

CAYMAN ISLANDS



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**A BILL FOR A LAW TO PROVIDE FOR THE ELIMINATION OF  
GENDER DISCRIMINATION IN EMPLOYMENT, TRAINING AND  
RECRUITMENT; TO PROVIDE FOR THE PAYMENT OF EQUAL  
REMUNERATION TO EMPLOYEES WHO PERFORM WORK OF  
EQUAL VALUE; AND TO PROVIDE FOR INCIDENTAL AND  
CONNECTED PURPOSES**



**THE GENDER EQUALITY BILL, 2011**

**MEMORANDUM OF OBJECTS AND REASONS**

This Bill seeks to provide for the elimination of gender discrimination in employment and to provide for the payment of equal remuneration to male and female employees who perform work of equal value.

Part 1 of the Bill contains clauses 1 and 2 which are preliminary provisions.

Clause 1 provides the short title.

Clause 2 defines various terms for the purposes of the legislation (for example, the term “marital status” is defined to include the status of a man and a woman who, although not married to each other, are living with each other in the same household as husband and wife).

Part 2 of the Bill contains clauses 3 to 16 which make provision for protection against gender discrimination.

Clause 3 describes the circumstances in which a person may be regarded as discriminating against another person for the purposes of the legislation. The clause deals specifically with discrimination on the ground of sex, marital status pregnancy or any characteristic based on gender which appertains generally or is generally imputed to persons of a particular sex or marital status or pregnant state

Clause 4 prohibits discrimination against a prospective employee, on any ground specified in section 3(2) of, in the arrangements for selecting persons for employment or in the terms or conditions on which employment is offered.

Clause 5 sets out exceptions where sex or marital status is a genuine occupational qualification.

Clause 6 empowers the Governor in Cabinet to make an Order to prescribe special measures to promote equality of opportunity in employment based on the grounds set out in section 3(2), and for such special measures to be deemed not to be discrimination.

Clause 7 provides that sexual harassment committed against a person by any other person constitutes discrimination based on sex. The clause also prohibits sexual harassment as defined in clause 2.

Clause 8 provides for equal remuneration to be paid to men and women performing work of equal value for an employer.

Clause 9 prohibits a partnership from discriminating against a person in the arrangements made for the purpose of determining who should be offered a position as a partner in the firm.

Clause 10 prohibits discrimination by an authority or body that is empowered to confer, renew, extend, revoke or withdraw a qualification that is needed for the practice of a profession, the carrying on of a trade or the engaging in an occupation.

Clauses 11 and 12 prohibit discrimination by vocational training bodies and employment agencies.

Clause 13 prohibits discrimination in connection with the provision of goods, services and facilities.

Clause 14 provides that where a requirement or condition which is not apparently in contravention of the legislation, has the effect of giving preference to a person where such preference would be discrimination on any ground specified in clause 3(2), a person shall not impose that requirement or condition, unless the person imposing it establishes good reason for its imposition and shows that its imposition is not made with a view to avoiding compliance with the legislation.

Clause 15 prohibits a person from causing the publication or display of an advertisement or notice which indicates or could reasonably be understood as indicating an intention to commit a breach of the legislation.

Clause 16 prohibits a person from asking another person to provide information that would not, in the same circumstances, be required of a person of a different sex, marital status or pregnant state.

Part 3 of the Bill contains clauses 17, 18 and 19 and prescribes exceptions to the provisions of the legislation with regard to unlawful gender discrimination. These exceptions relate to charities and religious bodies and where discrimination on any ground referred to in section 3(2) is permitted in another Law.

Part 4 of the Bill contains clauses 20 and 21 which provide for the offences relating to gender discrimination, namely, the offence of inducing a person to unlawfully discriminate and the offence of victimization.

Part 5 of the Bill contains clauses 22 to 37 which make provision for the Gender Equality Tribunal and for the determination of complaints by the Tribunal.

Clause 22 provides for the establishment of the Tribunal.

