prescribed relative.
- A life insurance payment equal to one years average earnings of NRBS contributors when an active Fund member dies.

### **(iv) Administration**

The scheme will be run by an independent tripartite Board of Trustees representing employers, employees, and Government. The Board would establish an organization to manage the scheme, and would devise investment strategies guided as necessary by professionals in this field.

Following the Cabinet decision, further development of the scheme was undertaken in Phase 2 involving close collaboration at all stages between ILO experts and Tongan organisations and institutions as well as other stakeholders. Key issues were discussed on a regular basis in order to formulate specific proposals for the NRBS. In October 2002 the following decisions were taken by His Majesty's Cabinet:

### **(v) Minister responsible for the NRBS**

As the scheme has the same objectives as the Government Retirement Benefits Fund under the Hon. Minister of Finance, the responsible Minister for the NRBS should be the Hon Minister of Finance, authorised to appoint the Board which would be answerable to Government through him. Annual reports from the new Scheme will be tabled by the Hon Minister of Finance in Parliament.

### **(vi) The Board of Trustees**

A six (6) member Board of Trustees constituted on a tripartite basis is proposed to run the Fund. The Hon. Minister of Finance would appoint the six Trustees on the basis of nominations in respect of the employer and employee NRBS members.

- The two Employer representatives would be appointed in accordance with nominations from the representative Employer organisations, tentatively one each from the Chamber of Commerce and the Tonga Small Business Association.
- The two Employee representatives would be appointed after consultations or elections amongst the members of the scheme (for the first Board, prospective members would participate in the process of selecting employee representatives).
- The two Government representatives would represent the concerned Government Departments assumed to be the Ministry of Finance and the Ministry of Labour, Commerce and Industry respectively.

### **(vii) Apportionment of the higher contribution rates**

The proposal for the private sector National Retirement Benefits Scheme agreed by Cabinet is that the contribution rate for this scheme should rise from 10 per cent to 15 per cent after five years of the implementation of the scheme. However, when Cabinet approved the scheme no decision was taken on how the cost of the additional 5 per cent contribution was to be shared between employers and employees. After consultations with employers and employees it was agreed that the additional contributions will be shared equally between employers and employees, with each side paying 7.5 per cent in total.

### **(viii) Entitlement to refunds of balances in the case of permanent total incapacity**

One issue raised in the design of the scheme concerns the treatment of persons who become permanently and totally disabled for further employment prior to the age of 60. At meetings with employers and employees there was general agreement that, whilst no withdrawals should be permitted prior to age 60 other than on death, this particular group was a special case. It was agreed that an exception should be made to the rule to the effect that where strict criteria for permanent and total disablement have been met these members should be allowed to make an early withdrawal of their accumulated contributions and interest earnings. However, where the balance equals or exceeds the minimum sum on which pensions are payable, these persons should have an option to take up to one-third as a lump-sum and the remainder in the form of pensions (this is similar to the Government Retirement Benefits Scheme). This option should also be available to prescribed survivors when the member dies before age 60.

Accordingly it was agreed that the legislation should stipulate entitlement to early withdrawal of balances, with an option to take a partial lump-sum and the remainder in pensions, in cases of permanent and total incapacity, in addition to death, subject to medical criteria set by the Board.

### **(ix) Pensions payable for life with a five-year guarantee period**

Stakeholder meetings proposed that pensions be paid for a guaranteed period of five years to provide more security to family members. Thus if a member died one month after turning 60 and claiming a pension, the prescribed relatives would receive pension payments for the remaining period of 4 years and 11 months.

**Table 2. Estimated rates to convert the balance into pensions with a 5-year guarantee period**

Assumed interest rates	2%	4%	6%	8%
Conversion rate (*)	6.5%	7.7%	8.9%	10.2%

Source: ILO/UNDP, "Tonga: A National Retirement Benefits Fund for Tonga" (ILO/UNDP/Tonga/R.3), 2001

(\*) Note: For instance, if a retired worker with \$10,000 balance opts for a pension, the annual pension is \$890 under 6% interest rate. If this member dies one month after 60 years of age, \$4,376 (equivalent to 4 years and 11 months pension) will be paid to the prescribed relatives.

### **(x) Exemption of existing retirement benefits Funds from NRBS**

Some private sector organizations (e.g. Tonga Development Bank) already have staff retirement benefit schemes, and may well wish to retain their separate status. The policy guidelines for the development of old-age protection in Tonga are:

- The NRBS should set the basic and general standards for old-age protection of employees wherever they are employed.

- Existing Funds at the relevant date (date of approval of the legislation) may be permitted to apply for exemption from NRBS on the grounds that they provide equivalent or better benefits and meet the conditions stipulated in the legislation.
- Any changes made in the rules of existing funds should respect the members' acquired rights and rights in the course of acquisition.
- The NRBS should be extended as widely as possible and no new exemptions should be permitted after the legislation is approved.

The proposals approved by Cabinet were that existing retirement benefit schemes could continue as "complying schemes," with their members not being required to join the NRBS, provided certain "complying conditions" were met. These conditions were;

- The retirement benefits provided must be at least as good as the NRBS, especially the provision for a pension of at least two thirds of the value of account balances at age 60.
- The total contribution rates must be at least as high as in the NRBS.
- The employer level of contributions must be at least as high as in the NRBS.
- There must be provision to transfer the value of accumulated account balances (transfer values) into the NRBS when employees leave exempted employment before age 60.
- It has since been proposed that another stipulation should be that the members of the complying schemes should have the same legal rights to benefits as under the NRBS.

From meetings with several private sector retirement benefit schemes it appears that a number of such schemes would be likely to change their trust deeds in order to become "complying schemes." When the NRBS legislation is enacted they will have some time to consult members and decide on the action to take. The Board will examine the applications for exemptions and apply the legal provisions.

The Government Retirement Benefits Fund Board has considered options for the scheme and the Board has directed that the scheme should be exempted from the NRBS. This will be prescribed in the draft Bill and the scheme will continue as at present.

#### **(xi) Tax exemption of the Fund**

Income earned by the Government Retirement Benefits Fund is tax exempt and it is proposed that the same rules should apply to the NRBS. Similarly, pensions and cash lump-sums paid out by the Government Retirement Benefits Fund are tax exempt under Tongan law and tax practice. It is also proposed that this would also continue to apply to pensions and cash lump-sums paid out by the NRBS.

Because the pension received would be tax free, it is not proposed that there should be any tax concession on personal contributions to the Fund. However, because the contributions paid by employers are part of the cost of employing workers, it is proposed that these contributions would be tax deductible to employers in the same way that wages are tax deductible.

### **1.4. Current situation of the NRBS Bill**

The drafting of the NRBS legislation was completed in October 2002 and the Bill was submitted to the Law Committee together with a comprehensive Memorandum explaining the main principles and features of the scheme and its legal structure. The Law Committee made a number of changes, including the exclusion of daily paid employees and in the composition of the NRBS Board, before submitting it to Parliament in 2004. Some Parliamentarians objected to these changes and also questioned whether sufficient consultations had been carried out, leading to the withdrawal of the Bill.

ILO and UNDP fielded a joint mission in October 2004 in order to assist the Government in resolving the situation. After a review of the National Retirement Benefits Scheme Bill 2004, a series of meetings was held to discuss the issues and queries arising from the amended text with

- The Hon. Minister of Finance
- People's Representatives in Parliament
- Chamber of Commerce
- Secretary, Ministry of Labour and Commerce
- National Reserve Bank
- Stakeholders,
- The Project Steering Committee, and
- The Retirement Fund Board.

As a result of these consultations, a total of 32 proposals for amendment of the National Retirement Benefits Scheme Bill 2004 were formulated in the ILO report submitted in November 2004. These items comprise important policy issues, technical matters and drafting changes.

As these changes call for review by different types of participants in the process referred to it was proposed that as a first step the Crown Law Office (CLO) should:

- (a) study the proposed changes and provide advice on the most appropriate actions to be taken on the proposals, and
- (b) consider the adoption or resolution of certain specific proposals, including drafting changes and questions regarding the priority accorded to the Scheme in the event of bankruptcies of defaulting employers.

The second step suggested was reviews by stakeholders of the remaining proposals as a whole or only the proposals which appear to be the most relevant. It was also recommended that the main issues should be discussed with Parliamentarians in order to clarify the purposes of the Scheme and to resolve as many queries as possible before the Bill returns to Parliament.

The objective of this strategy was to establish a clear consensus on the final draft of the NRBS Bill to be submitted to the Law Committee so that this Committee could take this into account in its review of the draft legislation and facilitate its work allowing this legislation to go forward for Parliamentary scrutiny as a priority item in the timetable. However, it was decided that in view of a number of issues arising with the amended text a consultation programme was needed to improve understanding of the objectives and main features of the NRBS.





## **2. Revision of the National Retirement Benefits Scheme Bill**

### **2.1. Summary of the consultation meetings with stakeholders**

This Section summarises the main points raised at a series of consultation meetings with stakeholders regarding the proposed amendments to the NRBS Bill (List of participants and meeting programmes are found in the Annex).

#### **(i) Prospects for the NRBS Bill**

In view of the very long delays and unclear prospects for the NRBS Bill, an urgent meeting was held with the Prime Minister on the issue of the extremely slow progress of the NRBS Scheme. The Prime Minister expressed a strong Government commitment to the Scheme and stated that the Bill would probably go to Parliament in 2007 because of the difficulty of considering it in the programme for 2006. However, at a later meeting with the Minister of Finance he offered to take an advance copy of the revised Bill, when available, to request the Attorney-General to allow it to proceed to Parliament or to give it a high priority. The Attorney-General had ruled during the mission that the NRBS Bill had to take its place in the legislative pipeline which may mean a lengthy delay before it is considered by the Law Committee and forwarded to Parliament.

It is encouraging to note that the Strategic Development Plan Eight for the period from 2006/7 to 2008/9 contains Goal 4 “Ensure equitable distribution of the benefits of growth” and strategy 6 under this heading is to “Finalise, pass and implement the legislation for a National Retirement Benefits Scheme”.

#### **(ii) System of governance**

Significant new ideas emerged at some meetings on this topic especially on the subject of good governance through a tripartite board. It was evident that the employer groups had changed and that few people were willing to accept nominations from them, which lead to a consensus in favour of elections for Board members by all participating employers and employees. Furthermore, the majority of speakers on this topic favoured minimal or no Government representation on the Board and increases in the employer and employee representatives from 2 to 3 respectively.

Election for Board members is a well established concept in the Government Retirement Benefits Fund as regards the employee members, and was always envisaged for the Board representatives of NRBS members. Extending this concept to employer representatives may be generally welcomed amongst employers. The main aim should be to attract competent and experienced persons who have the capacity to act as trustees and cope with challenging tasks in implementing the Scheme. Organisation of the first elections may require the involvement of the national electoral system and the costs should be included in the estimates of the start-up capital budget for the Scheme.

In view of the general trend of comments on reducing or eliminating the role of Government in this sphere, the Minister of Finance proposed that there should be no Government membership of the Board as such except for one qualified person to be appointed by the Minister with no voting rights and no remuneration; the corollary to this is increased emphasis on the integrity of Board members, in the transparency of financial operations through the publication of quarterly accounts and close attention to performance through the publication of benchmarks and progress reports. These features have to be incorporated in the legislation.

As determined in the earlier stages of drafting of the NRBS Bill the idea of an Interim Board was dropped and the first Board will be empowered to proceed with the implementation of the Scheme.

### **(iii) The Employment Relations Bill 2006**

The Employment Relations (ER) Bill, which is now undergoing consultations, is the long-awaited regulatory Bill in the labour and employment sectors and needs to be taken into account in the final drafting of the NRBS Bill. From a comparison of the terms “earnings (NRBS Bill)” versus “wages (ER Bill)”, and “employee (NRBS Bill)” versus “worker (ER Bill)” it is evident that, whilst there are no inconsistencies, there are some differences due to different requirements. For example, in the NRBS definition of “earnings” there is a specific exclusion of overtime which is popular with employers as they are able to standardise their payroll procedures for collecting and remitting NRBS contributions. Similarly, “worker” in ER Bill includes categories not covered by NRBS. Consequently, it is proposed to retain the NRBS definitions for these the most important for NRBS of the terms used in both Bills.

In addition, the ER definition of child is on an age basis and is unsuitable for NRBS which is concerned with eligibility for benefit rather than for employment. The ER definitions of the terms “domestic worker” and “outworker” used in the NRBS First Schedule Exemptions have been adopted for NRBS, and are now included in Section 2.

In the meeting with the Prime Minister (who is also the Minister of Labour, Commerce and Industries) he stated that there is no linkage between the two Bills and therefore the NRBS Bill can proceed independently.

### **(iv) Coverage**

Another key topic was the inclusion of daily paid employees and the definition of prescribed relatives. The Prime Minister and Minister of Finance both stated that the daily paid in the private sector should be included in the NRBS. The Government Retirement Fund Board confirmed that the Government scheme will include such employees who are in the Government service, making it possible to amend the First Schedule to exempt the latter from NRBS.

### **(v) Capacity to pay contributions**

The requirement to pay contributions on a compulsory basis was the focus of some comments on the low wage levels in the private sector. One Parliamentarian enquired about the existence of minimum wage legislation in other Pacific island countries running similar schemes. In fact, such legislation is rarely found in Pacific island countries and where it exists invariably applies to a limited range of employees. Church leaders at their separate meeting expressed support for the Scheme but indicated that they may need some time to prepare for their participation in NRBS, which may imply a delay for the Scheme itself or for its application to churches and their employees.

### **(vi) Investment of the Fund**

The importance of sound investment strategies was underlined in some discussions with employer groups and mention was made of the idea of stipulating a minimum percentage, such as 50 per cent of the investment fund, to be invested in Tonga, which was discussed in earlier stages of the project. One of the expected benefits of establishing the NRBS Fund is its potential to provide a boost to the Tongan economy and further the interests of members. The NRBS Board should work out suitable investment strategies that meet requirements for safety, yield and liquidity and leave the actual investments to professional fund managers. However, as economic and fiscal

requirements will change over time it is inadvisable to place such rules in the Act, and the following provisions in Section 12 appear to be suitable and provide the necessary flexibility.

- (1) The Board shall invest all monies available for investment as prescribed by Regulations.
- (2) The Board shall devise investment strategies for investments of the Fund, including investments in other countries, that meet criteria for trustee management of the NRBS Fund.

