

Equal Opportunities Bill

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BELIZE:

EQUAL OPPORTUNITIES BILL, 2022

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Equal Opportunities Bill

BELIZE:

BILL

for

AN ACT to promote equal opportunities between persons of different status; to prevent and prohibit certain kinds of discrimination; to establish an Equal Opportunities Commission and an Equal Opportunities Tribunal; and for related matters.

(Gazetted, 20.....)

BE IT ENACTED, by and with the advice and consent of the House of Representatives and the Senate of Belize and by the authority of the same, as follows:

PART I

Preliminary

Short title

1. This Act may be cited as the Equal Opportunities Act, 2022.

Interpretation

2.-(1) In this Act, unless the context requires otherwise—

“act” includes an omission;

“AIDS” means Acquired Immune Deficiency Syndrome;

“anonymous testing” means an HIV testing procedure whereby an individual’s identity is not revealed and an identifying number or symbol is used to substitute for the individual’s name and which allows the laboratory or centre conducting the test and the individual on whom the test is conducted to match the test results with the identifying number or symbol;

“associate” of a person means—

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- (a) any person with whom the person associates, whether socially or in business or commerce, or otherwise; or
- (b) any person who is wholly or mainly dependent on, or a member of the same household as, the person;

“Chairperson” means the person appointed as the Chairperson of the Commission under section 59(4);

“child” includes a natural child, adopted child, stepchild or foster child who is–

- (a) unmarried and is under the age of eighteen years; or
- (b) eighteen years of age or more and is wholly or substantially dependent on one or both of the child’s parents for care or support;

“Commission” means the Equal Opportunities Commission established under section 59(1);

“commissioner” means a person appointed as a commissioner under section 59(2);

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

“common law union” has the meaning assigned to that expression under the Senior Courts Act, 2022;

“contract worker” means a person who, pursuant to a contract between that person’s employer and another person, performs work for that other person;

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

“disability” has the meaning assigned to that expression under subsection (2);

“discriminate against” has the meaning assigned to that term in subsection (3) and “discrimination” shall be construed accordingly;

“domestic violence” includes the following–

- (a) physical violence;

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- (b) sexual assault and other sexually abusive behaviour;
- (c) economic abuse;
- (d) emotional or psychological abuse;
- (e) stalking;
- (f) kidnapping or deprivation of liberty; and
- (g) damage to property, irrespective of whether the victim owns the property, committed by a person against a spouse, child, dependent or parent of that person or a child, dependent or parent of that person's spouse or a person residing in the same residence as the person;

“educational authority” in relation to an educational institution, means the owner or other person responsible for managing or administering the educational institution;

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

“employee” includes a person who provides services under a contract of employment, a managerial employee, a dependent contractor and includes, where appropriate, a former employee;

“employees’ organisation” means a trade union or any other organisation in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers on behalf of employees over conditions of work;

“employer”–

- (a) means any person, undertaking, public authority, service commission or body of persons who or which employs any person under a contract of employment or uses the services of a dependent contractor and includes the heirs, successors and assigns of an employer; and
- (b) where appropriate includes a prospective employer being a person or body of persons that proposes to carry out any of these functions;

“employers’ organisation” means any organisation in which employers participate, and which exists for the purpose, in whole or in part, of dealing with trade unions on behalf of employers over conditions of work;

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“employment” includes–

- (a) part time employment and temporary employment;
- (b) employment under a contract of service;
- (c) employment under a contract for services;
- (d) an apprenticeship; and
- (e) work or services performed as an independent contractor;

“employment agency” means a person who, for profit or not, provides services for the purpose of finding work or employment for others or for supplying employers with workers or employees;

“family responsibility”, in relation to a person, includes responsibilities of the person to care for or support–

- (a) a dependent child of the person; and
- (b) any other family member who is in need of care and support;

“gender” means the socially constructed cultural, economic and social characteristics, roles and opportunities considered appropriate for men and women;

“gender identity” includes the gender-related identity, appearance or mannerisms and other gender-related characteristics of a person with or without regard to the person's designated sex at birth;

“harassment” shall be construed in accordance with section 46;

“healthcare facility” means a facility in which health care services are provided to the public;

“healthcare provider” means any individual whose vocation or profession is directly or indirectly related to of maintenance of health of another individual and includes any physician, nurse, paramedic, psychologist, counsellor or other individual providing medical, nursing, psychological and other health care services including HIV prevention and treatment services;

“High Court” means the High Court of Justice established under the Constitution;

“HIV” means Human Immunodeficiency Virus;

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“HIV positive” means the presence of HIV or HIV antibodies in the body of a person upon HIV testing and HIV positive status shall be construed accordingly;

“HIV status” means the status of being HIV positive or HIV negative;

“HIV testing” means the application of professional techniques or laboratory procedures done on an individual to determine the HIV status of the individual and “HIV test” shall be construed accordingly;

“HIV testing centre” means any place so designated by the Director of Health Services under section 52;

“industrial activity” means—

- (a) being or not being a member of, or proposing or refusing to join, an industrial organisation; or
- (b) participating in, not participating in, or proposing or refusing to participate in, a lawful activity organised or promoted by an industrial organisation;

“industrial organisation” means an employees’ organisation or an employers’ organisation;

“irrelevant criminal record” means—

- (a) further action was not taken in relation to the arrest, interrogation or charge of the person;
- (b) a charge has not been laid;
- (c) the charge was dismissed;
- (d) the prosecution was withdrawn;
- (e) he person was discharged, whether or not on conviction;
- (f) the person was found not guilty
- (g) the person’s conviction was quashed or set aside;
- (h) the person was granted a pardon; or
- (i) the circumstances relating to the offence for which the person was convicted are not directly relevant to the situation in which the discrimination arises;

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“judge” includes a judge of the High Court;

“marital status” means a person's status of being—

- (a) single;
- (b) married;
- (c) in a common law union;
- (d) married but living separately and apart from the person’s spouse;
- (e) divorced; or
- (f) widowed;

“Minister” means the Minister responsible for equal opportunities and “Ministry” shall be construed accordingly;

“parent” includes a biological parent, step-parent, adoptive parent and foster parent;

“post-test counselling” means the process of providing, at the time that the result of an HIV test is released, risk-reduction information and emotional support to a person who has submitted to such HIV testing;

“premises” includes residential and business premises;

“pre-test counselling” means the process of providing a person, before the person undergoes HIV testing, with—

- (a) information on the biomedical aspects of HIV and AIDS; or
- (b) emotional support in relation to any psychological implications of undergoing HIV testing and receiving the result of an HIV test;