Clause 23 makes provision for the functions of the Tribunal which are to hear and determine discrimination complaints submitted to it.

Clause 24 provides for the independence of the Tribunal so that in the exercise of its functions the Tribunal is not to be subject to the direction or control of any other person.

Clause 25 provides for the Tribunal to comprise of five members, who shall be appointed by the Governor in Cabinet on such terms and conditions as the Governor in Cabinet may specify in the members' instruments of appointment. The members are to include an attorney-at-law of at least ten years' standing who shall be the Chairperson and four other persons each of whom has experience and qualifications in gender, social development, human rights, or labour or a related field. Clause 25 also provides disqualification criteria for membership in the Tribunal.

Clause 26 specifies that the appointment of a member shall be for a period not less than three years, subject to eligibility for reappointment for a further term, a maximum of two consecutive terms and to staggering of appointments unless the member resigns or the member's appointment is revoked.

Clause 27 makes provision for a member who is in any way, either directly or indirectly, interested in a matter before the Tribunal to declare the nature of his or her interest to the Tribunal at the first instance where it is practicable to do so and for the member not to sit to hear that particular matter.

Clause 28 provides for resignation of members of the Tribunal.

Clause 29 provides for revocation of appointment of members of the Tribunal.

Clause 30 specifies that the office of a member is vacated upon the death, disqualification, resignation, revocation of appointment or expiry of appointment of a member. Clause 30 also provides that a decision of the Tribunal taken at a hearing is not invalidated merely because there is a vacancy in membership.

Clause 31 makes provision for a member of the Tribunal to be paid such remuneration and allowances as may be determined by the Governor in Cabinet

and for the expenses of the Tribunal to be paid out of the general revenue of the Islands.

Clause 32 provides for the making of complaints by a person who has reasonable grounds for believing that another person is engaging or has engaged in discrimination. The complaint is to be made within six months from the date on which the alleged acts that were the basis of the complaint were done except that where a complaint is made after that time the Tribunal may if the reasons for the delay are reasonable, accept that complaint.

Clause 33 provides for the hearing of complaints by the Tribunal.

Clause 34 makes provision for the notification of the Tribunal's findings to the complainant and the person against whom the claim was made and for the issuing of directions by the Tribunal where the Tribunal finds that the claim was substantiated.

Clause 35 provides for an agreement to be made at any stage after the filing of a complaint and before the commencement of a hearing by the Tribunal and for the Tribunal to be notified of such agreement in writing.

Clause 36 provides for confidentiality of information.

Clause 37 contains immunity and indemnity provisions.

Part 6 of the Bill contains clauses 38 to 41 which provide for the miscellaneous matters.

Clause 38 deals with the burden of proof where it is alleged that conduct is excepted from the Law.

Clause 39 provides for a person aggrieved by a decision of the Tribunal to appeal to the Grand Court against that decision within twenty-eight days of the decision.

Clause 40 empowers the Governor in Cabinet to make regulations for the effective implementation of the legislation and for carrying the legislation into effect.

Clause 41 specifies that the legislation binds the Crown.

**THE GENDER EQUALITY BILL, 2011**

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GENDER DISCRIMINATION IN EMPLOYMENT, TRAINING AND  
RECRUITMENT; TO PROVIDE FOR THE PAYMENT OF EQUAL  
REMUNERATION TO EMPLOYEES WHO PERFORM WORK OF  
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CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

**PART 1 - PRELIMINARY**

1. This Law may be cited as the Gender Equality Law, 2011.

Short title

2. In this Law -

Interpretation

“commission agent” means an agent who is remunerated by commission;

“contract of employment” means any agreement, understanding or arrangement whatever, whether written or oral, express or implied, whereby it is agreed between an employee and an employer that the employee will be employed under a contract of service;

“contract worker” means a person who performs work for another person pursuant to a contract between the employer of the first-mentioned person and that other person;