**(vii) Other points**

**a) Definition of prescribed survivors**

The Government Retirement Benefits Scheme also plans to amend the definition of prescribed relatives to give first place to nominations due to pressure from members. There are gender dimensions to this change since it allows female members some scope to nominate their family members in preference to their spouses. This is one of the formulations discussed in the 2004 consultations and therefore was adopted for the Scheme.

**b) Exemption of the existing schemes**

The question was raised whether there would be conflicts of interest when the NRBS Board considers applications for exemption because the Scheme will have a small number of contributors. There appears to be no reason for concern since the decision is based on a comparison of specific features of the schemes and the process is transparent. Also should a private scheme object to the Board's decision it may submit an appeal which is to be determined by an independent process.

Some questions concerned the conditions for exemption of existing schemes. Whilst the main requirements are to match or better the NRBS benefit rights and contribution rates, it was necessary to underline the requirement to provide the same legal rights to benefits. For example, usually private schemes impose some restrictions in the event of dismissal for misconduct whereas NRBS rights will be unaffected by such events and therefore those seeking exemption will need to modify their rules accordingly.

**c) Compliance issues**

A few questions were asked about the need for inspectors and the extent of their powers. In addition the Law Committee commented in 2004 on the powers of inspectors. Tonga has yet to experience the difficulties of collecting contributions from private sector enterprises and is unaware that the universal experience of contributory schemes is that adequate powers of inspection are essential to combat an inevitable amount of non-compliance and are in the interests of the members and of complying employers. It is essential that inspections are conducted tactfully and efficiently and normally raise no objections amongst enterprises complying with the law, especially as the inspectors should mainly target those employers who are in arrears. Contributory schemes are very dependent on employer cooperation and foster good relations, reserving strict enforcement procedures for the difficult situations where enterprises are in financial difficulties in order to work out instalment payments or other methods of recovery that enable such enterprises to achieve full compliance. In the light of the concerns, no further changes are proposed in the Bill on the role of inspectors.

Provisions on sub-contracting drew some questions on whether they are necessary. The typical problem faced by contributory social security schemes on occasions is when sub-contractors employ temporary workers and fail to pay contributions although deducting the employees' shares from their wages. This may have negative effects on the employees' benefit rights and ultimately could prove costly to the Scheme since it may have to pay benefits in full to the employees

concerned under Section 56 (as proposed). When such problems surface, legislative powers are usually found lacking. One safeguard is to specify that the principal employers (the main contractors who enter into the sub-contracts) must bear the responsibility although this is transferred to the sub-contractors in practice and comes into force only when defaults occur. The expected benefit is that the principal employers will ensure that sub-contractors meet their responsibilities and thus the interests of the workers will be safeguarded.

## **2.2. Revision of the legislation**

The revision of the NRBS Bill was undertaken by combining and consolidating the proposed changes identified in 2004 and those emerging from the wide range of meetings conducted during the August 2006 mission. In addition, careful note was taken of Comments in the margins from the last Law Committee review. However, limited information was available on the revisions made by the Law Committee.

The important changes to strengthen good governance were devised with the benefit of the proposed amendments to the National Reserve Bank of Tonga Act, which were supplied by the Crown Law Office following the end of the mission. The proposed changes to Part IV of the National Reserve Bank legislation assisted the drafting process for Part II of the NRBS Bill to some extent. In addition, Section 52 on Offences relating to officers was updated and expanded on a similar basis to Section 19 of the National Reserve Bank of Tonga Amendment Bill 2006 and now includes the offence of unlawful use of inside knowledge. In addition it is expected that the regulations will contain additional provisions on good governance.

The revised NRBS Bill 2004 is presented in Part II of this report. The accompanying Notes provide detailed explanations of the proposed changes to assist the Law Committee in its review of the legislation, with the aim of expediting the Committee's work.

## **2.3. Conclusion and the way ahead**

At the end of the August 2006 mission, the UNDP representative announced that the project would be closed down at the conclusion of the Phase 2 activities. When the legislation is approved it will be open to the Government of Tonga to make a request for the resumption of the next Phase 3 project activities.

**The National Retirement Benefits Scheme has been carefully designed to meet specific needs identified by Tongans in different sectors and areas of the country and has been subject to extensive and wide-ranging consultations at all stages. There is no doubt that this long-awaited scheme warrants priority attention in order to minimise the effects of lengthy delays. The revised NRBS Bill presented in Part II of this report has been produced as a result of further consultations with stakeholders. It is hoped that the revised NRBS Bill will be re-submitted to Parliament as a priority matter and that final consideration will be made so that implementation of this important programme can be envisaged at the earliest stage.**

## **Part II**

# **National Retirement Benefits Scheme Bill 2004 (Revised 2006)**



## **NATIONAL RETIREMENT BENEFITS SCHEME BILL 2004 (REVISED 2006)**

### **Explanatory Note**

This note does not form part of the Bill and is intended only to explain its purpose and effect.

#### Section 1:

This section states the short title of this Bill and its date of commencement.

#### Section 2:

This section provides definitions of terms used throughout the Bill.

#### Section 3:

This section stipulates that the responsibility for the administration of the National Retirement Benefits Scheme rests with the National Retirement Benefits Organisation.

#### Section 4:

This section prescribes the status of the National Retirement Benefits Organisation.

#### Sections 5:

This section deals with the establishment of the National Retirement Benefits Scheme Board.

#### Section 6:

This section deals with the resignation, disqualification and termination of office of a Director.

#### Section 7:

This section sets out the rights and powers of the National Retirement Benefits Scheme Board.

#### Section 8:

This section lays down procedures of the National Retirement Benefits Scheme Board.

#### Section 9:

This section concerns the establishment of the National Retirement Benefits Fund and the scope of the income and expenditures.

#### Section 10:

This section states the purpose of the Fund as the payment of benefits and specifies that these will be paid from individual accounts whilst the source of life insurance benefits will be general revenue into which life insurance premiums are paid.

#### Section 11:

This section specifies that bank accounts be maintained.

#### Section 12:

This section specifies the powers of the Board in the investment of the Fund. It is assumed that plans for overseas investments should be subject to approval year by year of the National Reserve Bank of Tonga.

#### Section 13:

This section provides for the same tax exemptions as are accorded to the Retirement Fund.

Section 14:

This section deals with the charging of administrative expenses against investment earnings up to a maximum limit specified in regulations made under this Bill.

Section 15:

This section provides for the annual declarations of the interest rate to be applied to the individual balances.

Section 16:

This section refers to the ultimate Government responsibility to support the Scheme if it is ever temporarily unable to meet obligations; most unlikely as this is once the Scheme is running normally. However, start-up capital will be needed and this section provides for the possibility that the Scheme will obtain a loan from Government for repayment as soon as sufficient revenue is available.

Section 17:

This section covers the same procedures for auditing of the Fund's accounts and tabling them in the Legislative Assembly as are contained in the Retirement Fund Act.

Section 18:

This section provides for an actuarial review at five yearly intervals.

Section 19:

This section specifies liabilities to comply with the Scheme.

Section 20:

This section states how contributions shall be paid.

Section 21:

This section stipulates the rights of employers to deduct employees' contributions from their pay but only the pay for the period concerned and prohibits deductions in respect of the employers' contributions.

Section 22:

This section deals with the rights of principal and intermediate employers or sub-contractors with regard to the payment of contributions.

Section 23:

This section is concerned with the limitation of employers' rights of recovery from employees' pay where contributions are paid late.

Section 24:

This section provide for the making of regulations on the payment of contributions.

Section 25:

This section deals with submission of documentation to the National Retirement Benefits Organisation.

Section 26:

This section deals with the appointment of the National Retirement Benefits Organisation's inspectors who are responsible for relations with employers and ensuring good compliance standards, and the cooperation of employers with them.



Sections 27 to 30:

These sections cover various situations arising when contributions are not paid or are paid late, including imposition of a surcharge to penalise late payment (a standard provision in similar schemes) after expiry of a 15-day grace period for delivery of the contributions and returns to the Organisation. The priorities to be accorded contributions in cases of bankruptcy or liquidation are also specified.

Section 31:

This section specifies the rights to voluntary coverage by the National Retirement Benefits Scheme.

Section 32:

This section stipulates the duty of the National Retirement Benefits Organisation to issue annual statements of account to members and voluntary contributors, and their rights to statements at other times.

Section 33:

This section specifies the basis for exemption as a complying scheme.

Section 34:

This section stipulates the conditions to be met by complying schemes.

Section 35:

This section deals with an employee's credit on leaving a complying scheme.

Section 36:

This section deals with the transfer of employees within the same group of complying scheme.

Section 37:

This section deals with the obligation of an exempted employer.

Section 38:

This section provides for the revocation of a certificate of exemption.

Section 39:

This section deals with probation.

Section 40:

This section prescribes the entitlements, including the rights to claim instalments (and to revoke this option) and to nominate a person to receive benefit on death; the action required when persons entitled are under age 18 is also included.

Section 41:

This section deals with application for retirement benefits.

Section 42:

This section sets out the entitlement to benefit.

Section 43:

This section deals with rules on payment of retirement pension.

Section 44:

This section deals with entitlement in respect of permanent and total disablement.

Section 45:

This section deals with death benefit.

Section 46:

This section sets out the system of determining claims and questions by the National Retirement Benefits Scheme Board.

Section 47:

This section provides for appeal of decisions of the National Retirement Benefits Scheme Board.

Section 48:

This section deals with the establishment of Appeal Board.

Section 49:

This section deals with membership of the Appeal Board.

Section 50:

This section specifies the powers of the Appeal Board.

Section 51:

This section lists the offences and the penalties under this Bill.

Section 52:

This section deals with offences relating to officers.

Section 53:

This section stipulates that illegal deductions from pay may be the subject of an order to repay these sums to the employees concerned.

Section 54:

This section specifies the legal liabilities of officers of corporations for offences committed by a body corporate, firm, society or other body.

Section 55:

This section states the right of the National Retirement Benefits Organisation or another authorised person to institute proceedings.

Section 56:

This section specifies the liability to repay to the Board any benefit that was paid by the Board despite failure of the employer to pay sufficient contributions.

Section 57:

This section confers powers on the Minister in respect of exemptions.

Section 58:

This section specifies the powers of the Minister to make regulations.

Section 59:

This section provides for benefits and employers contributions to be tax exempt.

Section 60:

This section stipulates that overpayments of benefits must be repaid.

Section 61:

This section specifies that contributions and benefits cannot be assigned or attached, in any circumstances.

Section 62:

This section deal with the arrangements of a practical nature designed to ensure that during temporary duty assignments membership in the Scheme is maintained and do not involve affiliation to the scheme in the country of the temporary employment

Section 63:

This section is concerned with beneficiaries living abroad and their obligation to confirm they remain entitled whilst the National Retirement Benefits Scheme undertakes to pay into bank accounts in Tonga.

Section 64:

This section deals with confirmation of entitlement.

First Schedule:

This schedule lists the various types of exemptions by category.

Second Schedule:

This schedule indicates the rates of contributions.

**Attorney General & Minister of Justice**

# **NATIONAL RETIREMENT BENEFITS SCHEME BILL 2004 (REVISED 2006)**

## **Arrangement of Provisions**

### **Part I Preliminary**

1. Short Title
2. Interpretation

### **Part II Administration of the National Retirement Benefits Scheme**

3. Administration of the Scheme
4. Status of the Organisation
5. Establishment and constitution of the Board
6. Resignation, disqualification and termination of office
7. Rights and duties of the Board
8. Procedures of the Board

### **Part III Financial Provisions**

9. Establishment of the National Retirement Benefits Fund
10. Purpose of the Fund
11. Bank accounts of the Organisation
12. Investment of the Fund
13. Exemption from tax
14. Administrative expenses
15. Declaration of the rate of interest
16. Advances by the Government
17. Auditing of accounts
18. Actuarial review

### **Part IV Contributions to the Scheme**

19. Liability to contribute
20. Payment of contributions
21. Employer to deduct employees' contributions
22. Recovery of contributions from an intermediate employer
23. Late paid contributions
24. Method of payment of contributions
25. Employers to furnish returns
26. Appointment and powers of inspectors
27. Determination of contribution liability in certain cases
28. Recovery of contributions
29. Surcharge on late paid contributions
30. Unpaid contributions deemed to be paid
31. Voluntary contributors
32. Statements of account

### **Part V Exemption of complying schemes**

33. Entitlement to exemption
34. Conditions for complying schemes
35. Employee's credit on leaving a complying scheme
36. Transfer within same group of complying scheme

- 37. Obligation of exempted employer
- 38. Revocation of a certificate of exemption
- 39. Probation

#### **Part VI    Benefits**

- 40. Benefit entitlement
- 41. Applications for benefits
- 42. Entitlement to benefits
- 43. Payment of retirement pension
- 44. Permanent and total disablement
- 45. Death benefit

#### **Part VII    Determination of Claims and Questions**

- 46. Determination of claims
- 47. Right of appeal
- 48. Establishment of Appeal Board
- 49. Membership of Appeal Board
- 50. Powers of the Appeal Board

#### **Part VIII    Offences and Penalties**

- 51. Offences and penalties
- 52. Offences relating to officers
- 53. Offences relating to contributions
- 54. Liability of officers of corporations
- 55. Civil proceedings
- 56. Loss of benefit through default of employer

#### **Part IX    Miscellaneous**

- 57. Power of Minister on exemptions
- 58. Power of Minister to make Regulations
- 59. Exemption from tax
- 60. Overpayments of benefits
- 61. Contributions and benefits not to be assigned or attached
- 62. Insured person working abroad
- 63. Beneficiary abroad
- 64. Confirmation of entitlement.