“professional organisation” means an organisation of and for professional people and includes a non-profit organisation which seeks to further a particular profession, the interests of individuals engaged in that profession and the public interest;

“protected characteristic” means a characteristic referred to in subsection (3) but does not include any act prohibited by the law in force in Belize;

“principal” means—

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- (a) in relation to a commission agent, a person for whom work is done by that commission agent; or
- (b) in relation to a contract worker, a person for whom a contract worker performs work otherwise than under a contract of employment;

“race” includes colour, descent, ancestry, national origin, ethnic origin and status as a member of an indigenous community;

“reasonable accommodation” means necessary and appropriate modification and adjustment not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities are given equal opportunities with other persons;

“services” includes—

- (a) services relating to banking, insurance and the provision of grants, loans, credit or finance;
- (b) services relating to entertainment, recreation or refreshment;
- (c) services relating to transport or travel;
- (d) services of any profession or trade;
- (e) services provided by the Crown or a public authority except where the service is an administrative function under the Marriage Act, Cap. 297;
- (f) services relating to health; and
- (g) services consisting of access to, and the use of any facilities in, any place or vehicle that the public or a section of the public is entitled or allowed to enter or use, for payment or not;

“sex” includes the state of being male or female and intersex;

“sexual orientation” includes heterosexuality, homosexuality and bisexuality;

“small premises” means—

- (a) in the case of premises comprising residential accommodation for more than one household, there is not normally accommodation in the premises for more than three households; or

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- (b) in any other case, there is not normally residential accommodation in the premises for more than six persons in addition to a person mentioned in sections 19(4)(b) or 22(2)(b) and any person residing with that person;

“trade union” has the meaning assigned to that expression under the Trade Union Act, Cap. 300;

“Tribunal” means the Equal Opportunities Tribunal established under section 97;

“victimisation” shall be construed in accordance with section 47;

“voluntary HIV testing” means HIV testing done on an individual who after having undergone pre-test counselling, gives voluntary informed consent to such testing;

“voluntary informed consent” means in relation to an HIV test, consent specifically related to the performance of an HIV test, freely given without threat, coercion, duress, fraudulent means or undue influence, after the provision of pre-test counselling and with reasonable expectation of post-test support;

(2) For the purposes of this Act, a person has a disability, if that person has—

- (a) total or partial loss of their bodily or mental functions;
- (b) total or partial loss of a part of their body;
- (c) the presence in their body of organisms causing or likely to cause disease or illness;
- (d) the malfunction, malformation or disfigurement of a part of the person’s body;
- (e) an impairment, neurodiverse condition or a malfunction that results in that person learning differently from a person without the impairment, neurodiverse condition or malfunction;
- (f) an impairment, , an illness or a disease that affects a person’s thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour; or
- (g) behaviour that is a symptom or manifestation of a disability.

(3) For the purposes of this Act, the term “discriminate against” means to make a distinction, create an exclusion, or show a difference in treatment in relation to a person,

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by reason of that person falling within a particular description by virtue of that person having any of the following characteristics—

- (a) age;
- (b) breastfeeding;
- (c) disability;
- (d) family responsibilities;
- (e) gender;
- (f) gender identity;
- (g) HIV positive status;
- (h) industrial activity;
- (i) intersex status;
- (j) irrelevant criminal record;
- (k) lawful sexual activity;
- (l) marital status;
- (m) maternity;
- (n) political opinion;
- (o) pregnancy;
- (p) race;
- (q) religious belief or activity;
- (r) sex;
- (s) sexual orientation;
- (t) status as a person who is experiencing or has experienced domestic violence;
- (u) status as an orphan;

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- (v) any other status where discrimination based on such status—
 - (i) causes or perpetuates a systemic disadvantage;
 - (ii) undermines human dignity; or
 - (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on based on a characteristic specified in paragraphs (a) to (u);

and which has the effect of subjecting that person to disadvantages, restrictions or detriment to which another person of another description is not subjected; or

- (w) any combination of characteristics specified in paragraphs (a) to (v) which for the avoidance of doubt, includes intersectional discrimination.

(4) For the purposes of this Act, discrimination includes direct discrimination and indirect discrimination, or both.

(5) For the purposes of this Act—

- (a) direct discrimination occurs when, for a reason related to any protected characteristic, a person or group of persons is—
 - (i) treated less favourably than another person or another group of persons is, has been or would be treated in a comparable situation; or
 - (ii) subjected to a detriment;
- (b) indirect discrimination occurs when a provision, criterion or practice would put a person having any protected characteristic at a particular disadvantage compared to other persons unless the provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are proportionate and necessary.

(6) In order for discrimination to take place, it is not necessary—

- (a) that the protected characteristic be the sole or dominant ground for the discrimination;
- (b) that the person who discriminates regards the treatment as discriminatory; or

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(c) that the person who discriminates has any particular motive in discriminating.

(7) In determining whether a person indirectly discriminates it is irrelevant whether or not that person is aware of the discrimination.

(8) For the purposes of this Act, a reference to a person's religious belief includes a reference to that person not holding a lawful religious belief or view or refusing to engage in a lawful religious activity.

(9) For the purposes of this Act, discrimination on the basis of a protected characteristic includes discrimination on the basis—

- (a) that a person has that protected characteristic or had it at any time, whether or not the person had it at the time of the discrimination;
- (b) of an attribute that a person with that protected characteristic generally has;
- (c) of an attribute that is generally imputed to a person with that protected characteristic;
- (d) that a person is presumed to have that protected characteristic or to have had it at any time; or
- (e) of personal association with a person with a protected characteristic.

(10) For the purposes of subsection (9), if a person with a disability is accompanied by or possesses an assistance aid, being accompanied by or the possession of that assistance aid is taken to be a characteristic that a person with the disability generally has.

Objects

3. The objects of this Act are as follows—

- (a) to eliminate discrimination, harassment and victimisation, to the greatest possible extent;
- (b) to further promote and protect the right to equal protection of the law and non-discrimination contained in the Constitution;
- (c) to encourage the identification and elimination of systemic causes of discrimination, and victimisation;

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- (d) to promote and facilitate the realisation of substantive equality by recognising that—
 - (i) discrimination can cause social and economic disadvantage and that access to opportunities is not equitably distributed throughout society;
 - (ii) equal application of a rule to different groups can have unequal results or outcomes;
 - (iii) the achievement of substantive equal opportunities may require the making of reasonable accommodation and taking of special measures;
- (e) to address HIV prevention and care, and as far as possible, eliminate practices which hamper an effective HIV response, recognizing the vulnerability of key populations at risk;
- (f) to guarantee access to justice to all persons in relevant judicial and other dispute resolution forums;
- (g) to provide for the establishment and functioning of the Equal Opportunities Commission and Equal Opportunities Tribunal; and
- (h) to facilitate further compliance with the international law obligations of Belize including treaty obligations in terms of, and among others, the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of all forms of Racial Discrimination, Convention on the Elimination of all Forms of Discrimination against Women, Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities and other relevant International Labour Conventions.