“dependent contractor” means a person, whether or not employed under a contract of employment, who performs work or service for another person for compensation or reward on such terms and conditions that the first-mentioned person is, in relation to that other person, in a position of economic dependence on, and under an obligation to perform duties for, that other person more as an employee than an independent contractor;

“educational authority” means a body of persons administering an educational institution;

“educational institution” means a school, college, university or other institution at which education or training is provided;

“employee” means any individual who enters into or works under or stands ready to enter into or work under a contract of employment with an employer whether the contract be oral or written, express or implied; and the term includes a person whose services have been interrupted by a suspension of work during a period of leave or temporary lay-off;

“employer” means any person who has entered into or stands ready to enter into a contract of employment with an employee, or any person duly authorized to act on the employer’s behalf

“employment” includes -

- (a) part-time employment, temporary employment and employment under a contract of service or of apprenticeship;
- (b) employment under a contract for services; and
- (c) engagement as a commission agent,

carried on in the Islands.

“employment agency” means any person who, whether for payment or not, assists persons find employment or assists employers to find employees;

“equal remuneration” means a rate or a scale of remuneration that has been established without differentiation based on the ground of sex, marital status or pregnancy;

“gender” means the cultural, economic, social, and political characteristics, roles and opportunities through which women and men are socially constructed and valued;

“genuine occupational qualification” has the meaning assigned to that expression by section 5;

“managerial employee” includes persons who plan, organize, control, co-ordinate or direct the business of an employer or a part of such business;

“marital status” means the status or condition of being -

- (a) single;
- (b) married;
- (c) married but living separately and apart from one’s spouse;
- (d) divorced; or
- (e) widowed,

and includes the status of a man and a woman who, although not married to each other, are living with each other in the same household as husband and wife;

“member” means a member of the Tribunal appointed under section 25;

“Minister” means Minister responsible for gender affairs;

“remuneration” means any money or other thing, whether called salary, wage, allowance or by any other name, paid or contracted to be paid, delivered or given as recompense, reward or compensation for any work or labour done or to be done, whether within a certain time or to a certain amount, or for a time or an amount uncertain;

“sexual harassment” means unwanted conduct of a sexual nature in the workplace or in connection with the performance of, or recruitment for work, which is threatened or imposed as a condition of employment on an employee or which creates a hostile working environment for the employee, being conduct which has the purpose or effect of violating the dignity of the employee or intimidating, degrading, humiliating or offending the employee;

“Tribunal” means the Gender Equality Tribunal established under section 22; and

“work of equal value” means work equal in value in terms of the demands it makes in relation to such matters as skill levels, duties, physical and mental effort, responsibility and conditions of work.

## **PART 2 - PROTECTION AGAINST GENDER DISCRIMINATION**

3. (1) For the purposes of this Law, a person discriminates against another person on grounds specified in subsection (2) if the first-mentioned person makes, on any of the grounds specified in subsection (2), any distinction, exclusion or preference the intent or effect of which is to nullify or impair equality of opportunity or treatment in any employment or occupation.

Prohibited grounds of  
discrimination

(2) The grounds referred to in subsection (1) are -

- (a) sex, marital status or pregnancy; or
- (b) any characteristic based on gender which appertains generally or is generally imputed to persons of a particular sex or marital status or pregnant state.

(3) Any act, practice or policy that directly or indirectly results in discrimination against a person on any ground specified in subsection (2), is an act of discrimination regardless of whether the person responsible for the act, practice or policy intended to discriminate.

Prohibition on  
discrimination in  
employment

4. (1) A person who is an employer, shall not in relation to the recruitment, selection or employment of any other person, discriminate against that other person on any ground specified in section 3(2) -

- (a) in an advertisement of a job;
- (b) in an interview or other arrangements made for the purpose of determining who should be offered employment;
- (c) in determining who should be offered employment;
- (d) in the terms or conditions on which employment is offered; or
- (e) in the creation, classification or abolition of jobs.