First Schedule - Exemptions

Second Schedule - Rates of Contributions

**A BILL**

**for**

**AN ACT TO PROVIDE FOR THE ESTABLISHMENT AND ADMINISTRATION  
OF THE NATIONAL RETIREMENT BENEFITS SCHEME AND RELATED  
MATTERS**

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

**PART I PRELIMINARY**

- |                              |    |  |
|------------------------------|----|--|
| Short title and commencement | 1. | <p>(1) This Act may be cited as the National Retirement Benefits Scheme Act 2004.</p> <p>(2) This Act shall come into force on a day to be proclaimed by His Majesty in Council.</p>   |
| Interpretation               | 2. | <p>In this Act, unless the contrary intention appears –</p> <p>“<i>Act</i>” means the National Retirement Benefits Scheme Act 2004;</p> <p>“<i>active member</i>” means a member in respect of whom a contribution in respect of insurable employment under the Act was paid during the last financial year;</p> <p>“<i>amount of wages for the month</i>” means the amount of wages earned by an employee during a month of his employment;</p> <p>“<i>account</i>” means the member’s account in respect of insurable employment or voluntary contribution under this Act maintained by the National Retirement Benefits Organisation;</p> <p>“<i>Appeal Board</i>” means an ad hoc National Retirement Benefits Scheme Appeal Board established under section 48 of this Act;</p> <p>“<i>balance</i>” means the amount standing to the credit of the member of the Scheme;</p> <p>“<i>beneficiary</i>” means a person entitled to benefits under this Act;</p> <p>“<i>Board</i>” means the National Retirement Benefits Scheme Board of Directors established under this Act;</p> <p>“<i>Chief Executive Office</i>” or “<i>CEO</i>” means the Chief Executive Officer of the Organisation appointed by the Board in accordance with section 7(1) (c);</p> <p>“<i>certificate of exemption</i>” means the certificate issued by the Board to a complying scheme under Part V of this Act;</p> <p>“<i>child</i>” means a legitimate biological child, stepchild, and a legally adopted child and shall include a posthumous child of a member;</p> |

“*complying scheme*” means a retirement benefits scheme in existence at the date of coming into force of this Act that is certified by the Board as complying with the conditions in sections 33 and 34;

“*contribution*” means the sum payable to the Organisation by way of contributions specified in section 19;

“*contribution schedule*” means the schedule provided by the Organisation for the purpose of the collection of contributions;

“*date of entitlement*” means the date on which a member of the Scheme qualifies for a benefit in accordance with the provisions of this Act;

“*date of entry*” means in respect to any member of the Scheme the first day of the month in which the first contribution is payable to the Scheme on his behalf;

“*Director*” means any Board member;

“*domestic worker*” means a person employed in connection with the work of a private dwelling-house and not in connection with the trade, business or profession carried out by the employer in the dwelling-house such as cook, house-worker, child’s nurse, gardener, laundry worker, security officer, or a driver of a vehicle licensed for private use;

“*earnings*” means all emoluments due to an employee in respect of services performed under a contract of service whether paid daily, weekly, fortnightly, monthly or at any other intervals, and shall include any bonus, commission or allowance payable by the employer to the employee whether such bonus, commission or allowance is payable under his contract of service or otherwise, but does not include -

- (a) overtime payment;
- (b) gratuity;
- (c) retrenchment, redundancy or termination payments;
- (d) retirement benefit;
- (e) any sums payable by an employer, whether or not prescribed by legislation, in respect of sickness, maternity or work-related injury;
- (f) any travelling allowance or the value of any travel concession or benefit; and
- (g) any payments made by an employer to an employee for Reimbursement of expenses incurred for the purposes of his employment;

“*employee*” means any person aged 15 years or more and under age 65, not being a person of any of the descriptions specified in the First Schedule, who works for an employer in Tonga under a contract of service or apprenticeship whether written or oral, expressed or implied, for remuneration; and includes a Tongan subject employed under a contract of service entered into in Tonga 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 Tonga and the Government of Tonga;

*“employer”* means any person, partnership, enterprise, undertaking, organisation or body corporate employing an employee under a contract of service or apprenticeship, whether written or oral, expressed or implied for remuneration; and includes the owners of the vessel or aircraft referred to in the definition of *“employee”*;

*“financial year”* means the period from 1 July in any year to 30 June in the following year;

*“Fund”* means the Fund established under section 9;

*“inactive member”* means a member in respect of whom no contribution was paid in the last financial year;

*“insurable earnings”* means the earnings on which liability arises for the payment of contributions under this Act;

*“insurable employment”* means employment in respect of which contributions are payable under this Act;

*“liquidator”* means a person appointed or assuming the position of liquidator, receiver, trustee-in-bankruptcy, mortgagee-in-possession, or executor of a deceased estate;

*“Medical Board”* means a medical board established in accordance with section 44 of this Act;

*“member”* means a person registered as a contributor to the Scheme;

*“member’s account”* means the account established for a member to receive all compulsory contributions and interests;

*“minimum sum”* means the sum declared by the Board under section 42;

*“Minister”* means the Minister of Finance;

*“Organisation”* means the National Retirement Benefits Organisation;

*“outworker”* means a person to whom articles are given to be made up, cleaned, washed, altered, ornamented, finished or repaired or adapted for sale in the person’s own home or on other premises not under the control or management of the person who gave out the materials or articles;

*“pension age”* means the age of 60;

*“pensioner”* means a person receiving a pension or instalment under this Act;

*“permanent and total disablement”* means a condition as a result of which a member is medically certified to the satisfaction of the Board as permanently



incapacitated to such an extent as to be unable to earn from his usual or any other suitable occupation more than one-third of the normal rate of earning in this occupation;

“*prescribed beneficiary*” means the person who, at the date of death, is nominated by the member, or if no such person, then to –

- (a) his spouse, if none;
- (b) his child or children, or if none;
- (c) his father or mother;

“*rate of interest*” means the rate declared by the Board as the interest rate to be credited to the accounts of each member;

“*Scheme*” means the National Retirement Benefits Scheme;

“*statement of account*” means the statement of account issued by the Board to each member;

“*total balance*” means the accumulated total of –

- (a) all contributions paid by and on his behalf in respect of insurable employment and any interest added from time to time;
- (b) all contributions and interest in his voluntary account, if any;
- (c) any amounts transferred to his account in respect of periods of exempted employment in a complying scheme; and
- (d) less any deductions due and outstanding under section 10(5);

“*voluntary contribution*” means the contributions paid by voluntary contributors;

“*voluntary contributor*” means a person who registers with the Scheme as a voluntary contributor; and

“*wages*” has the same meaning as “*earnings*”.

Sections of this Act in which the masculine gender is used should be understood as referring also to females.

## **PART II ADMINISTRATION OF THE NATIONAL RETIREMENT BENEFITS SCHEME**

Administration  
of the Scheme

3. (1) There shall be a National Retirement Benefits Organisation to be in charge of the National Retirement Benefits Scheme in accordance with this Act.
- (2) The general direction and supervision of the Organisation shall vest in the Board.
- (3) The Board members shall act in good faith in the best interests of the Scheme and in accordance with the Act.

Status of the Organisation	4.	<p>(1) The Organisation shall be established as an autonomous body accountable to the Minister and with the responsibility of implementing this Act.</p> <p>(2) The Organization shall be a body corporate with perpetual succession and a common seal and shall have all rights and duties of a body corporate.</p> <p>(3) The Organisation may sue and be sued in its corporate name and may enter into contracts and may acquire, purchase or lease property and may convey, assign, transfer, mortgage or otherwise dispose of any real or personal property or any interest vested in the Organisation upon such terms as the Board determines to be appropriate in the circumstances of each transaction.</p>
Establishment and constitution of the Board	5.	<p>(1) The Board is hereby established.</p> <p>(2) The Board shall be appointed by the Minister and shall consist of –</p> <p>(a) three persons representing employee members of the Scheme;</p> <p>(b) three persons representing employer contributors to the Scheme; and</p> <p>(c) one person with relevant experience and qualifications who shall have no right to vote and no entitlement to remuneration as a Board Member.</p> <p>(3) The employer and employee representatives shall each be three persons who are elected by the contributing employers and employees respectively and thereupon are appointed by the Minister.</p> <p>Provided that the first such election shall held amongst the employers and employees eligible under this Act for compulsory participation in the Scheme.</p> <p>Provided further that employees of the Organisation shall be ineligible for election to the Board.</p> <p>(4) Members of the Board shall be appointed for a term of three years.</p> <p>(5) Directors may be re-appointed after expiry of their term of office for up to a maximum of two full terms whether or not these are consecutive terms.</p> <p>Provided that regulations shall prescribe the eligibility of a member of the first Board to participate in elections for the second Board.</p> <p>(6) The Minister shall appoint the Chairman nominated by Board members by a resolution of the Board.</p> <p>(7) Directors shall be paid such remuneration, travelling and subsistence allowances as the Minister may determine.</p> <p>(8) The CEO shall perform the function of Secretary of the Board.</p>

- (9) Upon cessation of office of a Director, otherwise than on expiry of his term of office, the Minister at the earliest opportunity and , in any case, within thirty days, shall appoint a replacement Director who shall be the next eligible person under the last held election for employer or employee representatives, or a person appointed by the Minister under sub-section (2) (c), as the case may be, and the duration of the appointment shall be for the remaining part of the term of the former Director.
- Resignation, disqualification and termination of office
6. (1) A Director shall hold office until the date –
- (a) of his resignation by notice in writing to the Chairman or, in the case of the resignation of the Chairman, by notice in writing to the Minister;
  - (b) of his death;
  - (c) on which he is declared bankrupt under any law relating to bankruptcy, or a court finds him guilty of a criminal offence;
  - (d) on which he is certified as mentally or physically incapable of fulfilling the office of Director;
  - (e) of his removal in accordance with any procedures adopted by the Board for the appointment or removal of Directors for persistent non-attendance at duly called meetings of the Board;
- Provided that a Director shall be deemed to have vacated his office upon his failure to attend three consecutive duly called meetings of the Board without the prior permission of the Chairman; and
- (f) of expiry of his term of office.
- (2) No person shall be appointed or remain a Director –
- (a) who has anywhere been declared bankrupt and has not been discharged;
  - (b) who has anywhere been convicted of an offence involving dishonesty;
  - (c) who is a member of the Legislative Assembly; or
  - (d) who has, in the case of a person having professional qualifications, been disqualified or suspended from practising his profession by the order of any competent authority made in respect of him personally.
- Rights and duties of the Board
7. (1) The Board shall have the following main duties –
- (a) to advise the Minister on appropriate plans for the implementation and development of the Scheme both on its own initiative and in response to specific requests from the Minister;

- (b) to manage the Fund as Trustee and approve the income and expenditure accounts,

Provided that the Board members shall not –

- (i) make profit for themselves from the Fund;
  - (ii) put themselves in a position where there is a conflict between their duty to the members and their own personal interests; or
  - (iii) take advantage of information gained as a Trustee;
- (c) to appoint staff for the administration of the Scheme consisting of -
  - (i) a Chief Executive Officer or CEO with such duties as the Board may delegate; and
  - (ii) such other staff as are, in the opinion of the board, necessary for the efficient and effective administration of the Scheme, including inspectors having the powers set out in section 26.
- (d) to adopt personnel and remuneration structures for the Organisation that are not less favourable in their entirety than those applying to public servants;

Provided that the conditions of service for the Organisation shall be approved by the Minister;

Provided further that the Organisation shall be an employer within the meaning of this Act;

- (e) to determine applications for exemption by retirement benefit schemes in existence at the date of introduction of this Act and to review the reports submitted by approved complying schemes;
- (f) to determine benchmarks for the Scheme's operations from time to time;
- (g) to maintain two-way channels of communications with registered employers and employees;
- (h) to consider and make recommendations to the Minister relating to changes in contributions or benefits under the Act;
- (i) to co-opt suitably qualified persons to advise the Board and sub-committees established by the Board and to incur expenditures for this purpose;
- (j) to determine the Organisation's administrative expenses on submissions by the CEO;
- (k) to consider and recommend draft Regulations and rules for approval;
- (l) to arrange for actuarial reviews of the Scheme as required and at intervals of not less than five years;

(m) to submit to the Minister annual reports on the operations of the Scheme; and

(n) to do any other act authorised under this Act.

- (2) In any instance of submitting proposals to the Minister for changes in contributions or benefits, or of commenting on any such proposals referred to it, the Board shall attach an actuarial report, or its equivalent, on the financial implications of the proposals.

Procedures of  
the Board

8. (1) Subject to this Act and any Regulations made under it, the Board may regulate its own procedures and shall have the power to make rules for the conduct of its proceedings.
- (2) Board meetings shall be convened on a minimum of one meeting per month to consider the Organisation's performance and other matters within the responsibility of the Board.
- (3) The Chairman has the right to convene meetings at any time as required to carry out the Board's duties expeditiously.
- (4) Any four Directors present at a meeting shall constitute a quorum.
- (5) Resolutions of the Board shall be carried by majority voting and in the case of an equal number of votes, the Chairman shall have a deciding vote.
- (6) In the absence of the Chairman at a meeting of the Board, the members present shall appoint an Acting Chairman for that meeting.
- (7) A Director shall not communicate or reveal to any person or any organisation any facts or information of any kind acquired by him as a member of the Board except as may be required for the due discharge of his duties as Director.
- (8) A Director having directly or indirectly by himself, his spouse or children, or any other person, any interest in agenda items or subjects to be discussed by the Board or in Committees of the Board of which he is a member shall disclose to the Board or the Committee, as the case may be, the fact of his interest and the nature thereof as soon as practicable after the relevant fact has come to his knowledge and shall absent himself with the permission of the Chairman when such agenda items come under consideration.