Act to bind Crown

4. This Act binds the Crown.

Application of Act

5. (1) This Act shall not apply to any act that occurred prior to the commencement of this Act.

(2) Nothing in this Act affects the operation of-

- (a) the Marriage Act, Cap.174;
- (b) any rule of law in force Belize relating to marriages; or

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- (c) the Senior Courts Act, 2022 in relation to marriages or common law unions.

Unenforceable term

6. A term of a contract is unenforceable against a person in so far as it constitutes, promotes or provides for treatment of that or another person that is of a description prohibited by this Act.

PART II

Prevention of Discrimination

Discrimination in employment

7.-(1) An employer shall not discriminate against a person—

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

(2) An employer shall not discriminate against an employee—

- (a) in the terms or conditions of employment that the employer affords the employee;
- (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;
- (c) by dismissing the employee; or
- (d) by subjecting the employee to any other detriment.

(3) Subsections (1) and (2) shall not apply where an employer discriminates against a person in relation to a position as an employee if the duties of the position involve—

- (a) the carrying out of domestic duties in the premises where the employer lives; or

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- (b) the care, instruction or supervision of a child on the premises where the child, employer or person lives.

Discrimination against commission agent

8.—(1) A principal shall not discriminate against a person—

- (a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent;
- (b) in determining who should be engaged as a commission agent; or
- (c) in the terms or conditions on which the principal engages the person as a commission agent.

(2) A principal shall not discriminate against a commission agent—

- (a) in the terms or conditions on which the principal engages the commission agent;
- (b) by denying the commission agent access, or limiting the commission agent's access, to opportunities for promotion, transfer or training, or to any other benefits associated with the position as a commission agent;
- (c) by terminating the engagement of the commission agent; or
- (d) by subjecting the commission agent to any other detriment.

Discrimination against contract workers

9.—(1) A principal shall not discriminate against a contract worker—

- (a) in the terms or conditions on which the principal allows the contract worker to work;
- (b) by not allowing the contract worker to work or continue to work;
- (c) by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the work in respect of the contract between the principal and the employer of the contract worker; or
- (d) by subjecting the contract worker to any other detriment.

(2) Subsection (1) shall not apply where a person discriminates against another person in relation to a position as a contract worker if the duties of the position involve-

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- (a) the carrying out of domestic duties in the premises where the first-mentioned person lives; or
- (b) the care, instruction or supervision of a child on the premises where the child, first-mentioned person or other person lives.

Partnerships

10.—(1) A partner in a partnership shall not discriminate against another person—

- (a) in determining who should be invited to become a partner in the partnership; or
- (b) in the terms or conditions on which the other person is invited to become a partner in the partnership.

(2) A partner in a partnership shall not discriminate against another partner in the partnership—

- (a) by denying the other partner access, or limiting the other partner's access, to any benefit arising from being a partner in the partnership;
- (b) by expelling the other partner from the partnership; or
- (c) by subjecting the partner to any other detriment.

Qualifying bodies

11.—(1) A person that 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 engaging of an occupation shall not discriminate against another person—

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

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(2) In this section “authorisation or qualification” includes recognition, registration, enrolment, approval and certification.

Professional or industrial organisations

12.—(1) A professional organisation or industrial organisation, the management committee of a professional organisation or industrial organisation or a member of the management committee of a professional organisation or industrial organisation, shall not discriminate against another person—

- (a) by refusing or failing to accept the person’s application for membership; or
- (b) in the terms or conditions on which the professional organisation or industrial organisation is prepared to admit the person to membership.

(2) A professional organisation or industrial organisation, the management committee of a professional organisation or industrial organisation, or a member of the management committee of a professional organisation or industrial organisation, shall not discriminate against a person who is a member of the professional organisation or industrial organisation—

- (a) by denying the member access or limiting the member’s access, to any benefit provided by the professional organisation or industrial organisation;
- (b) by depriving the member of membership or varying the terms of membership; or
- (c) by subjecting the member to any other detriment.

Employment agencies

13.—(1) An employment agency shall not discriminate against a person—

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

(2) This section does not require an employment agency to ensure that an employer complies with this Act.

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Reasonable accommodation by employer, etc. for person with disability

14.—(1) If a person with a disability requires reasonable accommodation in order to perform the genuine and reasonable requirements of—

- (a) an employment;
- (b) being a commission agent;
- (c) a partnership;
- (d) being a contract worker;
- (e) a profession;
- (f) a professional organisation;
- (g) an industrial organisation; or
- (h) an employment agency,

the employer, commission agent, partnership, principal or qualifying body, professional organisation, industrial organisation or employment agency shall make reasonable accommodation unless the person with the disability is incapable of adequately performing the genuine and reasonable requirements of the employment, commission agent, partnership, contract work, profession, professional organisation, industrial organisation or employment agency even after the reasonable accommodation is made.

(2) In determining whether reasonable accommodation is made under subsection (1) is reasonable, all relevant facts and circumstances shall be considered, including—

- (a) the circumstances of the person with the disability including the nature of the person's disability;
- (b) the nature of the role;
- (c) the nature of the modification or adjustment required to accommodate the disability of the person;
- (d) the financial circumstances of the employer, commission agent, partnership, principal, qualifying or professional body, professional organisation, industrial organisation or employment agency;
- (e) the size and nature of the employer, commission agent, partnership, principal, qualifying or professional body, professional organisation, industrial organisation or employment agency;

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- (f) the effect on the employer, commission agent, partnership, principal, qualifying or professional body, professional organisation, industrial organisation or employment agency of making the modification or adjustment including—
 - (i) the financial impact of the modification or adjustment;
 - (ii) the number of persons who would benefit from or be disadvantaged by the modification or adjustment; and
 - (iii) the impact on efficiency and productivity and, if applicable, on customer service of the modification or adjustment;
- (g) the consequences for the employer of making the modification or adjustment; and
- (h) the consequences for the person or employee of not making the modification or adjustment.

(3) For the purposes of subsection (1), in determining whether a person with a disability could or can adequately perform the genuine and reasonable requirements of the employment, all the relevant facts and circumstances shall be considered, including—

- (a) the person’s training, qualifications and experience; and
- (b) the person’s current performance, if applicable.