(2) An employer shall not discriminate against an employee on any ground specified in section 3(2) -

- (a) in the terms or conditions of employment afforded to the employee by the employer;
- (b) in conditions of work or occupational safety and health measures;
- (c) in the provision of facilities related to or connected with employment;
- (d) by denying access, or limiting access to opportunities for advancement, promotion, transfer or training, or to any other benefits, facilities or services associated with employment;
- (e) by retrenching or dismissing the employee; or
- (f) by subjecting the employee to any other disadvantage.

(3) Subsection (1) does not apply to employment -

- (a) for the purposes of a private household; or
- (b) by a private educational authority.

Exception for genuine  
occupational  
qualification

5. (1) Nothing in section 4 shall apply to any distinction, exclusion or preference based on any ground specified in section 3(2) where a genuine occupational qualification exists.

(2) For the purposes of this Law a genuine occupational qualification for a job exists where -

- (a) the essential nature of the job calls for a man or woman for reasons of physique (excluding physical strength or stamina) or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a person of the opposite sex;
- (b) the job needs to be held by a person of a particular sex to preserve decency or privacy because -
  - (i) it is likely to involve physical contact with persons of the same sex in circumstances where those persons might reasonably object to its being carried out by persons of the opposite sex; or
  - (ii) the holder of the job is likely to do work in circumstances where persons of the same sex might reasonably object to the presence of a person of the opposite sex because they are in a state of undress or use the same sanitary facilities;
- (c) in the case of an establishment where less than twenty-five persons are employed, the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer and -
  - (i) the only premises which are available for persons holding that kind of job are occupied or normally occupied, by persons of the same sex and are not equipped with separate sleeping accommodation and sanitary facilities for persons of the opposite sex; and
  - (ii) it is not reasonable to expect the employer either to equip those premises with such accommodation and facilities or to provide other premises for persons of the opposite sex;
- (d) the job requires a married couple; or
- (e) the nature of the establishment, or the part of it where the work is carried out, requires the job to be held by a person of a particular sex because -
  - (i) it is, or is part of, a hospital, prison, or other establishment for persons requiring special care, supervision or attention;
  - (ii) those persons are all of the same sex (disregarding any person of the opposite sex whose presence is exceptional); and
  - (iii) it is reasonable, having regard to the essential character of the establishment or that part, that the job should not be held by a person of the opposite sex.

6. Special measures may be prescribed by Order made by the Governor in Cabinet to promote equality of opportunity in employment based on the grounds

Special measures to promote equality

set out in section 3(2), and such special measures shall be deemed not to be discrimination within the meaning of section 4.

(2) An Order pursuant to subsection (1) shall specify the period during which the special measures shall be effective.

Sexual harassment

7. (1) Any act of sexual harassment against a person committed by any other person constitutes discrimination based on sex within the meaning of section 3.

(2) A person shall not commit sexual harassment against any other person.

Equal remuneration

8. (1) An employer shall not pay unequal remuneration to men and women performing work of equal value for such employer.

(2) The burden of proof to establish that equal remuneration has been paid rests on the employer.

Professional partnership

9. (1) Where employment in a particular profession is provided primarily through a partnership firm, any such firm of professionals, or any persons proposing to form themselves into such a partnership firm, shall not, discriminate against any person on any ground specified in section 3(2) -

- (a) in the arrangements they make for the purpose of determining who should be offered a position as a partner in the firm;
- (b) by refusing or deliberately omitting to offer that position to that person;
- (c) in the terms on which they offer that position to that person; or
- (d) in a case where that person already holds that position -
  - (i) by denying or limiting access to any benefit arising from membership of the firm; or
  - (ii) by expelling that person from the firm or subjecting that person to any other detriment.

(2) Subsection (1) does not apply if the treatment afforded to the partner or potential partner is based on a genuine occupational qualification.

Qualifying bodies

10. (1) An authority or body shall not, if the authority or body is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in an occupation, discriminate against a person on any ground specified in section 3(2) -

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification;

- (b) in the terms or conditions on which it is prepared to confer the authorisation or qualification or to renew or extend it; or
- (c) by revoking or withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.