### **PART III FINANCIAL PROVISIONS**

Establishment  
of the National  
Retirement  
Benefits Fund

9. (1) For the purposes of the Act, there shall be established the National Retirement Benefits Fund, into which shall be paid –
- (a) all contributions required to be made under this Act;
- (b) moneys earned or arising from any investment, property or other transactions, mortgages, charges or rents vested in the Organisation;

		<ul style="list-style-type: none"> <li>(c) any fines, surcharges, or other payments due to the Organisation under this Act;</li> <li>(d) any sums paid by the Government, or other body or bodies, to finance the initial implementation of the Act or to enable it to meet all financial obligations specified in subsection (2); and</li> <li>(e) any other income or payments due to the Fund.</li> </ul>
	(2)	<p>The Fund shall be expended for the purpose of –</p> <ul style="list-style-type: none"> <li>(a) meeting all payments required to be made under this Act;</li> <li>(b) investments under this Act, including the expenses incurred in undertaking the investments;</li> <li>(c) payment of life insurance benefit;</li> <li>(d) meeting all expenses, costs and expenditures properly incurred or accepted by the Board in the execution of its powers and duties; and</li> <li>(e) repayment of advances or loans obtained by the Board for the implementation of this Act.</li> </ul>
Purpose of the Fund	10.	<ul style="list-style-type: none"> <li>(1) Subject to this Act, the Fund shall provide benefits in respect of the retirement, permanent total disablement and death of members of the Scheme, as specified in this Act and Regulations.</li> <li>(2) The Organisation shall maintain individual accounts for each member and shall credit all contributions paid by and on behalf of the member and any interest as specified in section 15 for the purpose of subsection (1).</li> <li>(3) The Fund shall pay benefits, other than life insurance, from individual accounts of a member in the form of instalments or a lump-sum or a combination of a lump-sum and instalments.</li> <li>(4) Life insurance benefits shall be payable in lump-sums from the general revenues of the Fund.</li> <li>(5) The Organisation shall deduct from the account of each active member, other than a voluntary contributor, in respect of each financial year the premium for life insurance as may be prescribed by the Board and these premiums shall be credited to the general revenue of the Fund.</li> </ul>
Bank accounts of the Organisation	11.	<ul style="list-style-type: none"> <li>(1) The Organisation shall establish and maintain such bank account or accounts, as determined by the Board, for the purposes of the financial management of the Scheme and its general revenue.</li> <li>(2) The bank accounts of the Organisation shall be maintained at the National Reserve Bank of Tonga, or other bank licensed by the National Reserve Bank of Tonga or other bank licensed to operate in the Kingdom, or in the case of overseas accounts, those banks approved by the National Reserve Bank of Tonga.</li> </ul>

	(3)	The Organisation's account or accounts signatories shall be such persons as may be authorised by the Board for that purpose.
Investment of the Fund	12.	<p>(1) The Board shall invest all monies available for investment as prescribed by Regulations.</p> <p>(2) The Board shall devise investment strategies for investments of the Fund, including investments in other countries, that meet criteria for trustee management of retirement benefit funds.</p> <p>Provided that the Board shall request approval for undertaking overseas investments from the National Reserve Bank of Tonga and that any such approval shall be given for periods of not less than one year.</p>
Exemption from tax	13.	No tax, duty, levy, or any other Government impost shall be payable by the Organisation on Fund monies, including investment earnings.
Administrative expenses	14.	<p>(1) All expenses properly incurred in the implementation of this Act and the administration of the Scheme shall be paid out of the Fund.</p> <p>(2) The costs incurred in implementing the Act and administering the Scheme shall be deducted from the earnings from investments to the extent possible and otherwise from the general revenues of the Scheme.</p> <p>(3) Notwithstanding subsection (1), expenditures may be incurred by the Organisation out of the Fund up to such amounts prescribed by Regulations.</p>
Declaration of the rate of interest	15.	<p>(1) Subject to this Act, at or before the end of each financial year, the Board shall, with the approval of the Minister, declare a rate of interest in respect of that year that shall be credited at such rates to the total amounts recorded as in each member's accounts, including voluntary accounts, at the commencement of the financial year, as prescribed by Regulations.</p> <p>Provided that no rate of interest shall be declared if the repayment of any sums advanced by the Government under section 16 is not provided for to the satisfaction of the Minister.</p> <p>(2) Notwithstanding the provisions of subsection (1) where benefit entitlement arises under the provisions of this Act and is to be calculated, interest shall be first credited to the account or accounts in respect of the period from the beginning of the financial year to the end of the month preceding the date of entitlement in accordance with the rate of interest declared by the Board for the preceding financial year, regardless of the fact that the rate of interest subsequently declared by the Board in respect of that financial year may be greater or less than this rate.</p>
Advances by the Government	16.	<p>(1) If the Organisation is unable at any time to pay any sum that it is liable to pay under the provisions of this Act, the Board shall submit a request for assistance to the Minister with full information on the financial shortfall and proposals for the repayment of any future bridging loans from Government.</p> <p>(2) The Board shall enter into an agreement with the Government on a repayment schedule in respect of any sums so advanced by Government.</p>

Auditing of  
accounts

17. (1) The Board shall have accounts prepared, within two months of the end of the financial year, or within such further time of not more than one month as the Minister may approve, in such form and including additional information, statements and reports as required by the Minister in respect of that year.

Provided that the Minister may request the preparation of interim accounts for the first six months of a financial year or for such shorter periods as he may determine.

- (2) The accounts shall be submitted to the Auditor-General or another approved auditor for an audit to be completed within six months of the end of the financial year or of the period covered by the accounts, if shorter.
- (3) The Minister shall within ten working days of completion of the audit cause the accounts to be submitted for tabling in the Legislative Assembly during its session on the first available sitting day.
- (4) The reports under subsection (1) shall include a report by the Board on the investments of the Fund.

Actuarial  
review

18. (1) At intervals of five years, or such shorter periods as the Board may determine, an actuarial review shall be conducted into the operation of the Scheme.
- (2) The actuarial report shall be considered by the Board and forwarded to the Minister with the recommendations of the Board.
- (3) The Organisation shall provide members with information on the findings and recommendations of the actuarial review.

#### **PART IV CONTRIBUTIONS TO THE SCHEME**

Liability to  
contribute

19. (1) Subject to this Act, every employer, having one or more employees, other than those in respect of whom the Board has issued a certificate of exemption, and his employee(s) shall be liable to contribute to the Scheme.
- (2) Every employer and employee to whom this Act applies shall register with the Organisation within such time and in such manner as is prescribed by Regulations.
- (3) Where any person registered as an employer intends to cease being an employer he shall notify the Organisation as soon as practicable.
- (4) Where employees are employed through a sub-contractor, the following shall apply –
- (a) the contract between the principal employer and the sub-contractor shall include the name and address of the employer who is responsible under the Act for the registration of employees who are assigned for work under the contract and the payment of contributions;



- (b) the responsibility of the principal employer may be transferred to the sub contractor or another person through specific provisions of the relevant contract, but, in the event of a default on the part of the sub-contractor or other person, as determined by the Organisation, the principal employer shall be liable in all respects in respect of the employees concerned; and
- (c) the relevant contract shall be made available for inspection whenever requested by an inspector appointed under section 26 of this Act or other competent official and a copy shall be lodged with the Organisation if requested in writing by the CEO.

Payment of  
contributions

20. (1) A contribution consisting of both the employer's contribution and the employee's contribution shall be payable by the employer for each month in respect of the whole or part of which wages are payable to the employee and not otherwise.
- (2) The contribution shall be calculated on the amount of wages payable to such employee by such employer at the rates specified in the Second Schedule.
- (3) Subject to this Act, all contributions shall be payable monthly unless otherwise prescribed by Regulations.
- (4) All monthly contributions shall be payable in the end of every month, but where the employment is for a period of less than a month, on the last day of the employment.
- (5) Where two or more contributions are paid in respect of the employment of one insured person for the same month they shall be counted as a single monthly contribution.

Employer to  
deduct  
employees'  
contributions

21. (1) Subject to this Act, the employer shall be entitled to deduct the employee's contribution from the employee's wages for payment to the Fund and notice of such deduction shall be furnished to the employee in writing.

Provided that –

- (a) no such deduction shall be made from any wages other than that which relates to the period or part of the period in respect of which the contribution is payable; and
  - (b) where the employer has failed to deduct and pay the employee's contribution under this section, the employer shall be responsible for paying the employee's outstanding contribution with no right of recovery from the employee.
- (2) Notwithstanding any contract to the contrary, the employer shall not be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.
- (3) Any sum deducted by the employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.

Recovery of contributions from an intermediate employer	22. (1) An employer, who has paid a contribution in respect of an employee employed by or through an intermediate employer or sub-contractor, shall be entitled to recover the amount of the contribution so paid (that is to say the employer's contribution as well as the employee's contribution, if any) from the intermediate employer or sub-contractor, as the case may be, either by deduction from any amount payable to him by the principal employer under any contract, or as a debt payable by the intermediate employer or sub-contractor.
	(2) The intermediate employer or sub-contractor shall be entitled to recover the employee's contribution from the employee employed by or through him by deduction from wages and not otherwise.
Late paid contributions	23. Contributions shall be payable in respect of an employee from the month the employee enters into insurable employment and such contributions are payable as arrears even though the employment to which this Act applies or the employees have not been registered with the Organisation.
	Provided that –
	(a) an employer who has paid arrears of contributions in respect of an employee will only be entitled to recover from the wages payable, notwithstanding the proviso to section 21(1), the employee's share of the contributions due within a maximum of the last preceding six months prior to the date of payment; and
	(b) the Organisation shall arrange for the deduction of such arrears of the employee's share by the employer over a period for the purpose of avoiding financial hardship to the employee.
Method of payment of contributions	24. The Minister may prescribe method of payment of contributions by Regulations.
Employers to furnish returns	25. (1) Every employer shall submit to the Organisation, such schedules and returns relating to persons employed by him as required by Regulations.
	(2) The Organisation may require an employer or any other person where it has reason to believe that a return should have been submitted, to furnish such particulars as it may consider necessary to determine the extent, if any, of liability to contribute to the Fund on behalf of the employees.
	(3) Every employer shall maintain such registers and records in respect of employment as may be prescribed by Regulations.
Appointment and powers of inspectors	26. (1) The Board shall appoint inspectors and issue them with identification.
	(2) Inspectors shall have the power to –
	(a) enter at reasonable times, all premises where a person or persons are believed to be engaged as employees, and any other place only with a court order;
	(b) examine all documents relevant to participation in the Scheme and if necessary to remove such documents as are essential to the investigation;

- (c) question and take statements in writing from persons, including employers, employees and their staff;
  - (d) give official warnings to persons who are in breach of this Act and Regulations; and
  - (e) compile official reports and statements of their investigations.
- (3) An employer, within normal working hours shall produce for inspection the records and copies of contribution schedules or any other documents relating to liability to contribute, for inspection if requested by an inspector.
- Determination of contribution liability in certain cases      27. (1) The Organisation may determine on the basis of information available to it, the amount of contributions payable in respect of the employees of an employer where –
- (a) the employer has defaulted under this Act; and
  - (b) the Organisation has been obstructed in the exercise of its functions.
- (2) The determination made by the Organisation under subsection (1) shall be sufficient proof of a debt for recovery under section 28.
- Recovery of contributions      28. (1) Any contribution or other amount payable under this Act may be recovered as a debt due to the Organisation.
- (2) A liquidator shall be required to inform the Organisation in writing within fourteen days of his appointment or assumption of this responsibility and shall not, without leave of the CEO, make any distribution of such property, business or estate until receipt of a claim by the Organisation.
  - (3) The CEO shall notify the liquidator in writing of the amount of any unpaid contributions and payable from the assets in the possession or control of the liquidator and such notice shall be served by the Organisation within two months of being served with a notice under subsection (2).
  - (4) Subject to subsection (5), a liquidator shall set aside out of the assets and the proceeds of sale of any asset (s) of the employer the amount notified by the CEO under subsection (3), to the extent that such assets are available for this purpose, and shall be liable to the extent of the amount set aside for the contributions due by the disposal of the employer's asset(s).
  - (5) Nothing in subsection (4) shall prevent the liquidator from paying any debt that has a legal priority over the contributions referred to in that subsection.
  - (6) The liquidator shall, before distributing any assets under his control, obtain from the CEO a certificate to the effect that the contributions payable under the provisions of this Act by such person out of any estate under his control have been paid to the satisfaction of the Board.
  - (7) If any distribution is made by the liquidator without first obtaining a certificate under the provisions of subsection (3), then such person shall be

personally liable for any unpaid contributions together with any surcharge payable under the provisions of section 29.

- (8) Where two or more persons are liquidators in respect of a defaulting employer or deceased the obligations and liabilities under this section shall apply to all the liquidators but may be discharged by any of them.

Surcharge on  
late paid  
contributions

29. An employer shall be liable to pay a surcharge on the total amount of all contributions not so paid by him at the rate of 2 per cent in respect of each month or part of each month after expiration of the period of 15 days following the month concerned.

Provided that –

- (a) in any case where the surcharge is calculated at less than \$5, the surcharge payable shall be \$5; and
- (b) the Organisation may remit in whole or part the amount of the surcharge where the employer shows good cause for the delay in remitting contributions to the Organisation.

Unpaid  
contributions  
deemed to be  
paid

30. (1) Where any employer fails to pay any contribution required under this Act, the Board may credit to the employees' account the amounts payable by the employer to the Organisation and shall charge such amounts to the general revenues of the Organisation if –

- (a) such failure was not due to the consent of the employee concerned;
- (b) deductions were made from insurable earnings of the employee; or
- (c) there is no prospect of recovery of the amount unpaid within a reasonable time.

- (2) The amount so credited to a member account shall be deemed to have been paid in respect of him on the date on which such credit is made unless otherwise determined by the Board.

- (3) Nothing in this section shall prejudice the right of the Organisation to recover the amount of such contributions together with any surcharge due under this Act from the employer and to credit the amounts recovered to the general revenues of the Fund.

Voluntary  
contributors

31. (1) Subject to this Act, any person, or any category of persons as may be prescribed, including citizens of Tonga living overseas, may apply to the Organisation to contribute to the Scheme on their own behalf or on behalf of another person.

- (2) Voluntary contributors shall comply with the prescribed levels and methods of payment of contributions to the Scheme.

- (3) Persons exempted under paragraph 5 of the First Schedule shall not be entitled to become voluntary contributors.

Statements of  
account

32. The Organisation shall issue statements of account to members and voluntary contributors at annual intervals and when requested to do so in writing by members and voluntary contributors.

## **PART V EXEMPTION OF COMPLYING SCHEMES**

Entitlement to  
exemption

33. (1) The Retirement Fund established under the Retirement Fund Act 1998 shall be exempted from the provisions of this Act.
- (2) The Board may issue a certificate of exemption from liability to contribute to the Fund to an employer and employee if satisfied that –
- (a) the employer has before the effective date of this Act established a retirement benefits scheme which, provides benefits equivalent to or better than those provided under this Act; and
- (b) the employer and trustees of that retirement fund concerned undertake to make the necessary changes in the rules of that scheme within a timescale set by the Board, in order to conform to this Act on the exemption of retirement benefit schemes.
- (3) The Board shall give the employer of a retirement scheme which is not exempted under this section, notice that it is not so exempted whereupon –
- (a) the provisions of this Act shall apply to him and his employees from a date specified by the Board;
- (b) no contribution shall be payable to the Fund in the month in which the Board so informs the employer; and
- (c) there shall be no liability for contributions to the Fund whilst an appeal of the decision of the Board is under consideration.
- (4) An exempted retirement benefit scheme shall ensure that –
- (a) contributions payable under section 20 are not less than those specified in the Second Schedule for employers and employees; and
- (b) employees contributing to that retirement benefit scheme have legal entitlements that are equal to or better than those specified in this Act, excluding life insurance, and without rights to withdraw any part or the whole prior to the date of entitlement to benefit.