Prohibition on unequal remuneration

15.-(1) Notwithstanding the provisions of the Equal Pay Act, Cap. 302:01, a person who is under a duty pursuant to section 7, 8, 9, 10, 11, 12, 13 or 14 shall not pay unequal remuneration to a person on the basis of a protected characteristic, where the person performs work of equal value.

(2) The burden of proof to establish that equal remuneration has been paid rests on the person who is under the duty pursuant to section 7, 8, 9, 10, 11, 12, 13 or 14.

(3) For the purposes of this section, a person pays “unequal remuneration” if the rate or scale of remuneration for the performance of work is a rate or scale in which there is an element of differentiation among employees based on a protected characteristic.

Education

16.-(1) Subject to section 36, an educational authority shall not discriminate against a person—

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- (a) by refusing or failing to accept the person's application for admission as a student of an educational institution administered by the educational authority; or
 - (b) in the terms or conditions on which it is prepared to admit the person as a student of such an educational institution.
- (2) An educational authority shall not discriminate against a student—
- (a) by denying the student access, or limiting the student's access, to any benefit, facilities or services provided by the educational authority;
 - (b) by expelling the student from an educational institution administered by the educational authority; or
 - (c) by subjecting the student to any other detriment.
- (3) An educational authority shall not discriminate against a person with a disability by developing or accrediting curricula or training courses that, based on the content of the curricular or training course, will either exclude the person from participation or subject the person to any other detriment unless objectively justified by the nature of the particular curricular or training course.
- (4) This section shall not apply in respect of admission to an educational institution established wholly or primarily for students who have a disability or are of a particular sex where the person does not have that disability or is not of that particular sex.
- (5) Nothing in this Act renders unlawful the requirement by an education authority for reasonable standards of dress or appearance of students in respect of the educational institution administered by the education authority.
- (6) Without limiting the generality of what constitutes a reasonable standard of dress or appearance for the purposes of subsection (5), a standard may be taken to be reasonable if, in setting the standard, the educational authority has taken into consideration guidelines issued by the Commission under this Act and the views of the school community.
- (7) In subsection (6), "school community" means the student body, teachers, parents and the Ministry responsible for education.

Reasonable accommodation by education authority for person with disability

17. (1) If a person with a disability requires reasonable accommodation in order to participate in or continue to participate in or derive or continue to derive any substantial benefit from an educational programme of an educational authority, the educational authority shall make reasonable accommodation unless the person could not participate in

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or continue to participate in or derive or continue to derive any substantial benefit from the educational programme even after the adjustments are made.

(2) In determining whether a reasonable accommodation is made, all relevant facts and circumstances shall be considered, including—

- (a) the person's circumstances, including the nature of the person's disability; and
- (b) the nature of the modification or adjustment required to accommodate the person's disability; and
- (c) the effect on the person of making the modification or adjustment, including the effect on the person's ability to—
 - (i) achieve learning outcomes;
 - (ii) participate in courses or programmes; or
 - (iii) work independently;
- (d) the effect on the educational authority, staff, other students or any other person of making the modification or adjustment, including—
 - (i) the financial impact of making the modification or adjustment; and
 - (ii) the number of people who would benefit from or be disadvantaged by making the modification or adjustment;
- (e) the consequences for the educational authority of making the modification or adjustment; and
- (f) the consequences for the person of not making the modification or adjustment.

Access to premises

18. A person shall not discriminate against another person, in relation to any premises that the public or a section of the public is entitled or allowed to enter or use, as the case may be, whether for payment or not—

- (a) by refusing to allow the other person access to, or the use of the premises;
- (b) in the terms or conditions on which the first-mentioned person is prepared to allow the other person access to, or the use of, the premises;

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- (c) in relation to the provision of means of access to the premises;
- (d) by refusing to allow the other person to use the facilities in the premises;
- (e) in the terms or conditions on which the first-mentioned person is prepared to allow the other person the use of the facilities in the premises;
- (f) by requiring the other person to leave the premises or cease to use the premises; or
- (g) by subjecting the other person to any other detriment.

Transactions relating to premises

19.-(1) A person shall not, in transactions relating to premises discriminate against another person—

- (a) by refusing the other person's application for the premises;
- (b) in the terms or conditions on which the premises is offered to the other person; or
- (c) by deferring the other person's application for the premises or according to the other person a lower order of precedence in any list of applicants for that premises.

(2) A person shall not discriminate against another person—

- (a) by denying the other person access, or limiting the other person's access, to any benefit connected with premises occupied by the other person;
- (b) by evicting the other person from premises occupied by the other person; or
- (c) by subjecting the other person to any other detriment in relation to premises occupied by the other person.

(3) Notwithstanding the provisions of any other law in force in Belize, a person shall not discriminate against another person, by refusing to permit the other person to make reasonable alterations to premises occupied by that person, if—

- (a) that person has undertaken to restore the premises to its condition before alteration on leaving the premises;

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- (b) in all the circumstances it is likely that the person will perform the undertaking;
 - (c) in all the circumstances, the action required to restore the premises to its condition before alteration is reasonably practicable;
 - (d) the alteration does not involve alteration of the premises of any other occupier; and
 - (e) the alteration is at that other person's expense.
- (4) This section shall not apply to or in respect of the provision of premises—
- (a) if the premises are provided by a charitable or other voluntary body solely for the welfare of persons of a particular status or with a particular protected characteristic and the person discriminated against does not have the particular status or protected characteristic;
 - (b) if the person providing the premises, or a person who is a near relative of that person, intends to continue to reside, or in the immediate future to take up residence, in the premises or a part of the premises and the premises are small premises;
 - (c) if embarrassment or infringement of privacy can reasonably be expected to result from the presence of a person of another sex on the premises; or
 - (d) in shared premises, which for reasons of privacy or decency or because of the nature of the sanitary facilities should be used by one sex only.
- (5) This section shall not apply in relation to premises covered by any special agreement between the Government of Belize and any group of persons which governs the ownership or disposition of land.
- (6) For the purposes of this section “transactions relating to premises” includes buying, selling, renting, leasing, letting, negotiating, listing, advertising, inspecting, or financing and the terms, conditions, privileges, services or facilities connected to the premises.

Goods and, services

20.—(1) A person who, whether for payment or not, provides goods or services shall not discriminate against another person who seeks to obtain those goods or services—

- (a) by refusing to provide the other person with those goods or services;

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- (b) in the terms or conditions on which the first-mentioned person provides the other person with those goods or services; or
- (c) in the manner in which the first-mentioned person provides the other person with those goods or services.

(2) Nothing in this Act prohibits the treatment of a person in relation to an annuity, life insurance policy, accident insurance policy, or similar services or matters involving the assessment of risk, where the treatment—

- (a) was affected by reference to actuarial or other data from a source on which it was reasonable to rely; and
- (b) was reasonable having regard to the data and any other relevant factors.