(2) In this section -

“authorisation or qualification” includes recognition, registration, enrolment, approval and certification.

11. A person or educational authority recognised as providing facilities for training for employment shall not discriminate on any ground specified in section 3(2) against another person who is seeking or undergoing technical or vocational training which would help to fit that other person for any kind of employment or occupation -

Vocational training  
bodies

- (a) in the arrangements made for the purpose of determining who should be offered training;
- (b) in the terms and conditions on which that other person is afforded access to training courses or other facilities and services, including vocational counselling and guidance;
- (c) by refusing or deliberately omitting to afford access to training courses or other facilities and services, including vocational counselling and guidance; or
- (d) by terminating any training which has already started.

12. (1) An employment agency shall not discriminate against a person on any ground specified in section 3(2) -

Employment agencies

- (a) by refusing to provide that person with any of its services;
- (b) in the terms on which it offers to provide that person with any of its services;
- (c) in the manner in which it provides that person with any of its services; or
- (d) in any other manner in which it facilitates the hire or employment of that person.

(2) This section shall not apply if the discrimination concerns employment which the employer could lawfully refuse to offer that person.

(3) An employment agency is not liable under this section if it proves -

- (a) that it acted in reliance on a statement made to it by an employer to the effect that by reason of the operation of subsection (2), its action would not be unlawful; and

(b) that it was reasonable for it to rely on the statement.

(4) Any person who knowingly, or recklessly, makes a statement referred to in subsection (3) which is false or misleading in a material particular commits an offence and is liable on summary conviction to a fine of five thousand dollars.

Goods, services and facilities

13. A person who, whether for payment or not, provides goods and services or makes facilities available, shall not discriminate against another person on any ground specified in section 3(2) -

- (a) by refusing to provide that person with those goods or services or to make those facilities available; or
- (b) in the manner in which or in the terms and conditions on which those goods or services are provided or those facilities are made available to that person.

Imposition of requirement or conditions

14. Where a requirement or condition which is not apparently in contravention of any provision of this Law, has the effect of giving preference to a person where such preference would be discrimination on any ground specified in section 3(2), a person shall not impose that requirement or condition, except where the imposition is reasonable and the imposition is not made with a view to avoiding compliance with this Law.

Advertisements

15. A person shall not discriminate against another person on any ground specified in section 3(2) by causing to be published or displayed, any advertisement or notice.

Application forms, etc.

16. Where by virtue of any provision of this Part, a person is prohibited from discriminating against another person on any ground specified in section 3(2), the first-mentioned person discriminates against the other person if he requests or requires that other person to provide information (whether by way of completing a form or in the course of an interview or otherwise) that would not, in the same or substantially similar circumstances be required or requested of a person of the opposite sex or of a different marital status or pregnant state.



**PART 3 - EXCEPTIONS**

17. (1) Nothing in Part 2 affects - Charities
- (a) a provision of a deed, will or other document, whether made before or after the date of commencement of this Law, that confers charitable benefits or enables charitable benefits to be conferred on persons on the basis of any ground specified in section 3(2); or
  - (b) an act that is done in order to give effect to such a provision.
- (2) In this section -

“charitable benefits” means benefits for purposes that are exclusively charitable according to law.

18. Nothing in Part 2 affects - Religious bodies
- (a) the ordination of priests, ministers of religion or members of a religious order;
  - (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;
  - (c) the selection or appointment of persons to perform duties or functions for the purposes of, or in connection with, or otherwise to participate in any religious observance or practice; or
  - (d) any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of a religion or is necessary to avoid injury to the religious susceptibilities of adherents to that religion.

19. Nothing in this Law affects a provision of any other Law under which discrimination on grounds referred to in section 3(2) is permitted. Provisions in other Laws

**PART 4 - OFFENCES RELATING TO GENDER  
DISCRIMINATION**

20. (1) A person shall not induce or attempt to induce another person to do any act which contravenes Part 2 by - Pressure to discriminate
- (a) providing or offering to provide that other person with any benefit; or
  - (b) subjecting or threatening to subject that other person to any detriment.