Conditions for  
complying  
schemes

34. (1) An employer who provides a retirement benefit scheme for his employees may submit an application for exemption from contributing to the Scheme in the prescribed form within one month of the effective date of this Act, or such longer period as the Board may determine.
- (2) The Board may on an application for exemption –
- (a) issue an employer with an interim certificate of exemption with required modifications; and

- (b) issue a final decision on the application for exemption as soon as practicable.

Employee's credit on leaving a complying scheme

35. (1) Where an employer who is a member of a complying scheme ceases to participate in such a scheme or an employee leaves an employment or ceases to contribute to a complying scheme without being entitled to a pension benefit, the amount of the employee's credit in such scheme that represents contributions to such retirement benefit scheme both by the employer and the employee since the date of coming into force of this Act, together with any interest thereon, shall be transferred to the Fund, within one month or such further period as the Board may specify.

Provided that the employer and employee concerned may, by mutual agreement, elect to transfer to the Fund additional amounts or all such amounts standing to the credit of the employee in the retirement benefit scheme as represents the contributions paid to such scheme before the date of coming into force of this Act.

- (2) Notwithstanding the provisions in this section and section 36 on transfers to the Fund, in any instance where the member, or in the case of his death, his prescribed beneficiary, submits a written request and the Board deems it to be in the interest of the member (or his prescribed beneficiary) to do so, any transfer of amounts from a complying scheme may be suspended, and/or, if the transfer has been completed, the various accounts held in his name both in the scheme and in a complying scheme or schemes may be combined in either the scheme or a complying scheme, as the case may be, for the purpose of providing the best possible benefit. The Board shall be the sole judge of this matter.

Transfer within same group of complying scheme

36. (1) Where an employee –
- (a) transfers from employment, that is certified as a complying scheme, to employment under another employer of the same group, and where such transfer is permitted by the rules of such a scheme, continues to contribute thereto on the same terms and conditions, such employee, shall not be deemed to have left an employment; and
- (b) in accordance with the rules of such a scheme the amount standing to the credit of any employee consists in whole or in part of a policy of life insurance, such policy shall not be transferred to the Fund, but shall be dealt with in accordance with such rules.
- (2) Subject to the rules of a complying scheme, an employee who takes up employment with an employer with a complying scheme, may choose to continue with or join the Scheme instead of the complying scheme, within one month of commencing employment.
- (3) If an employee chooses to leave the Scheme and join a complying scheme, contributions in respect of the employee shall not become payable to the Fund but any amount standing to the credit of such employee shall remain in the Fund.
- (4) Where a complying scheme is wound up the amount standing to an employee's credit in such a scheme that represents contributions to such retirement benefit scheme both by the employer and the employee since

the date of coming into force of this Act, together with any interest thereon shall, be transferred to the Fund, and which amount the Board shall cause to be credited to the employee.

- (5) Where the assets of such a scheme are not sufficient to meet its liabilities, the amount to be credited to the employee under subsection (4) shall be reduced in such proportion as the Board may determine.

Provided that where the amount standing to the credit of any employee consists of a policy of life insurance, such policy shall not be transferred to the Fund.

- (6) Where under sub-section (4) any amount of contributions paid after this Act came into force is transferred to the Fund, the employer and employee concerned may, by mutual agreement, elect to transfer to the Fund additional amounts or all such amounts standing to the credit of the employee in the scheme, and if the Board approves such transfer, the employee shall be credited with the amount so transferred to the Fund.

Obligation of  
exempted  
employer

37. (1) An employer who has received a certificate of exemption in respect of this Scheme –
- (a) shall furnish the Organisation with such audited accounts as the Board may require in respect of the complying scheme;
  - (b) may amend the rules of the complying scheme with the written approval of the Board;
  - (c) furnish the Organisation with such particulars of those employees contributing to this complying scheme as may be prescribed by the Board; and
  - (d) provide such information specified by the Organisation in respect of persons entitled to benefits under the rules of the complying scheme.
- (2) An employer of any complying scheme shall be subject to the same offences and penalties in respect of deductions or contributions made under this Act.
- (3) Any expenses incurred by the Organisation in enforcing the obligations of complying schemes under this Act shall be reimbursed to the Organisation from the funds of such complying schemes on the basis of such membership.

Revocation of a  
certificate of  
exemption

38. (1) The Board shall revoke an employer's certificate of exemption where the conditions for the certificate of exemption are not or are no longer met by the employer unless the employer provides the Board with satisfactory explanations or information in writing.
- (2) Where the Board makes a revocation decision under subsection (1) it shall–
- (a) inform the employer of its decision in writing;

- (b) make the decision effective from the date on which it considers entitlement to the complying scheme status has ceased; and
  - (c) apply the provisions of sections 36(4) and (5) as if such funds were wound up from that date.
- (3) The employer and employees concerned shall be liable to contribute to the Scheme from the date on which the certificate of exemption was revoked.

Probation

39. Where an employee is precluded by the rules of his employment's complying scheme from contributing thereto during a specified period of probation or other periods of non-qualifying service under the rules of the scheme, any sum standing to such employee's credit in the Fund which represents contributions to the Fund both by the employer and employee since the date on which such employment commenced, together with any interest thereon, shall remain in the members account in the Fund.

## **PART VI BENEFITS**

Benefit  
entitlement

40. (1) Subject to this Act, the Scheme shall provide benefits to a member in the following events –
- (a) attainment of pension age, or any age between age 60 and age 65, in a lump-sum or instalments;
  - (b) permanent and total disablement before pension age, by payment of the total balance held in the name of the member or in a lump-sum of up to one third of the total balance and the remainder in instalments;
  - (c) death before pension age, by payment of the total balance held in the name of the member or payment in a lump-sum unless the beneficiary requests in writing that the benefit due to him should be paid by a lump-sum of up to one third of the total balance and the remainder in instalments; and
  - (d) in the case of death before pension age of active members other than voluntary contributors, a life insurance benefit equal to the average insurable earnings of all members in the last financial year, provided that the amount of life insurance benefit shall be the amount declared by the Board and in force at the date of death.
- (2) Any member of the Scheme may nominate one or more beneficiaries.
- (3) The Court upon application shall appoint a person to represent the beneficiary if he is under 18 years of age at the date of entitlement.

Applications  
for benefits

41. Applications for benefits shall be submitted to the Organisation in the prescribed form with all documentations and other information prescribed by Regulations.

Entitlement to  
benefits

42. (1) Subject to this Act a member shall be entitled at age 60 or at any age up to age 65 to claim a retirement pension if his total balance is equal to or greater than the minimum sum in force at the date of entitlement as prescribed by Regulations.



- (2) Where the total balance standing to the credit of a member is less than the minimum sum, he shall be entitled only to the payment of this amount as a lump-sum.
- (3) If the total balance standing to the credit of a member is equal to or greater than the minimum sum, he shall be entitled only to the lump-sum of one-third of the total balance, and a monthly pension during his lifetime and in no event to be less than a period of five years.
- (4) The rate of the retirement pension shall be calculated by multiplying the total balance, less the amount, if any, to be paid as a lump-sum at the request of the member, in accordance with subsection (5) with the prescribed annuity factor.
- (5) The member may elect to take up to one-third of the total balance as a lump-sum.

Payment of  
retirement  
pension

43. (1) Subject to this Act, retirement pension is payable from the month following the month –
- (a) in which the member attains age 60; or
  - (b) in which the member attains age 65; or
  - (c) between (a) and (b) during which the last contribution is paid.
- (2) Payment shall continue up to the month in which the pensioner dies or to the expiry of five years of payment, whichever is the later.
- (3) Where a pensioner dies before expiration of five years of payment, the balance of the pension shall be paid in a lump-sum unless the prescribed beneficiary elects to receive pension payments for the remainder of the term of five years.
- (4) (a) If there are more than one beneficiary they can agree to nominate a person to receive the payment and any one of them can request termination of that agreement at any time without cause being given; and
- (b) Pension benefits shall be paid in equal portions to children entitled under this Act.

Permanent and  
total  
disablement

44. (1) Subject to this Act, the total balance of an account of a member who is under pension age shall be payable to him if he is certified by a Medical Board as suffering from permanent and total disablement for the types of employment he has undertaken.

Provided that the Organisation may dispense with a certificate of a Medical Board in any case where, due to the serious physical or mental condition of the member, as certified by a senior hospital physician, it deems this unnecessary.

- (2) The Organisation may pay the pension in a lump-sum of up to one-third of the total balance and the remainder in instalments.

- (3) The Organisation shall establish Medical Boards from time to time for the purpose of establishing entitlement under the Act and shall defray all expenses as part of Scheme's administrative expenditure.

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| Death benefit | 45. | <ol style="list-style-type: none"> <li>(1) The prescribed beneficiary may claim the total balance in the member's account and life insurance benefit, if any, on the death of a member before he has been awarded a pension.</li> <li>(2) Where there are two or more children eligible for benefit they shall be paid in equal portions.</li> <li>(3) The Organisation may pay the balance in the form of a lump-sum of up to one-third of the total balance and the remainder in instalments, if requested by the beneficiary.</li> <li>(4) The Organisation shall pay the total entitlement into the estate of the deceased in the absence of a prescribed beneficiary.</li> </ol> |
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## **PART VII DETERMINATION OF CLAIMS AND QUESTIONS**

- |                               |     |  |
|-------------------------------|-----|--|
| Determination of claims       | 46. | <ol style="list-style-type: none"> <li>(1) The Board shall determine within one month of receipt, questions on liability to contribute, right to benefit and any other question arising under the Act, and such decision shall be in writing with reasons.</li> <li>(2) The Board may, on new facts coming to its notice, or if it is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact, review and revise its decision.</li> </ol> |
| Right of appeal               | 47. | <ol style="list-style-type: none"> <li>(1) There shall be a right of appeal from the decision of the Board under section 46.</li> <li>(2) <ol style="list-style-type: none"> <li>(a) Appeals against a decision of the Board shall be filed with the office of the Organisation within 21 days of the date of such decision.</li> <li>(b) The notice of such appeal shall be in writing and shall contain a statement of the grounds of appeal.</li> </ol> </li> </ol>                       |
| Establishment of Appeal Board | 48. | <ol style="list-style-type: none"> <li>(1) There shall be an Appeal Board established under this Act.</li> <li>(2) The Minister shall appoint members of the Appeal Board which shall consist of a Chairman and two assessors to hear appeals under this Act.</li> <li>(3) The decisions made by the Appeal Board shall be final.</li> </ol>   |
| Membership of Appeal Board    | 49. | <ol style="list-style-type: none"> <li>(1) The Minister shall appoint the two assessors from nominations received from organisations representing employers and employees.</li> <li>(2) The Chairman shall be a person who has for 10 years preceding his appointment been a law practitioner in the Kingdom of Tonga</li> </ol>   |

Powers of the  
Appeal Board

50. (1) The Appeal Board shall have the powers to issue summons, call for the production of documents, examine witnesses, administer oaths and record evidence.
- (2) An order of the Appeal Board shall be enforceable as if it were a judgement of the Supreme Court.

## **PART VIII OFFENCES AND PENALTIES**

Offences and  
Penalties

51. (1) Any person who fails to –
- (a) pay to the Fund in any month any amount required under section 20(1);
  - (b) submit returns under section 25(2);
  - (c) produce at the time specified, any document required to be produced by notice in writing under section 26(3);
  - (d) pay any contribution or other amount which he is required to pay under section 28;
  - (e) pay the Fund, within such period as may be prescribed, any surcharge which he is liable to pay under the provisions of section 29; or
  - (f) transfer to the Fund within the prescribed time any sum which he is required to transfer to it under section 35;
- is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding two years or both.
- (2) 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.

Offences  
relating to  
officers

52. (1) Any person who –
- (a) obstructs any officer or servant of the Organisation in the exercise of his duties; or
  - (b) procures any member, officer, servant or agent of the Organisation to communicate any such matter which is not permitted by the Board;
- is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding two years or both.
- (2) Any Board member, officer, servant or agent of the Organisation who communicates to any person any information which is not permitted by the Board is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding two years or both.

- (3) Any Board member, officer, servant or agent of the Organisation unlawfully using inside information for his own benefit or the benefit of another person is guilty of an offence and shall be liable on conviction to a fine not exceeding \$ 20,000 or to imprisonment for a term not exceeding two years or both.

Offences  
relating to  
contributions

53. Any person who –

- (a) makes any deductions or calculations of contributions at a time other than the time at which such contributions are payable;
- (b) deducts from the wages of the employee any sum greater than that permitted under this Act; or
- (c) having made any deductions, fails to pay to the Fund in the months in which they are due;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding two years or both.

Liability of  
officers of  
Corporation

54. (1) Where an offence under this Act has been committed by a body corporate, any person who at the time of the commission of the offence, was a director, manager or secretary shall be personally liable for that offence.
- (2) It shall be a defence for any person named in subsection (1) to prove that the offence was committed without his consent and that he exercised due diligence to prevent the commission of the offence.

Civil  
Proceedings

55. (1) For the purposes of this section the word “contribution” shall be deemed to include any surcharge under the provisions of section 29.
- (2) All contributions payable under the provisions of this Act may be recoverable by the Organisation as a debt due.
- (3) Notwithstanding any other Act, proceedings for the recovery of debts relating to contributions may be brought within five years from the date the contribution becomes due.
- (4) Proceedings for the recovery of debts may be instituted by the Organisation or its nominee authorised in writing.

Loss of benefit  
through default  
of employer

56. (1) An employer who fails to pay any contribution when due and by reason thereof any person or persons fail(s) to qualify for benefit under this Act or become entitled to benefit at a lower rate, the Organisation may pay benefit at the rate to which he or they would have been entitled if the failure to pay contributions had not occurred, and the Organisation shall be entitled to recover from the employer the contributions due and the expenditures on benefits otherwise not due save for the provisions of this sub-section.
- (2) Any sum which an employer is liable to pay under subsection (1) may be recoverable by the Organisation as a debt due.