(3) Where a skill exercised in providing a service is commonly exercised in a different way in relation to the sex of a person, a person does not contravene subsection (1) by exercising that skill in providing the service in relation to a particular sex, in accordance with the person's normal practice.

(4) Nothing in this this Act renders unlawful the difference in treatment of a person on the grounds of sex—

- (a) in relation to services of an aesthetic cosmetic or similar nature, where the services require contact between the person providing the service and the person receiving the service; or
- (b) in relation to the provision of services the nature of which is such that the services can only be provided to members of a particular sex.

(5) A person does not contravene subsection (1) by providing preferential rates for accessing recreational services, including events, on the grounds of age, sex, disability, marital status or family responsibility.

(6) In determining an alleged contravention of this section, the Commission shall have regard to—

- (a) practical and business considerations;
- (b) whether less discriminatory options were available;
- (c) the particular circumstances of the person alleging the contravention;

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- (d) the objects of the Commission, in particular, eliminating certain forms of discrimination as far as possible; and
- (e) all other relevant factors of a particular case, including medical opinions, opinions from other professional groups, the practice of others in the insurance industry and commercial judgment.

(7) The Commission, in consultation with the insurance industry and the Supervisor of Insurance, shall make rules for the development of binding standards for the purposes of this section.

(8) A person who is aggrieved by a determination as to what is reasonable for the purposes of subsection (2) may make a complaint to the Commission, and the Commission may, in the process of investigating the complaint-

- (a) require justification to be provided for-
 - (i) reliance on the data or advice or opinion; and
 - (ii) the different treatment; and
- (b) request the views of an actuary on the justification for the reliance on the data or advice or opinion and the different treatment.

Reasonable accommodation with regard to provision of goods and services for person with disability

21.-(1) If a person with a disability requires reasonable accommodation to be made to the provision of goods or services in order to participate in or access the goods or services or derive any substantial benefit from the goods or services, whether or not the goods or services are provided for payment, the person providing the goods or services shall make reasonable accommodation unless the person could not participate in or access the goods or services or derive any substantial benefit from the goods or services even after the reasonable accommodation is made.

(2) A person providing goods or services may make reasonable accommodation for a person with a disability, including by-

- (a) using subtitles in recorded audio-visual presentations; and
- (b) providing home delivery or making home visits.

(3) In determining whether reasonable accommodation is made, all relevant facts and circumstances shall be considered, including-

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- (a) the person's circumstances, including the nature of the person's disability;
- (b) the nature of the modification or adjustment required to accommodate the person's disability;
- (c) the financial circumstances of the person providing the goods or services;
- (d) the effect on the person providing the goods or services of making the modification or adjustment, including—
 - (i) the financial impact of making the modification or adjustment; and
 - (ii) the number of persons who would benefit from or be disadvantaged by making the modification or adjustment; and
- (e) the consequences for the person providing the goods or services of making the modification or adjustment.

Land

22.—(1) A person shall not discriminate against another person—

- (a) by refusing or failing to dispose of an estate or interest in land to the other person; or
- (b) in the terms or conditions on which an estate or interest in land is offered to the other person.

(2) This section shall not apply in relation to—

- (a) a disposal of an estate or interest in land by will or gift;
- (b) a disposal of an estate or interest in land where—
 - (i) the person making the disposal or any other person who has an estate or interest in the land or a person who is a near relative of either of them, intends to continue to reside, or in the immediate future, to take up residence in any premises or part of any premises that is fixed to the land; and
 - (ii) the premises are small premises;
- (c) a disposal of an estate or interest in land which is not available to the public generally;

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- (d) the disposition of communal land; or
- (e) land covered by any special agreement between the Government of Belize and any group of persons which governs the ownership or disposition of land.

(3) For the purposes of subsection (2), a reference to the disposal of an estate or interest in land includes a reference to the termination of any tenancy or other interest in that land.

Association

23.—(1) An association, the management committee of an association, or a member of the management committee of an association shall not discriminate against a person who is not a member of the association—

- (a) by refusing or failing to accept the person's application for membership; or
- (b) in the terms or conditions on which the association is prepared to admit the person to membership.

(2) An association, the management committee of an association or a member of the management committee of an association shall not discriminate against a person who is a member of the association—

- (a) in the terms or conditions of membership that are afforded to the member;
- (b) by refusing or failing to accept the member's application for a particular class or type of membership;
- (c) by denying the member access, or limiting the member's access to any benefit provided by the association;
- (d) by depriving the member of membership or varying the terms of membership; or
- (e) by subjecting the member to any other detriment.

(3) Subsection (1) or (2) shall not apply if membership of the association are restricted only to persons who have a particular characteristic which is a protected characteristic and the first-mentioned person does not have that characteristic, provided that the purposes of the association are consistent with the objects of this Act.

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(4) In this section “association” means an incorporated or unincorporated body of persons associated together for a lawful purpose.

Sport

24.—(1) A person shall not discriminate against another person—

- (a) by excluding that other person from a sporting activity; or
- (b) by subjecting that other person to any other detriment.

(2) In subsection (1)(a), a reference to a sporting activity includes a reference to an administrative or coaching activity in relation to any sport.

(3) Subsection (1) shall not apply—

- (a) if the person excluded is not reasonably capable of performing the actions reasonably required in relation to the sporting activity;
- (b) if the persons who participate or are to participate in the sporting activities are selected by a method which is reasonable on the basis of their sex, skills and abilities relevant to the sporting activity and relative to each other; or
- (c) if a sporting activity is conducted only for persons who have a particular disability or are of a particular sex and the first-mentioned person does not have that disability or is not of that particular sex.

Travel, etc.

25. Except where discrimination is reasonably justifiable in the interests of national security, public health or public safety, a person shall not discriminate against another person by—

- (a) denying or restricting the other person’s travel within, entry into or exit from Belize or a place in Belize;
- (b) placing the other person in quarantine or isolation; or
- (c) deporting the other person from Belize.

Administration of laws and programmes

26.—A person who—

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- (a) performs any function or exercises any power under a written law or for the purposes of a programme; or
- (b) has any other responsibility for the administration of a written law or the conduct of a programme,

shall not discriminate against another person in the performance of that function, the exercise of that power or the fulfilment of that responsibility.

Requests for information

27.—(1) A person who is under a duty pursuant to section 7, 8, 9, 10, 11, 12, 13 or 14 shall not request or require another person, orally or in writing to provide information on which discrimination might be based.