(2) An offer or threat is not prevented from falling within subsection (1), because it is not made directly to the person in question, if it is made in such a way that the person is likely to hear it or hear of it.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars.

Victimization

21. (1) A person shall not subject or threaten to subject another person to any detriment -

- (a) on the ground that the second mentioned-person -
  - (i) has made, or proposes to make, a complaint under this Law;
  - (ii) has furnished or proposes to furnish, any information, or has produced, or proposes to produce, any document to a person exercising or performing any power or function under this Law;
  - (iii) proposes to provide evidence or testimony as a witness; or
  - (iv) has made a good faith allegation that a person has committed an act of discrimination in contravention of this Law; or
- (b) on the ground that the first-mentioned person believes that the second-mentioned person has done, or proposes to do, an act or thing referred to in paragraph (a)(i) to (iv).

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars.

#### **PART 5 - GENDER EQUALITY TRIBUNAL**

Establishment of Tribunal

22. There is established the Gender Equality Tribunal for the purpose of hearing complaints under this Law.

Functions of Tribunal

23. The Tribunal shall hear and determine discrimination complaints submitted to the Tribunal under this Law.

Independence of Tribunal

24. In the exercise of its functions, the Tribunal shall not be subject to the direction or control of any other person.

Composition of Tribunal

25. (1) Subject to subsections (2) and (3) and to section 26, the Tribunal shall comprise of five members, who shall be appointed by the Governor in Cabinet on such terms and conditions as the Governor in Cabinet may specify in the members' instruments of appointment.

- (2) The members of the Tribunal shall be -
- (a) an attorney-at-law of at least ten years' standing who shall be the Chairperson; and
  - (b) four other persons each of whom has experience and qualifications in any of the following or related fields -
    - (i) gender;
    - (ii) social development;
    - (iii) human rights; or
    - (iv) labour.
- (3) A person shall be disqualified from being a member and is not eligible to be appointed as a member, or having been appointed, is not eligible to continue as a member if that person -
- (a) has filed for bankruptcy in a court or is declared by a court to be a bankrupt;
  - (b) is declared by a court to be physically or mentally incapacitated by reason of unsoundness of mind;
  - (c) has been convicted of a criminal offence except where the offence is a minor traffic offence; or
  - (d) is a Member of the Legislative Assembly.
- (4) A decision of the Tribunal shall be by simple majority of the members present at a properly constituted hearing or meeting of the Tribunal.
- (5) Where a vacancy exists in the membership of the Tribunal, the Governor in Cabinet shall, in accordance with this section, appoint a person to fill the vacancy.
- (6) The Governor in Cabinet shall by notice published in the Gazette give notice of the names of the members of the Tribunal as first constituted and thereafter of every change in the constitution of the Tribunal.
- (7) A person appointed as a member shall act in the public interest to carry out the purposes of this Law and not based on his personal or business interest.
- (8) For the purposes of subsection (4), a hearing or meeting of the Tribunal shall be properly constituted if there is a quorum of at least three members of the Tribunal are present and participating in the meeting or hearing.
26. The appointment of a member shall be for a period of not more than three years, subject to -
- (a) eligibility for reappointment for a further term;
  - (b) a maximum of two consecutive terms; and

Tenure of members

(c) staggering of appointments,

unless the member resigns under section 28 or the member's appointment is revoked under section 29.

Declaration of interest

27. (1) A member who is in any way, either directly or indirectly, interested in a matter before the Tribunal shall declare the nature of his interest to the Tribunal at the first instance where it is practicable to do so.

(2) Where a member declares an interest under subsection (1), the Tribunal shall determine whether or not the member's interest in the matter, is material and where the Tribunal determines the member's interest is material, the member shall not sit to hear that particular matter.