## PART IX MISCELLANEOUS

- |   |     |     |   |
|---|-----|-----|---|
| Power of Minister on exemptions           | 57. | (1) | Any person listed in the First Schedule is exempted from the provisions of this Act.  |
|   |     | (2) | The Minister may, on the recommendations of the Board exempt any other person or category of persons from the provisions of this Act.   |
| Power of Minister to make Regulations     | 58. |     | The Minister with the consent of Cabinet, may make regulations for giving effect to and carrying out the purposes of this Act including, but not limited to the following – <ul style="list-style-type: none"><li>(a) the registration of employers and employees;</li><li>(b) the payment and collection of contributions;</li><li>(c) the submission and adjudication of claims to benefit;</li><li>(d) the exemption of existing retirement benefit schemes as complying schemes under this Act;</li><li>(e) the investment of the Fund including the appointment of fund management institutions;</li><li>(f) the manner and time of payment of contributions and the supply of information to the Organisation; and</li><li>(g) the proper and effective administration of this Act.</li></ul> |
| Exemption from tax                        | 59. | (1) | There shall be no tax liability in respect of benefits paid under this Scheme.  |
|   |     | (2) | The contributions paid by employers shall be deductible as an expense for the assessment of taxes.  |
| Overpayments of benefits                  | 60. | (1) | Any person who has received any benefit or payment under this Act to which he is not entitled, shall be liable to refund the overpayment to the Organisation.   |
|   |     | (2) | An overpayment is a debt due to the Organisation.   |
| Limitations on contributions and benefits | 61. |     | Notwithstanding any other law – <ul style="list-style-type: none"><li>(a) no sum deducted from the wages of a member of the Scheme under section 19;</li><li>(b) no amount payable by the employer as his contribution;</li><li>(c) no amount standing to the credit of a member of the Fund; and</li><li>(d) no pension or other benefit under the Act;</li></ul> shall be assignable, transferable, liable to be attached, sequestered, for, or in respect of, any debt or claim whatsoever.  |

Insured person working abroad	62.	(1)	An employer who assigns a member to undertake duties under his contract of service outside Tonga for a period not exceeding twelve months shall –
		(a)	notify the Organisation of the date the employee leaves and when he returns; and
		(b)	be liable to contribute to the Scheme as if the employee is in Tonga.
	(2)		Employees working outside Tonga on assignment shall be included in the contribution schedule with information on the remuneration in Tongan currency.
Beneficiary abroad	63.	(1)	Subject to this Act, a person shall not be disqualified from receiving any benefit for any period during which that person is absent from Tonga.
	(2)		Benefits of persons abroad may be payable in Tonga in Tongan currency to a person appointed to act for and on behalf of the beneficiary, or to the bank account of the beneficiary in Tonga as may be approved by the Organisation.
Confirmation of Entitlement	64.	(1)	Every pensioner shall confirm in writing not less than once per year continued eligibility to receive payment of the pension.
	(2)		The Organisation shall suspend further payment upon failure to comply with subsection (1) and shall only resume payment upon such compliance.

Passed in the Legislative Assembly this \_\_\_\_ day of \_\_\_\_ .

## **FIRST SCHEDULE**

(Section 57)

### **Exemptions**

1. Any domestic employee or out-worker.
2. Any person who is a daily paid labourer in any Government employment.
3. Any person who is a member of a complying scheme.
4. Any person who is detained in a prison or mental hospital.
5. Any person who is not a Tongan subject and has diplomatic privileges and immunities extended to him by the Kingdom of Tonga.
6. Any person who is not a Tongan subject employed in Tonga who provides proof satisfactory to the Board that either he or she is -
  - (a) contributing to a national superannuation scheme in another country established under legislation, which provides equivalent or better benefits than those prescribed under this Act; or
  - (b) employed under a contract or contracts the duration of which when combined does not exceed 5 years, and calculation of the total period shall exclude any gaps between such contracts of not more than 24 months.

**SECOND SCHEDULE**  
(Section 20)

**Rates of Contribution**

Contribution rates payable by employers and employees shall be the following percentages of each complete pa‘anga of insurable earnings:

	Employers	Employees
1. For the first five years of implementation of this Act	5 per cent	5 per cent
2. After the first five years of this Act	7.5 per cent	7.5 per cent



# Notes on amendments to the Draft NRBS Bill 2004

These notes provide explanatory information on the amendments in order to facilitate the processes of reviewing and finalising this Bill. Amendments have been kept to a minimum.

These notes deal with the amendments of the following Sections:

**Sections, 2-3, 5-8, 10-12, 14, 16-17, 19-20, 23, 26, 28, 33-36, 38, 40, 42-46, 49, 51-53, 56-58, 64.**

## Section 2: Interpretation

When enacted the Employment Relations Bill 2006 will govern employment conditions and constitute a framework for legislation in the labour field. This Bill was still undergoing consultations and is expected to reach Parliament in the 2007 session. Therefore its final form is unknown, but it is necessary to check on the current provisions relevant to the NRBS Bill, particularly definitions of key terms. From a comparison of the terms, “earnings” is used in NRBS Bill while “wages” is used in ER Bill, and “employee” is used in NRBS Bill while “worker” is used in ER Bill. It is evident that, whilst there are no inconsistencies, some differences exist due to different requirements. For example, in the NRBS definition of “earnings” there is a specific exclusion of overtime which is popular with employers as they are able to standardise their payroll procedures for collecting and remitting NRBS contributions. Similarly, “worker” in ER includes categories not covered by NRBS. Consequently, it is proposed to retain the NRBS definitions for these the most important for NRBS of the terms used in both Bills.

The ER Bill definition of child is on an age basis and is unsuitable for NRBS which is concerned with eligibility for benefit rather than for employment. The ER Bill definitions of the terms **“domestic worker”** and **“outworker”** used in the NRBS First Schedule Exemptions have been adopted for NRBS, and are now included in Section 2.

- **“domestic worker” means a person employed in connection with the work of a private dwelling-house and not in connection with the trade, business or profession carried out by the employer in the dwelling-house such as cook, house-worker, child’s nurse, gardener, laundry worker, security officer, or a driver of a vehicle licensed for private use;**

- **“outworker” means a person to whom articles are given to be made up, cleaned, washed, altered, ornamented, finished or repaired or adapted for sale in the person’s own home or on other premises not under the control or management of the person who gave out the materials or articles;**

Other main changes are summarised as follows.

- **“employer”** The Government of Tonga is included to ensure that any Government officials who are ineligible for membership of the Retirement Fund Scheme, such as persons serving on contracts, are able to join NRBS, but daily paid workers in Government service will be excluded from NRBS through amendment of the First Schedule.

- **“liquidator” means a person appointed or assuming the position of liquidator, receiver, trustee-in-bankruptcy, mortgagee-in-possession, or executor of a deceased estate;**

The term “liquidator” has been included as part of the amendment of Section 28

- **“Medical Board”** This term is reinstated due to the inclusion of Medical Boards in Section 44.

- **“General Manager”** has been replaced by **“Chief Executive Officer or CEO”**.

The terms “he” and “him”, where appropriate, have been used throughout the Bill and the following phrase<sup>4</sup> was added to the end of Section 2:

**“Sections of this Act in which the masculine gender is used should be understood as referring also to females”.**

## **Part II: Administration of the National Retirement Benefits Scheme**

Significant new ideas emerged at many of the meetings held during the consultation programme in August 2006 on the subject of good governance through a tripartite board. It was evident that the main employer groups previously included in draft NRBS legislation had changed and that few people were willing to accept nominations from them, which lead to a consensus in favour of elections for Board members by all participating employers and employees. There are clearly practical problems to be overcome in holding the first elections prior to the registration of employers and employees with the Scheme and it may be necessary to involve the electoral system and to obtain Government financing. Furthermore, the majority of speakers on this topic favoured minimal or no Government representation on the Board and increases in the employer and employee representatives from 2 to 3 respectively.

In view of the general trend of comments on reducing or eliminating the role of Government in this sphere, the Minister of Finance proposed that there should be no Government membership of the Board as such except for one qualified person to be appointed by the Minister with no voting rights and no remuneration; the corollary to this is increased emphasis on the integrity of Board members, in the transparency of financial operations through the publication of biennial or quarterly accounts and close attention to performance through the publication of benchmarks and progress reports.

In order to incorporate these features in the legislation, Section 3 and Sections 5 to 7 have been amended, additional audit requirements have been added to Section 17, and an additional offence was included in Section 52. The important changes to strengthen good governance were devised with the benefit of the amendments to the National Reserve Bank of Tonga Act, which were forwarded by the Crown Law Office after the end of the mission. In addition it is expected that the NRBS regulations will contain additional provisions on good governance.

### **Section 3: Administration of the Scheme**

The following sub-section (3) has been added.

“(3) The Board members shall act in good faith in the best interests of the Scheme and in accordance with the Act.”

### **Section 5: Establishment and constitution of the Board**

The new Board structure of 3-3-1 with elections for employer and employee representatives is prescribed in Section 5. The amended text reads as follows.

“(1) The Board is hereby established.

(2) The Board shall be appointed by the Minister and shall consist of -

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<sup>4</sup> A similar phrase in the 2003 draft Bill was left out by the Law Committee.

- (a) ~~two~~ three persons representing employee members of the Scheme;
  - (b) ~~two~~ three persons representing employer contributors to the Scheme; and
  - (c) ~~two persons representing the Ministry of Finance and Ministry of Labour, Commerce and Industries respectively.~~  
**one person with relevant experience and qualifications who shall have no right to vote and no entitlement to remuneration as a Board Member.**
- (3) ~~The Minister shall appoint the employer and employee representatives from nominations received from the Tonga Chamber of Commerce & Industries Incorporated, the Tongan Small Business Association Incorporated and any religious organisation operating in Tonga.~~ **shall each be three persons who are elected by the contributing employers and employees respectively and thereupon are appointed by the Minister.**

**Provided that the first such election shall held amongst the employers and employees eligible under this Act for compulsory participation in the Scheme.**

**Provided further that employees of the Organisation shall be ineligible for election to the Board.**

- (4) Members of the Board shall be appointed for a term of three years.
- (5) Directors may be re-appointed after expiry of their term of office for up to a maximum of two full terms whether or not these are consecutive terms.

**Provided that regulations shall prescribe the eligibility of a member of the first Board to participate in elections for the second Board.**

- (6) The Minister shall appoint the Chairman nominated by Board members by a resolution of the Board.
- (7) Directors shall be paid **such** remuneration, travelling and subsistence allowances as the Minister may determine.
- (8) ~~The General Manager~~ **CEO** shall perform the function of Secretary of the Board.
- (9) Upon cessation of office of a Director, otherwise than on expiry of his term of office, the Minister **at the earliest opportunity and, in any case, within thirty days**, shall appoint a replacement Director ~~in the manner stipulated in this section except that~~ **who shall be the next eligible person under the last held election for employer or employee representatives, or a person appointed by the Minister under sub-section (2) (c) , as the case may be, and** the duration of the appointment shall be for the remaining part of the term of the former Director.”

The first Board will face major challenges in establishing the Organisation and implementing the Scheme and the members will gain valuable experience. However, if all of the elected Board members stand again and are re-elected for a second term, this would result in a completely new third Board due to the limitation of Directors to a maximum of two terms. Additional provisions are required for the eventuality that all Directors wish to contest an election which would limit eligibility to stand according to such criteria as their ranking at the last election and the numbers of Board meetings attended. It is proposed that these matters being of a transitional nature should be left to regulations, as stated in Section 5 (5).

## Section 6

Additional provisions are included for the purpose of preventing unsuitable persons gaining or retaining appointments to the Board and excluding members of the Legislative Assembly, as provided for in the proposed changes to Section 13 (2) of the NRBT Amendment Act. The Section title is changed from “Duration of office” to **“Resignation, disqualification and termination of office”** to better reflect the contents.

- “(2) No person shall be appointed or remain a Director**  
**(a) who has anywhere been declared bankrupt and has not been discharged;**  
**(b) who has anywhere been convicted of an offence involving dishonesty;**  
**(c) who is a member of the Legislative Assembly; or**  
**(d) who has, in the case of a person having professional qualifications, been disqualified or suspended from practising his profession by the order of any competent authority made in respect of him personally.”**

## Section 7: Rights and duties of the Board

Additional provisions are made at 7(1) (f) and (g) to widen the scope of the Board’s responsibilities, whilst drafting changes are proposed in Section (1) (b) and (c).

- “(f) to determine benchmarks for the Scheme’s operations from time to time;**  
**(g) to maintain two-way channels of communications with registered employers and employees;”**

## Section 8: Procedures of the Board

There is a minor drafting change in sub-section (3).

## Part III: Financial provisions

### Section 10: Purpose of the Fund

There is a minor drafting change to improve accuracy in sub-section (3).

### Section 11: Bank accounts of the Organisation

- “(2) The bank accounts of the Organisation shall be maintained at the National Reserve Bank of Tonga, or other bank ~~approved~~ **licensed** by the National Reserve Bank of Tonga or other bank licensed to operate in the Kingdom, or in the case of overseas accounts, those banks approved by the National Reserve Bank of Tonga.”**

This change was requested by the National Reserve Bank of Tonga on 25 October 2004.

### Section 12: Investment of the Fund

- “(2) The Board shall devise investment strategies for investments of the Fund, including investments in other countries, that meet criteria for trustee management of retirement benefit funds.**

**Provided that the Board shall request approval for undertaking overseas investments from the National Reserve Bank of Tonga and that any such approval shall be given for periods of not less than one year.”**

This addition was requested by the National Reserve Bank of Tonga on 25 October 2004.

## Section 14: Administrative expenses

In sub-section (2), the original wording is restored as more precise and indicating that no deductions are made from members' accounts for administrative expenses.

- “(2) The costs incurred in implementing the Act and administering the Scheme shall be deducted from ~~the Fund~~ **the earnings from investments to the extent possible and otherwise from the general revenues of the Scheme.**”

## Section 16: Advances by the Government

- “(1) If the Organisation is unable at any time to pay any sum that it is liable to pay under the provisions of this Act, the Board shall ~~provide~~ **submit a request for assistance to the Minister with full information on the financial shortfall and proposals for ...**”

This change was requested by the Minister at a meeting on 9 August 2006.

## Section 17: Audit of accounts

The Minister of Finance requested that, in order to strengthen accountability, additional audit requirements should be inserted and Section 17 (1) now contains powers to require the Board to produce interim accounts for auditing or accounts for shorter periods at his direction.

- “(1) The Board shall have accounts prepared, within two months of the end of the financial year, or within such further time of not more than one month as the Minister may approve, in such form and including additional information, statements and reports as required by the Minister in respect of that year.