(2) It is a defence to a proceeding for contravention of subsection (1) if the respondent proves on a balance of probabilities that the information was reasonably required for a purpose that did not involve discrimination.

PART III

Equal Opportunities Obligations

Special measures

28.—(1) A person may institute a special measure for the purpose of promoting or realising a substantive equal opportunity for a member of a group with a protected characteristic.

(2) A person does not discriminate against another person by taking a special measure.

(3) A special measure shall be—

- (a) undertaken in good faith for achieving the purpose set out in subsection (1);
- (b) reasonably likely to achieve the purpose set out in subsection (1);
- (c) a proportionate means of achieving the purpose set out in subsection (1);
- (d) legitimate; and
- (e) justified because the members of the group have a particular need for advancement or assistance.

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(4) A special measure is taken for the purpose set out in subsection (1) if it is taken—

(a) solely for that purpose; or

(b) for that purpose as well as other purposes.

(5) A person who undertakes a special measure may impose reasonable restrictions on eligibility for the measure.

(6) A person who undertakes a special measure has the burden of proving that the measure is a special measure.

(7) On achieving the purpose set out in subsection (1), the measure ceases to be a special measure.

(8) A person desirous of instituting special measures may apply to the Commission for certification of a measure as a special measure.

(9) The Commission may issue and publish guidelines on the certification of special measures under this Act.

Requirement for equal opportunities policy

29.—(1) An employer shall, in compliance with guidelines issued by the Commission under section 72, prepare and apply within such time as is specified by the Commission, an equal opportunities policy to minimise the risk of an employee being discriminated against and to promote recruitment training, selection and employment on the basis of merit.

(2) An employer shall with a view to promoting equal opportunities, and taking into consideration the employers' resources and circumstances in general, take such measures as are reasonable and proportionate to eliminate discrimination, and to promote equal opportunities.

(3) A person other than the Commission shall not bring an action against an employer for breach of subsection (1) or (2).

(4) The Commission may make a complaint to the Tribunal, or in the case of an employer who is a public authority, issue a compliance notice under section 96, against an employer for an alleged breach of subsection (1) or (2).

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Reasonable request for accommodation

30.—(1) An employer shall not, in relation to the work arrangements of an employee or a person offered employment, unreasonably refuse a reasonable request for accommodation that arises from a protected characteristic.

(2) In determining whether an employer unreasonably refuses to accommodate the request under subsection (1), all relevant facts and circumstances shall be considered, including—

- (a) the person's circumstances;
- (b) the nature of the role;
- (c) the nature of the arrangements required to accommodate the accommodation;
- (d) the financial circumstances of the employer;
- (e) the size and nature of the workplace and the employer's business;
- (f) the effect on the workplace and the employer's business of making the accommodation, including—
 - (i) the financial impact of making such accommodation;
 - (ii) the number of persons who would benefit from or be disadvantaged by making such accommodation;
 - (iii) the impact on efficiency and productivity and, if applicable, on customer service of making such accommodation;
- (g) the consequences for the employer of making such accommodation; and
- (h) the consequences for the person of not making such accommodation.

Variation of working arrangements for employee affected by domestic violence

31.—(1) An employee who is affected by domestic violence may make a request for variation of the employee's working arrangements, for the purpose of assisting the employee to deal with the effects on the employee of being affected by domestic violence.

(2) An employer shall deal with a request made under subsection (1) as soon as possible but not later than ten working days after receiving the request.

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(3) An employer may refuse a request made under subsection (1) only if evidence of domestic violence is required and not produced, or the request cannot reasonably be accommodated.

(4) If an employer does not deal with a request made under subsection (1) in accordance with subsection (3), the employee or employer may refer the matter to the Commission.

(5) If a request is made under subsection (1), the employer is under a duty of confidentiality.

Responsibility of persons contracting with the Government

32.—(1) A person who directly or indirectly contracts with the Government or other person exercising a public function shall promote equal opportunities by—

- (a) adopting appropriate equal opportunities plans, codes and other appropriate measures for the effective promotion of equal opportunities in the spheres of their operation;
- (b) enforcing and monitoring the enforcement of the equal opportunities plans, codes and other appropriate measures developed by the person; and
- (c) making regular reports to the Commission or any other appropriate authority as may be prescribed.

(2) The Minister may make Regulations prescribing codes of practice relating to the promotion of equal opportunities under this section.

Public administration and equal opportunities duty.

33.—(1) A public authority shall, in the exercise of its functions, have due regard to the need to—

- (a) eliminate discrimination and any other conduct that is prohibited by or under this Act;
- (b) advance equal opportunities between persons who share a relevant protected characteristic and persons who do not share it;
- (c) promote equal opportunities and gender mainstreaming when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas of employment, including

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promotion and vocational training and as regards working conditions and, on the conditions relating to social security; and

(d) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises a public function shall, in the exercise of the function, have due regard to the matters mentioned in subsection (1).

(3) A public authority shall have due regard to the need to advance equal opportunities between persons who share a protected characteristic and persons who do not share the protected characteristic and, in particular, the public authority shall have regard to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; or

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) For the purposes of this section, the steps involved in meeting the needs of persons with a disability that are different from the needs of persons who do not have a disability include, reasonable accommodation to take account of the disabilities.

(5) For the purposes of this section, having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) deal with prejudice; and

(b) promote understanding.

(6) The Commission may require a public authority to publish equal opportunities schemes that set out the manner in which the public authority will carry out its duties under this section including—

(a) a statement that the public authority involves relevant persons with protected characteristics in developing its schemes;

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- (b) an action plan setting out the steps the public authority intends to take promote equal opportunities and meet the general duty;
- (c) arrangements for gathering information about the public authority's performance regarding equal opportunities;
- (d) arrangements for assessing the impact of their policies on equal opportunities and ways to improve these when necessary; and
- (e) details of how the public authority is using the information gathered, in particular, in reviewing the effectiveness of their action plan and preparing subsequent schemes.

(7) A person other than the Commission shall not bring an action against a public authority for breach of this section.

(8) The Commission may make a complaint to the Tribunal, or issue a compliance notice under section 96, against a public authority for an alleged breach of this section.

Part IV

Exceptions

General exceptions

34. (1) Notwithstanding any provision to the contrary in this Act, discrimination is not unlawful if the conduct constituting the discrimination is justifiable.

(2) Conduct shall be justifiable if—

- (a) the first person engaged in the conduct, in good faith, for the purpose of achieving a particular aim;
- (b) the aim referred to in paragraph (a) is a legitimate aim;
- (c) the person considered, and a reasonable person in the circumstances of the person would have considered, that engaging in the conduct would achieve that aim; and
- (d) the conduct is a proportionate means of achieving that aim.