Resignation

28. (1) A member, other than the Chairperson, may resign his office at any time by giving thirty days' notice in writing addressed to the Governor in Cabinet through the Chairperson.

(2) The Chairperson may, at any time by giving thirty days' notice in writing addressed to the Governor in Cabinet, resign from his office.

Revocation

29. The Governor in Cabinet shall at any time, in writing, revoke the appointment of a member if, upon evidence, the Governor in Cabinet is satisfied that the member -

- (a) is disqualified from being a member under section 25(3);
- (b) is unable to perform the functions of his office;
- (c) is guilty of misconduct;
- (d) has been disqualified or suspended on grounds of misconduct, by a competent authority, from practising a profession; or
- (e) is disqualified on grounds of national security.

Vacancy

30. (1) The office of a member is vacated -

- (a) upon the death of the member;
- (b) if the member becomes disqualified under section 25(3);
- (c) if the member resigns under section 28;
- (d) if the Governor in Cabinet revokes the appointment of that member under section 29; or
- (e) if the member's appointment is not renewed by the Governor in Cabinet as of the date of expiry of the member's term of appointment.

(2) A decision of the Tribunal taken at a hearing is not invalidated merely because there is a vacancy in membership.

31. (1) A member shall be paid such remuneration and allowances as may be determined by the Governor in Cabinet. Remuneration and expenses

(2) The expenses of the Tribunal shall be paid out of the general revenue of the Islands.

32. (1) A person who has reasonable grounds for believing that another person is engaging or has engaged in discrimination contrary to this Law may, in the form approved by the Tribunal, file a complaint with the Tribunal. Complaint

(2) On receiving a complaint under subsection (1), the Tribunal shall -

- (a) record the complaint and furnish to the complainant and the person against whom the claim is made a copy of that record signed by the person receiving the complaint; and
- (b) furnish to the complainant and the person against whom the claim is made a prescribed statement setting out the procedures that will be followed respecting the complaint and the rights of the complainant.

(3) A complaint shall be made within six months from the date on which the alleged acts, the basis of the complaint, were done except that, where a complaint is made after that time, the Tribunal may if the reasons for the delay are reasonable, accept that complaint.

(4) The Tribunal may, adopt such procedures it considers appropriate in the circumstances to determine a particular complaint.

33. (1) Where a complaint is made by a person other than the individual who is alleged to be the victim of the discrimination on grounds specified in section 3(2) to which the complaint relates, the Tribunal shall refuse to deal with the complaint unless the alleged victim consents thereto. Hearing of complaint

(2) Where in accordance with subsection (1) the Tribunal decides not to hear and determine a complaint, the Tribunal shall give a written notice of its decision to the complainant setting out the reason for its decision.

(3) Where the Tribunal decides to hear and determine a complaint, the Tribunal shall give a written notice of the complaint and the date, time and place of the hearing to the parties to the complaint and section 34 shall apply.

(4) For the purpose of discharging the functions of the Tribunal under this Law, the Tribunal shall, as is reasonably required, have the power to -

- (a) compel the production of documents or any other matter or thing from any person the Tribunal has reasonable grounds to believe is committing discrimination on any ground specified in section 3(2) or is breaching any other provision of this Law;
- (b) issue summonses to compel the attendance of witnesses at the hearing; and
- (c) examine witnesses on oath, affirmation or otherwise at the hearing.

(5) A summons issued by the Tribunal under this section shall be under the hand of the Chairperson.

(6) A person who -

- (a) fails without reasonable excuse to comply with a requirement or a summons under subsection (4);
- (b) destroys or alters, or causes to be destroyed or altered, any document, or other matter or thing required to be produced under subsection (4); or
- (c) hinders, obstructs, prevents or interferes with the Tribunal in the exercise of a power under this section,

commits an offence and is liable on summary conviction to a fine of five thousand dollars.

(7) A party to a matter before the Tribunal under this section shall be entitled to appear at the hearing and may be represented by an attorney-at-law or any other person who in the opinion of the Tribunal is competent to assist the person in the presentation of the matter.