**Provided that the Minister may request the preparation of interim accounts for the first six months of a financial year or for such shorter periods as he may determine.”**

## Part IV: Financial provisions

### Section 19: Liability to contribute

- “(1) Subject to this Act, every employer, **having one or more employees, other than those in respect of whom the Board has issued a certificate of exemption**, and his employee(s) shall be liable to contribute to the Scheme.”

This wording should assist employers to understand their liabilities to contribute.

### Section 20: Payment of contributions

It is necessary to include the employer's liabilities so that the responsibilities of both parties are specified.

- “(1) ~~The employee's contribution shall be payable by the employer for each month from wages payable to the employee.~~ **A contribution consisting of both the employer's contribution and the employee's contribution shall be payable by the employer for each month in respect of the whole or part of which wages are payable to the employee and not otherwise.**”

### **Section 23: Late paid contributions**

The Law Committee comment in 2004 concerned the term “insured” has lead to the re-wording as more precise.

“Contributions shall be payable in respect of an employee from the month the employee enters into ~~the~~ insurable employment and such contributions are payable as arrears even though the employment to which this Act applies or the employees have not been ~~insured or~~ registered with the Organisation.”

### **Section 26: Inspections**

The Law Committee’s 2004 comments on powers of inspection are noted and no further changes are proposed. In addition, some concerns were expressed during consultations with employers. It may be helpful to note that the universal experience of contributory schemes is that adequate powers of inspection are essential to combat an inevitable amount of non-compliance and are in the interests of the members and of complying employers. Inspections must be conducted tactfully and efficiently and normally raise no objections amongst enterprises complying with the law, especially as the inspectors should mainly target employers in arrears. Contributory schemes are very dependent on employer cooperation and aim to maintain good relations, reserving enforcement for the difficult situations where enterprises are in financial difficulties in order to work out instalment payments or other methods of recovery that enable such enterprises to achieve full compliance.

### **Section 28: Recovery of contributions**

The Law Committee omitted sub-sections (2) to (7) concerning cases where the affairs of a defaulting employer are in the hands of the Official Receiver, any trustee in bankruptcy, assignee, liquidator, or personal representative or other such person who is dealing with the property, business, estate of the employer who has failed to pay contributions or is deceased. The Comment states that “(1) is enough then follow the normal procedure of recovery of debt i.e. delete rest of sub-section. All sub-sections saying just how to recover it as a debt”.

However, social security schemes need to assert rights to a share of assets where enterprises are in acute financial difficulties and liquidators are called in. Reference has been made to Section 20 of the “Bill for An Act to Make Provision for the Administration of Revenue Collection “on the assumption that the same procedures can be adopted by NRBS. It is hoped that the Law Committee can accept the following sub-sections (2) to (8) which use the same or similar wording whilst the definition in Section 2 of the term “liquidator” means “a person appointed or assuming the position of liquidator, receiver, trustee in bankruptcy, mortgage-in-possession, or executor of a deceased estate”

- “(2) A liquidator shall be required to inform the Organisation in writing within fourteen days of his appointment or assumption of this responsibility and shall not, without leave of the CEO, make any distribution of such property, business or estate until receipt of a claim by the Organisation.**
- (3) The CEO shall notify the liquidator in writing of the amount of any unpaid contributions and payable from the assets in the possession or control of the liquidator and such notice shall be served by the Organisation within two months of being served with a notice under sub-section (2).**
- (4) Subject to sub-section (5), a liquidator shall set aside out of the assets and the proceeds of sale of any asset (s) of the employer the amount notified by the CEO under sub-section (3), to the extent that such assets are available for this purpose,**

**and shall be liable to the extent of the amount set aside for the contributions due by the disposal of the employer's asset(s).**

- (5) Nothing in sub-section (4) shall prevent the liquidator from paying any debt that has a legal priority over the contributions referred to in that sub-section.**
- (6) The liquidator shall, before distributing any assets under his control, obtain from the CEO a certificate to the effect that the contributions payable under the provisions of this Act by such person out of any estate under his control have been paid to the satisfaction of the Board.**
- (7) If any distribution is made by the liquidator without first obtaining a certificate under the provisions of sub-section (3), then such person shall be personally liable for any unpaid contributions together with any surcharge payable under the provisions of Section 29.**
- (8) Where two or more persons are liquidators in respect of a defaulting employer or deceased the obligations and liabilities under this Section shall apply to all the liquidators but may be discharged by any of them”.**

#### **Part V: Exemption of complying schemes**

The Explanatory Memorandum accompanying the NRBS Bill 2002 devotes 4 pages to this subject. The basis for exemption of existing retirement benefit schemes is as follows,

- The retirement benefits provided must be at least as good as the NRBS, especially the provision for a pension of at least two thirds of the value of account balances at age 60.
- The contribution rates must be at least as high
- The employer level of contributions must be at least as high as in the NRBS
- There must be provision to transfer the value of accumulated account balances since the date of coming into force of the Scheme (Transfer values) into the NRBS when employees leave exempted employment before age 60 (but not to other exempted schemes which the employee joins on change of jobs) However, where the rules of the exempted scheme permit the provision of pension benefits at this point this would obviate the need for a transfer.
- Employees will have the same legal rights to benefits as under the Act (as some employers' schemes have rules allowing mortgaging of pensions and disqualifying persons on various grounds such as personal bankruptcy which are contrary to the principles of national schemes).

Provision has to be made for a wide range of situations occurring as NRBS gradually builds up entitlements. Consequently, this is a rather complicated part of the NRBS Bill. It appears that some changes were made by the Law Committee which have altered the original meaning of certain important provisions. The lengthy Section 35 was split up and it is now difficult to restore essential provisions without additional drafting.

#### **Section 33: Entitlement to exemption**

Sub-section (1) states the right to exemption of the Retirement Fund established under the Retirement Fund Act 1998. The Law Committee added the words “or any pension scheme prescribed under any other statute” There is no information on this wide-ranging provision and it is advisable to delete it leaving any such pension schemes to apply for exemption in the usual way.

“(1) The Retirement Fund established under the Retirement Fund Act 1998 ~~or any pension scheme prescribed under any other statute~~ shall be exempted from the provisions of this Act”.

Sub-section (2) wording was changed but it appears that the original wording is preferable.

“(2) The Board may issue a certificate of exemption from liability to contribute to the Fund to an employer and employee ~~upon satisfaction~~ **if satisfied** that...”

The original draft of the Bill prepared in 2002 contained the following, including the words now shown in underlined.

“ The Board shall not exempt a retirement benefit scheme under sub-section (1) (a) unless the rules of the scheme provide, or commitments satisfactory to the Board as specified in sub-section (1) (b) will ensure, that from the date of coming into force of this Act

(a) contributions are payable as specified in Section 20 into the retirement benefit fund at rates not less than those specified in the Second Schedule for employers and employees, and

(b) employees contributing to the retirement benefit scheme have the same **legal** entitlements as members of the Scheme to benefits that are equal to or better than those specified in this Act in relation to the total balances accumulated in a member account or accounts in the same manner as defined in Part VI, excluding provisions on life insurance, and **without** rights to withdraw any part or the whole prior to the date of entitlement to benefit.”

The wording in Section 33 (4) requires that:

- it is necessary to include in (4) (b) the word “**legal**” in line 2 before “entitlements” since some private schemes may contain limitations on entitlements that are inconsistent with NRBS principles. For example, occupational schemes may disqualify employees from their pension rights if they are dismissed for misconduct and they may be entitled only to receive a refund of their but not their employers’ contributions. However, dismissals for any reason would not affect entitlement to a NRBS benefit so this type of provision in a private scheme has to be changed in order for a retirement benefit scheme to qualify for exemption.
- It is essential to restore “**without**” to line 3 of (4) and the original meaning.

The amended text reads as follows:

“(4) An exempted retirement benefit scheme shall ensure that –

(a) contributions payable under Section 20 are not less than those specified in the Second Schedule for employers and employees; and

(b) employees contributing to that retirement benefit scheme have **legal** entitlements that are equal to or better than those specified in this Act, excluding life insurance, and **without** rights to withdraw any part or the whole prior to the date of entitlement to benefit.”

### **Section 34: Conditions for complying schemes**

Sub-section (1) in line 2 replace “contribution” with “contributing”.



- “(1) An employer who provides a retirement benefit scheme for his employees may submit an application for exemption from ~~contribution~~ **contributing** to the Scheme in the prescribed form within one month of the effective date of this Act, or such longer period as the Board may determine”

### **Section 35: Employees credit on leaving a complying scheme**

It is hoped that re-consideration should be given to including in line 4 after the words “employee’s credit in such scheme “the words **“that represents contributions to such a retirement benefit scheme both by the employer and the employee since the date of coming into force of this Act”** This is to ensure that the liability to transfer should be limited to the period since the Act came into force and not be applied retrospectively, including employment prior to the approval of the Act.

Another important provision was omitted but needs to be re-considered. This is that notwithstanding the provisions requiring transfers to the Fund in the final analysis the best interests of the member will determine what action is taken (original Section 35 (8)). For example, in the early years of the Scheme before the minimum sum can be built-up it may not be beneficial to enforce transfers to the Fund in all cases.

It is proposed therefore that the following revisions should be made in Section 35 to incorporate these important provisions.

- “(1) Where an employer who is a member of a complying scheme ceases to participate in such a scheme or an employee leaves an employment or ceases to contribute to a complying scheme without being entitled to a pension benefit, the amount of the employee’s credit in such scheme **that represents contributions to such a retirement benefit scheme both by the employer and the employee since the date of coming into force of this act,** together with any interest thereon, shall be transferred to the Fund, within one month or such further period as the Board may specify.

**Provided that the employer and employee concerned may, by mutual agreement, elect to transfer to the Fund additional amounts or all such amounts standing to the credit of the employee in the retirement benefit scheme as represents the contributions paid to such scheme before the date of coming into force of this Act.**

- (2) **Notwithstanding the provisions in this Section and Section 36 on transfers to the fund, in any instance where the member, or in the case of his death, his prescribed beneficiary, submits or submit a written request and the Board deems it to be in the interest of the member (or his prescribed beneficiary) to do so, any transfer of amounts from a complying scheme may be suspended, and/or, if the transfer has been completed, the various accounts held in his name both in the scheme and in a complying scheme or schemes may be combined in either the scheme or a complying scheme, as the case may be, for the purpose of providing the best possible benefit. The Board shall be the sole judge of this matter.”**

### **Section 36: Transfers within the same group of complying schemes**

The same point as in Section 35 applies to Section 36 (4) which deals with the entitlements when a complying scheme is wound up. The amended version omits the stipulation restricting the extent of the liability to transfer to the Fund.

- “(4) Where a complying scheme is wound up the amount standing to an employee’s credit in such a scheme **that represents contributions to such a retirement benefit scheme both by the employer and the employee since the date of coming into force of this Act,**

together with any interest thereon shall, be transferred to the Fund, and which amount the Board shall cause to be credited to the employee.”

It is advisable to revise sub-section (6) to clarify the meaning. The proposed amended text is:

- “(6) **Where under sub-section (4) any amount of contributions paid after this Act came into force is transferred to the fund**, the employer and employee concerned may, by mutual agreement, elect to transfer to the Fund additional amounts or all such amounts standing to the credit of the employee in the scheme, and if the Board approves such transfer, the employee shall be credited with the amount so transferred to the Fund. ~~Any amount of contributions paid after this Act came into force is transferred to the Fund.~~”

### **Section 38: Revocation of a certificate of exemption**

A minor improvement is suggested for sub-section (1) which now reads:

- “(1) The Board shall revoke an employer’s certificate of exemption where the conditions for the certificate of exemption are not **or are no longer** met by the employer unless the employer provides the Board with satisfactory **explanations** or information in writing.”

## **Part VI: Benefits**

### **Section 40: Benefit entitlement**

A consequence of the Law Committee’s action of dividing up the original Section 37 (1) (c), is that the new equivalent Section 40 (1) (d) does not contain the essential information that life insurance benefits are payable only for deaths before pension age. It is necessary therefore to insert the qualification at the beginning of Section 40 (1) (d) as follows:

- “(1) (d) **in the case of deaths before pension age of** an active member other than a voluntary contributor a life insurance benefit equal to the average insurable earnings of all members in the last financial year, provided that the amount of life insurance benefit shall be the amount declared by the Board and in force at the date of death.”

### **Section 42: Entitlement to benefits**

Sub-section (1) states that a pension can be claimed at the date of retirement but entitlement arises at age 60 and claims can be submitted at any age between age 60 and age 65.

- “(1) Subject to this Act a member shall be entitled ~~at the date of his retirement~~ **at age 60 or at any age up to age 65** to claim a retirement pension if his total balance is equal to or greater than the minimum sum in force at the date of entitlement as prescribed by Regulations.”

In sub-section (4), more precise wording is necessary as follows:

- “(4) The rate of the retirement pension shall be calculated by multiplying the total balance, less the amount, if any, to be paid as a lump-sum at the request of the member, in accordance with sub-section (5) **with the prescribed annuity factor.**”

### **Section 43: Payment of retirement pension**

It is proposed to amend Sections 43 (1) and (3) to read as follows

- “(1) Subject to this Act, retirement pension is payable **from the one-month following the month from the date -**
- (a) in which the member attains age 60; or
  - (b) in which the member attains age 65; or
  - (c) between (a) and (b) during which the last contribution is paid.
- (2) (Unchanged)
- (3) Where a pensioner dies before expiration of five years of payment, the balance of the pension shall be paid in a lump-sum unless the **prescribed** beneficiary elects **to receive pension instalment payments for the remainder of the term of five years”**

In fact it is incorrect to state in sub-section (1) that the pension is payable one month after the events listed. Benefit is payable from the following calendar month and there may be gap of between 1 and 30 days between attaining age 60 and receiving the first payment. Section (3) also requires further drafting to clarify that the beneficiary may opt to receive the pension for the remainder of the 5 year term and not “instalment payments”.

#### **Section 44: Permanent and total disablement**

The stakeholders held in-depth discussions on the possibility of this entitlement as the only exception to the rule that no withdrawals should be permitted before pension age. The unanimous view was that this should be included provided that there is no scope for easy medical certification that may result from the relationship between the member and his doctor and therefore that the certification should be the responsibility of an independent Medical Board. Under the present wording the Director of Health could be placed in an invidious position where the member’s General Practitioner is willing to issue a medical certificate to help his patient obtain benefit and he has a different opinion. The question therefore is whether the method of certifying permanent and total disablement is satisfactory or if not whether the Medical Board should be reinstated. If the latter is the case, the required amendment would be:

- “(1) Subject to this Act, the total balance of an account of a member who is under pensionable age shall be payable to him if he is certified by a ~~registered medical practitioner and verified by the Director of Health~~ **Medical Board** as suffering from permanent and total disablement for the types of employment he has undertaken.