(3) The factors to be considered in determining whether conduct is justifiable under this section are—

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- (a) the objects of this Act;
- (b) whether it results in unjustifiable hardship in accordance with section 35;
- (c) in employment, whether a requirement is a genuine occupational requirement or occupational qualification;
- (d) whether the discrimination reasonably and justifiably differentiates between persons according to objectively determinable criteria, intrinsic to the activity concerned;
- (e) whether the discrimination is systemic in nature;
- (f) the position of the complainant in society and whether complainant suffers from patterns of disadvantage or belongs to a group that suffers from such patterns of disadvantage;
- (g) whether and to what extent the respondent has taken such steps as being reasonable in the circumstances to—
 - (i) address the disadvantage which arises from or is related to one or more of the protected characteristics; or
 - (ii) accommodate diversity; and
- (h) the protection, advancement or exercise of another human right protected by the Constitution; or
- (i) any other matter that it is reasonable to consider may also be taken into account.

Exception: unjustifiable hardship

35.—(1) Sections 7 to 26 shall not apply where avoiding the discrimination against a person would impose an unjustifiable hardship on the person imposing the discrimination.

(2) For the purposes of subsection (1), in determining whether a hardship that would be imposed on a person would be an unjustifiable hardship, all relevant circumstances of the particular case shall be taken into account, including—

- (a) the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;
- (b) the financial circumstances, and the estimated amount of expenditure required to be made, by the person on whom the hardship is imposed; and

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- (c) the availability of financial and other assistance to the person on whom the hardship is imposed.

(3) For the purposes of subsection (1), the burden of proving that something would impose unjustifiable hardship lies on the person claiming unjustifiable hardship.

Exception: Religious bodies

36.—(1) Subject to subsections (2) and (3), nothing in this Act shall affect—

- (a) the ordination of priests or 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, appointment or revocation of appointment of persons to perform duties or functions for the purposes of, or in connections with, or otherwise to participate in, any religious observance or practice;
- (d) the administration of a body established for a religious purposes in accordance doctrines, tenets or beliefs of that religion;
- (e) the acceptance or rejection by an educational authority of an application for admission of a person as a student at an educational institution if-
 - (i) the educational authority is not a public authority; and
 - (ii) the educational institution is established by a religious order and the acceptance or rejection is made on the basis of conformity with the doctrines, tenets or beliefs of a religion or is necessary to avoid injury to the religious susceptibilities of adherents to that religion;
- (f) the selection or appointment by an educational authority of person to perform duties or functions for the purposes of, or in connection with, or otherwise to participate in, an educational institution if-
 - (i) the educational authority is not a public authority; and
 - (ii) the educational institution is established by a religious order and the selection or appointment is made on the basis of conformity with the doctrines, tenets or beliefs of a religion or is necessary to

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avoid injury to the religious susceptibilities of adherents to that religion;

- (g) the rental or use of premises (including places of worship) owned or managed by a religious authority having regard to a rental policy or other policy that takes into account the doctrines, tenets or beliefs of a religion; or
- (h) 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.

(2) Subsection (1)(e) shall only apply where education authority has published its policy in relation to the admission of students at the educational institution and that policy is accessible by current and prospective students from or at the educational institution.

(3) Subsection (1)(f) shall only apply where the education authority has published its policy in relation to-

- (a) the employment of staff in the educational institution; and
- (b) the engagement of a contractor to do work in the educational institution,

and that policy is accessible by the public.

Welfare measures

37. Notwithstanding any provision to the contrary in this Act, a person may do an act to benefit the members of a group of people with a protected characteristic for whose welfare the act was designed to benefit if the purpose of the act is not inconsistent with this Act.

Temporary exemption

38.—(1) The Commission may, on application made by a person, exempt the person from the operation of any provision of Part II or Part III.

(2) An application for an exemption under subsection (1) shall be made to the Commission in the form approved by the Commission.

(3) Subject to subsection (4), the Commission may grant with modification or refuse an application for an exemption made under subsection (1).

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(4) Nothing in Part II or III renders it unlawful for a person who has been granted an exemption from a provision of that Part, or a person in the employment or under the direction or control of a person who has been granted such an exemption, to do an act in accordance with the provisions of the instrument by which the exemption was granted.

(5) The Commission shall—

- (a) publish criteria for the granting of an exemption under this section;
- (b) publicly advertise each application made under subsection (1) and may request comments and submissions from the public;
- (c) ensure that any exemption under this section is for conduct or conditions that are not inconsistent with the objects of this Act;
- (d) publish reason for granting or refusing an application under this section; and
- (e) maintain a public register of applications made under subsection (1) and exemptions granted and refused.

(6) The Commission may grant an exemption under this section—

- (a) for a period not exceeding five years; and
- (b) subject to such terms and conditions or applicable only in specified circumstances or in relation to such activities as are specified in the instrument granting the exemption.

Exception: political opinion

39. Notwithstanding any provision to the contrary in this Act, discrimination on the basis of political opinion shall not be unlawful if the political opinion is the basis on which a person may be employed or appointed as—

- (a) an adviser to the Minister;
- (b) a member of staff of a political party;
- (c) a member of the electoral staff of any person;
- (d) a diplomat; or
- (e) in any other similar position.

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Exception: Age

40. Notwithstanding any provision to the contrary in this Act, discrimination on the basis of age shall not be unlawful where the discrimination is required for the purpose of the retirement of a person or the employment or education of a child in accordance with the Laws of Belize.

Exception: Health

41. Notwithstanding any provision to the contrary in this Act—

- (a) treating a person differently to another person does not constitute discrimination where the person is so treated solely in the exercise of a clinical judgement in connection with the diagnosis of an illness or the person's medical treatment; or
- (b) discrimination directed at ensuring that an infectious disease is not spread,

shall not be unlawful if it is reasonable in all circumstances.

Exception: Genuine occupational qualification

42. Notwithstanding any provision to the contrary in this Act, a person who is under a duty under section 7, 8, 9, 10, 11, 12, 13 or 14 may discriminate against another person in relation to employment if it is based on a genuine occupational qualification in relation to a particular position.

Exception: Education, training or care of children

43. Notwithstanding any provision to the contrary in this Act, a person may discriminate against another person on the grounds of irrelevant criminal record in relation to the education, training or care of children if it is reasonably necessary to do so in order to protect the physical, psychological or emotional wellbeing of children having regard to relevant circumstances.

Acts done under statutory authority or order of court

44. (1) Part II and this Part shall not apply to—

- (a) an order of a court; or
- (b) anything done by a person in direct compliance with any other Act in force in Belize.