Findings of Tribunal

34. (1) Where after a hearing under section 33, the Tribunal finds that -

- (a) the complainant's allegations or its suspicions are substantiated, the Tribunal -
  - (i) shall notify the complainant and the person against whom the complaint was made in writing of its findings;
  - (ii) shall issue directions requiring the person against whom the complaint was made to stop the discrimination and take remedial action within a specific time period or requiring the person to pay compensation (which is limited to an amount not exceeding twenty thousand dollars) to any person aggrieved by the discrimination within a specific time period; and

- (iii) may make an award for costs;
- (b) the complaint is frivolous or vexatious or that its suspicions are incorrect, the Tribunal shall, in writing, notify the complainant and the person against whom the complaint was made and order the complainant to pay the cost incurred by the Tribunal and the person against whom the complaint was made.

(2) A direction under subsection (1) may include an order directing an employer to redress the contravention including an order, if the employer and aggrieved person agree, to reinstate such aggrieved person.

(3) A person who fails to comply with a direction of the Tribunal given pursuant to subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars.

35. Notwithstanding section 34, where, at any stage after the filing of a complaint and before the commencement of a hearing by the Tribunal, an agreement is made by the parties, the parties shall notify the Tribunal, in writing, of the terms of the agreement. Agreement

36. (1) Subject to subsection (4), a person who is, or has at any time been a member shall not, either directly or indirectly - Confidentiality Schedule

- (a) divulge or communicate to any person, any information relating to the affairs of another person acquired by the member because of his office for the purposes of this Law;
- (b) make use of any such information as is mentioned in paragraph (a); or
- (c) produce to any person a document relating to the affairs of another person given for the purposes of this Law.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars.

(3) A person who is, or has at any time been a member, shall not be required -

- (a) to divulge or communicate to a court any information relating to the affairs of another person acquired by the member because of his office for the purposes of this Law; or
- (b) to produce in a court a document relating to the affairs of another person of which the member has custody, or to which he has access, because of his office for the purposes of this Law,

except where it is necessary to do so for the purposes of this Law.

- (4) This section shall not prohibit a person from -
- (a) making a record of information for the purposes of exercising a function under this Law or any other law in force in the Islands; or
  - (b) divulging or communicating information, or producing a document that is required or permitted by a Law to be divulged, communicated or produced as the case may be, if the information is divulged or communicated, or the document is produced, for the purposes of or under that Law.

(5) A defendant bears an evidential burden in relation to a matter in subsection (4).

(6) Subsection (3) shall not prevent a person from being required, for the purposes of or under a Law, to divulge or communicate information, or to produce a document, that is required or permitted by that Law to be divulged, communicated or produced.

(7) In this section -

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions; and

“produce” includes permit access to.

Protection from liability

37. (1) A member shall not be liable in damages for anything done or omitted in the discharge or purported discharge of his functions, responsibilities, powers and duties under this Law unless it is shown that the act or omission was in bad faith.

(2) The Government shall indemnify a member against all claims, damages, costs charges or expenses incurred by that member in the discharge or purported discharge of his functions, responsibilities, powers and duties under this Law, except claims, damages, costs, charges or expenses caused by the bad faith of that member.

## **PART 6 - MISCELLANEOUS**

Proof of exceptions

38. Where by any provision of this Law, conduct is excepted from being conduct that is unlawful under this Law or that is a contravention of this Law, the onus of proving the exception lies upon the person claiming the exception.



39. A person aggrieved by the decision of the Tribunal may within twenty-eight days of the decision appeal to the Grand Court against that decision. Appeal

40. The Governor in Cabinet may make such Regulations as are required for the effective implementation of this Law and generally for carrying this Law into effect. Regulations

41. This Law binds the Crown. Law binding on Crown

Passed by the Legislative Assembly the                      day of                      , 2011.

Speaker.

Clerk of the Legislative Assembly.