**Provided that the Organisation may dispense with a certificate of a Medical Board in any case where, due to the serious physical or mental condition of the member, as certified by a senior hospital physician, it deems this unnecessary.**

- (2) (Unchanged)
- (3) **The Organisation shall establish Medical Boards from time to time for the purpose of establishing entitlement under the Act and shall defray all expenses as part of the scheme's administrative expenditure.”**

The system of Medical Boards will require the following definition in Section 2: “Medical Board” means a medical board established in accordance with Section 44 of this Act;

#### **Section 45: Death benefit**

Life insurance benefit is not payable in all circumstances such as the death of a member over age 60 but before he had claimed a pension.

- “(1) The prescribed beneficiary may claim the total balance in the member's account and life insurance benefit, **if any**, on the death of a member before he has been awarded a pension.”

## **Part VII: Determination of claims and questions**

This Part was revised and shortened in 2004 and some significant changes inserted such as to state that “The decisions made by the Appeal Board shall be final” (Section 48 (3)) and that “An order of the Appeal Board shall be enforceable as if it were a judgement of the Supreme Court” Section 50 (2). Consequently, only a few additional points should be considered in order to establish a sound framework for the determination of claims and the establishment of independent Appeal Boards to consider appeals against adverse decisions by the NRBS Organisation.

### **Section 46: Determination of claims**

The proposed change is to add sub-section (2) to allow for reviews of decisions when new information is available.

- “(1) The Board shall determine within one month of receipt, questions on liability to contribute, right to benefit and any other question arising under the Act, and such decision shall be in writing with reasons.
- (2) **The Board may, on new facts being brought to its notice or if it is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact, review and revise its decision.”**

### **Section 49: Membership of appeal boards**

Considering the increased powers of Appeal Boards it is advisable to require the Chairman to have legal experience, as stipulated in the original text. The new provision in Section 49 requiring the Chairman to have held a senior managerial post for at least 10 years does not meet this requirement.

The structure of such Boards in similar countries to Tonga is that the Chairman is legally qualified whilst two lay assessors are appointed from nominations made by employer and employee organisations. The amendment to this effect is incorporated below.

- “(1) The Minister shall appoint the two assessors from nominations received from organisations representing employers and employees.
- (2) The Chairman shall be a person who has ~~held a senior managerial post~~ for 10 years **preceding his appointment been a law practitioner in the Kingdom of Tonga”**

## **Part VIII: Offences and penalties**

### **Section 52: Offences relating to officers (Sections 51 and 53)**

The penalties in sub-sections (1) and (2) have been adjusted to be more in line with current practice. A new offence of unlawfully using inside knowledge is specified in Section 52 (3). This is based on a similar offence in Section 19 of the NRBT Act 1988.

- “(1) Any person who –
- (a) obstructs any officer or servant of the Organisation in the exercise of his duties; or

(b) procures any member, officer, servant or agent of the Organisation to communicate any such matter which is not permitted by the Board;

is guilty of an offence and shall be liable on conviction to a fine not exceeding ~~\$5,000~~ **\$20,000** or to imprisonment for a term not exceeding ~~one~~ **two** years or both.

(2) Any **Board** member, officer, servant or agent of the Organisation who communicates to any person any information which is not permitted by the Board is guilty of an offence and shall be liable on conviction to a fine not exceeding ~~\$5,000~~ **\$20,000** or to imprisonment for a term not exceeding ~~one~~ **two** years or both.

(3) **Any Board member, officer, servant or agent of the Organisation unlawfully using inside information for his own benefit or the benefit of another person is guilty of an offence and shall be liable on conviction to a fine not exceeding \$ 20,000 or to imprisonment for a term not exceeding two years or both."**

The penalties in Sections 51 and 53 have been adjusted in conformity with the amendments in Section 52.

### **Section 56: Loss of benefit through default of employer**

This is modelled on the original Section 28 (8) in Part IV Contributions to the Scheme and was transferred to this Part by the Law Committee. Such provisions are for the protection of members when their benefit rights are affected by their employers failing to remit contributions, sometimes only the employers shares but also in some cases their own contributions. It is a normal provision in contributory schemes to pay benefit at the rate it should have been payable on the assumption that the employee may be unaware of the non-payment of contributions but to recover the costs from the employer.

The Law Committee's version does not provide for the Organisation paying the benefit to which the member would have been entitled and then recovering both the overdue contributions and the additional amounts of benefit from the defaulting employer .The proposed amendment is noted below.

**"(1) An employer who fails to pay any contribution when due ~~and causes loss of benefit to an employee, shall be liable to pay the Fund the amount of benefit payable under this Act and~~ by reason thereof any person or persons fail(s) to qualify for benefit under this Act or become entitled to benefit at a lower rate, the Organisation may pay benefit at the rate to which he or they would have been entitled if the failure to pay contributions had not occurred, and the Organisation shall be entitled to recover from the employer the contributions due and the expenditures on benefits otherwise not due save for the provisions of this sub-section."**

### **Part IX: Miscellaneous**

This Part has been retained with little or no significant amendments by the Law Committee, apart from the exclusion of the former Section 66 "Non nationals" which may be considered for inclusion in regulations. The queries noted below are in regard to drafting.

### **Section 57: Power of Minister on exemptions**

Most if not all exemptions will be categories of persons rather than individual persons. This should be made clear in sub-section (2).

**"(1) Any person listed in the First Schedule is exempted from the provisions of this Act.**

- (2) The Minister may, on the recommendations of the Board exempt any other person **or category of person** from the provisions of this Act.”

#### **Section 58: Power of Minister to make Regulations**

Some drafting changes are recommended to improve the wording of this Section.

- “58. The Minister, with the consent of Cabinet, may make regulations for giving effect to and carrying out the purposes of this Act including, but not limited to the following –
- (a) **the register registration** of employers and employees;
  - (b) **the payment** and collection of contributions;
  - (c) **the submit submission** and **adjudicate adjudication of** claims to benefit;
  - (d) **the exemption of** existing retirement benefit schemes as complying schemes under this Act;
  - (e) **the** investment of the Fund including the appointment of fund management institutions;
  - (f) **the** manner and time of payment of contributions and the supply of information to the Organisation; **and**
  - (g) ~~payment of contributions; and~~ **the proper and effective administration of this Act.”**

#### **Section 64: Confirmation of entitlement**

Regular confirmation of entitlement is essential because pensions are payable for life and automatic transfers may be made into bank accounts in good faith until a notification is received of the pensioner’s death. If relatives receive payments in excess of entitlement, problems of repayment may occur so the aim is to prevent such occurrences. However, a requirement to complete the necessary form every 6 months may cause excessive administrative burden since pensioners may live on average in excess of 15 years from age 60. It is suggested therefore that the following wording should be used to provide some flexibility.

- “64 Every pensioner shall confirm in writing ~~every 6 months~~ **not less than once per year** continued eligibility to receive payment of the pension”

## **Annex. Mission and project information**

### **1. Terms of Reference**

- The National Retirement Benefits Technical Consultation Project (TON/98/001) main report was completed in September 2000 and recommendations forwarded to the Tongan Cabinet. The report concluded that a contributory Retirement Benefits Fund was financially feasible, and would contribute positively to Tonga's economic and social development. On 1 November 2000, the Tongan Cabinet agreed to proceed to establish a Retirement Benefits Fund for Tonga. Cabinet also decided to adopt the contributory Provident Fund option from the alternatives set out in the report, with the Fund being compulsory for full time wage and salary earners who were not members of other complying funds, and voluntary for others. The process included consultations with Government, the private sector and various groups within the informal sector, most of whom were supportive of such a scheme.
- The project is now moving towards the implementation stage, which is envisaged by the Tongan authorities and the UNDP as comprising two distinct phases:
  - Phase Two, which involves preparing and passing the empowering legislation, and planning the practical and budgetary arrangements for the set-up phase up to the point of appointing an interim establishment board.
  - Phase Three, where the Interim Board is appointed, the Fund organization set up, and all necessary arrangements made to "go live" to collect contributions, invest funds, and pay benefits.

#### Scope of activities

- Since the last mission in November 2004, there has not been much progress in the project due to numerous reasons such as Tonga Government Reform, Civil Service and Political strikes etc. It is envisaged that this mission will endeavour to update all stakeholders who are involved in this project on the next best steps.
- To discuss with ILO/UNDP/CPD and the local consultant(s) in order to develop the strategy on how to proceed further with the whole project.
- To guide the local consultant on the development or review of information material to be published through media organisations on the draft Bill.
- To follow-up on discussions with different stakeholders in Tonga and collect information on the current draft legislation and recommendations submitted in November 2004.
- Participate in group discussions in Tonga to get collective views on possible legislative framework as well as work as a resource person in the stakeholders' meetings to clarify issues on the draft Bill.
- Discuss with policy makers including Parliamentarians and act as a resource person in the Parliamentary meeting planned for during the mission.
- Contribute to the development of a practical workplan for future activities (including the time for passing the draft Bill) to complete this exercise.
- Finalise the draft Bill, if required, on the basis of discussions emanating from the various meetings with stakeholders.

## **2. List of persons met and programme of meetings**

Mr Feleti Sevele, Prime Minister  
Mr Lopeti Senituli (Political Adviser to the PM)  
Mr Siosua 'Utoikamanu, Minister of Finance  
Dr. Caroline Fusimalohi, Director, Central Planning Department  
Sione Faleafa (Finance)  
Ofa Guttenbeil (National Consultant)  
Virisila Raitamata (UNDP, Suva)  
Surkafa Katafono (ILO Suva).

### 7 August 2006

#### Mission Briefing at CPD

Dr Caroline Fusimalohi and Tufui Aho, Deputy Director of CPD.

#### TNRBF Steering Committee

Polotu Fakafania-Pauga (Women's Affairs), Sione Maumau (MLCI), Gloria Poleo (Crown Law), Nunia Mone (PSC), Paulo Kautoke (MLCI), Caroline Fusimalohi (Finance), Sione Faleafa (Finance).

#### Employers Group

Afu'olo Matolo (Tonga Development Bank), Pousima Afeaki (Tinopai Farm – Tonga/NZ Business Association), Lee Miller (Waste Management – Tonga/NZ Business Association), Viliami Sikalu (Westpac Bank of Tonga), Tapu Panuve (Tonga Chamber of Commerce Federation), Etina Kilisimasi (Tonga Communications Cooperation – TCC), Erling Veetutu (TCC), Gladys Fukofuka (TCC).

#### Tonga Tourist Association & Farmers

Christine Ula'atu (Tonga Tourist Association), George Naleao (Tonga Tourist Association), Kololiana Naufahu (Tonga Tourist Association), Ramogy Dalyety (Tonga Tourist Association).

#### Meeting with the Prime Minister

Dr. Feleti Sevele Prime Minister, Lopeti Senituli (Political Adviser), Dr. Caroline Fusimalohi, Ken Thompson, Virisila Raitamata, Surkafa F. Katafono and Ofa Guttenbeil,

### 8 August 2006

#### Public Service Association, FITA & other Educational Institutions

Finau Tutone – Friendly Islands Teachers' Association (FITA), Siale 'Ilolahia (Civil Society Forum of Tonga), Mele Amanaki (Public Service Association), Salote Fukofuka (USP), Losaline Taufui (USP.)

#### Church leaders

Rev. S Otolouta Poloniati (Free Wesleyan Church), Viliami Fukofuka (Faith Seminary), Rev. Siketi Tonga (Tonga National Council of Churches)

#### Media Conference

Fatai Fainga'a (Radio & TV Tonga), Linny Folau (Matangi Tonga), P Fonua (Matangi Tonga), Gay Vorunda Tofolo (Kele'a Newspaper), Vakaola Tonganudrenoa (Kalonikali Tonga), Folauphola Siale (Talaki Newspaper), Kesaia Veamatahau (Talaki Newspaper), Saia Kauti (Times of Tonga).



## 9 August 2006

### Parliamentarians Meeting

Havea Tuiha'ateiho (Noble Rep), Sunia Fili (Eua Rep), Vili Kaufusi Helu (Vavau Rep #2), Akilisi Pohiva (Tongatapu Rep #1), Tu'I uata (Tonga Small Business Association).

### Meeting with the Minister of Finance

Mr Siosiu 'Utoikamanu, Minister of Finance, Ken Thompson, Surkafa F Katafono, Sione Faleafa, and Ofa Guttenbeil.

## 10 August 2006

### TV and Radio Programme (Tonga Broadcasting Commission )

Dr Caroline Fusimalohi, Sione Faleafa, Ken Thompson and Surkafa F Katafono.

### Westpac

Viliami Sikalu, Westpac.

### Chamber of Commerce & Tonga National Small Business

Present: Tu'i Uata (Tonga National Small Business Association), Afu'olo Matolo (Tonga Development Bank), Erling Veetutu (TCC), Lee Miller (Waste Management – Tonga/NZ Business Association).

## 11 August 2006

### Church leaders

Rev. S Otolouta Poloniati (Free Wesleyan Church), Viliami Fukofuka (Faith Seminary), Rev. Siketi Tonga (Tonga National Council of Churches) Rev. Fili Lilo (Free Wesley Church of Tonga), Rev. Temo Cama (AOG), Etuate Sakalia (Catholic Diocese of Tonga), Feke Mafi (Siasi 'o Tonga), Semisi Fonua, (Siasi'o Tonga Tauataina), Uili Fulaofuka (Faith Seminary).

### TNRBF Steering Committee

Nunia Mone (PSC), Caroline Fusimalohi (CPD), Sione Faleafa (Ministry of Finance), Ofa Guttenbeil, Virisila Raitamata and Surkafa F Katafono.

## References

ILO/UNDP, “Tonga: A National Retirement Benefits Fund for Tonga” (ILO/UNDP/Tonga/R.3), 2001

K. Thompson, National Retirement Benefit Scheme Act, 2003 (First draft, June 2002, Revision 1 October 2002), ILO mimeographed.

K. Thompson, Explanatory Memorandum to the Draft National Retirements Benefits Scheme Bill (June 2002), ILO mimeographed.