(2) Subsection (1)(b) shall expire two years after the commencement of this Act.

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Part V

Prevention of Discrimination Involving Harassment and Victimisation

Interpretation of words used in this Part

45. For the purposes of section 46 “public act” includes—

- (a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of recorded material;
- (b) any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems or insignia; and
- (c) the distribution or dissemination of any matter to the public.

Harassment

46.—(1) A person shall not discriminate against another person by harassing that other person.

(2) A person discriminates against another person by harassing that other person if—

- (a) the first-mentioned person engages in unwanted conduct in relation to that other person; and
- (b) the conduct has the purpose or effect of creating an intimidating, hostile degrading, humiliating or offensive environment for that other person.

(3) In deciding whether conduct has the purpose or effect referred to in subsection (2)(b), the following shall be taken in account—

- (a) the perception of the other person;
- (b) whether it is reasonable to treat the conduct as having that purpose or effect; and

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(c) all of the other circumstances of the case.
(4) Nothing in this section renders the following a contravention of subsection (1)–

- (a) a fair report of a public act;
- (b) a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege in proceedings for defamation; or
- (c) a public act done reasonably and in good faith, for academic, artistic, scientific, research or religious discussion or instruction purposes or for other purposes in the public interest, including taking part in a discussion or debate about expositions of any act or matter.

Victimisation

47.–(1) A person shall not discriminate against another person by committing an act of victimisation against that other person.

(2) For the purposes of subsection (1), a person is taken to commit an act of victimisation against another person if that first-mentioned person subjects, or threatens to subject, the other person to any detriment on the ground that–

- (a) the other person–
 - (i) has made, or proposes to make, a complaint under this Act against any person or raises a claim against discrimination with, or makes an inquiry in relation to discrimination to, the first mentioned person;
 - (ii) has brought, or proposes to bring, proceedings under this Act or any relevant law against any person;
 - (iii) has given, or proposes to give, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Act or any relevant law;
 - (iv) has attended, or proposes to attend, an alternative dispute resolution or hearing held under this Act or any relevant law;
 - (v) has appeared, or proposes to appear, as a witness in a proceeding under this Act or any relevant law;

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- (vi) has reasonably asserted, or proposes to assert, any rights to which that other person or any other person is entitled under this Act or any relevant Law; or
 - (vii) has made an allegation that a person has done an act which contravenes this Part or any relevant law; or
 - (b) that first-mentioned person believes that the other person has done, or proposes to do, an act or thing referred to in paragraph (a).
- (3) In this section, “relevant law” means-
- (a) the Equal Pay Act, Cap. 302.01;
 - (b) the Labour Act, Cap. 297;
 - (c) the Protection Against Sexual Harassment Act, Cap. 107; or
 - (d) any other law that the Minister may specify by Order.

Advertisements

48.—(1) A person shall not publish or display, or cause or permit to be published or displayed, an advertisement or notice that indicates, or could reasonably be understood as indicating, an intention by that person to do an act that is prohibited under this Act.

- (2) For the purposes of subsection (1), “advertisement” includes every form of advertisement or notice, whether to the public or not, and whether—
- (a) in a newspaper or other publication;
 - (b) by television or radio;
 - (c) by display of notices, signs, labels, show cards or goods;
 - (d) by distribution of samples, circulars, catalogues, price lists or other material;
 - (e) by electronic, social or other media;
 - (f) by exhibition of pictures, models or films; or
 - (g) in any other way.

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Promotion of unlawful acts

49. A person shall not assist or promote, whether by financial assistance or otherwise, the contravention of a provision under this Part.

PART VI

HIV Prevention and Care

Public interest considerations

50. This Part shall not apply to discrimination against a person if the discrimination is reasonably justifiable in the interests of national security, public health or public safety.

Restriction on HIV testing

51. A person shall not require another person to undergo HIV testing as a prerequisite to obtaining employment, accessing health care services or education or, for the continuation of the same unless the HIV testing is reasonably justifiable in the interest of national security, public health or public safety.

HIV testing centres

52.—(1) For the purposes of facilitating HIV testing, the Director of Health Services may in writing designate any public healthcare facility or HIV testing centre as an HIV testing centre for the purposes of this Act.

(2) A healthcare provider performing or otherwise involved in the performance of an HIV test shall take all measures to ensure that—

- (a) the testing process is carried out promptly and efficiently; and
- (b) the result of the HIV test is communicated in accordance with this Act.

Counselling

53. A person who is the owner, manager or in charge of an HIV testing centre shall ensure that there is a duly trained person to provide pre-test counselling and post-test counselling to a person undergoing an HIV test, and where feasible, to any other person likely to be affected by the test results.

HIV testing

54.—(1) A person attending a healthcare facility for the purpose of HIV testing shall be counselled and offered voluntary HIV testing.

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(2) Any HIV test administered under this section shall as far as practicable be by way of anonymous testing.

(3) A person shall not be compelled to undergo HIV testing and HIV testing shall not be procured without the voluntary informed consent of the person.

(4) Notwithstanding subsection (3), a child who is over the age of sixteen years may undergo HIV testing as follows—

(a) only the voluntary informed consent of the child is required; and

(b) the consent of the child's parent or legal guardian shall not be required.

(5) Notwithstanding subsection (3), if a child is under sixteen years of age and is, in the opinion of the person providing the pre-test counselling, incapable of understanding the meaning and consequences of HIV testing, and the child's parent or legal guardian cannot be located despite reasonable efforts, consent may be obtained from the court or a licensed social worker.

(6) Notwithstanding subsection (3), a person who is unable to comprehend the results of HIV testing may undergo HIV testing only after the written consent thereto of the person's personal representative.

(7) Notwithstanding subsection (3), a healthcare provider responsible for the treatment of a person may undertake an HIV test in respect of that person without the consent or knowledge of the person if—

(a) the person is unconscious and unable to give consent; and

(b) the healthcare provider reasonably believes that such a test is clinically necessary or otherwise desirable in the interest of that person.

(8) Without prejudice to the generality of subsection (3), consent shall not be required for HIV testing—

(a) under an order of a court; or

(b) on the donor of human organs and tissues.

(9) Subject to subsection (7), a healthcare provider who compels any person to undergo HIV testing or procures HIV testing of another person without the knowledge or consent of that other person commits an offence and is liable on conviction to a fine not exceeding ten thousand or imprisonment for a term not less than six months.

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Test results

55.—(1) The results of an HIV test shall be confidential and released confidentially and directly only to the person tested.

(2) Notwithstanding subsection (1), the results of an HIV test may be released confidentially and directly to—

- (a) in the case of a child, the person who gives consent in respect of the HIV testing of the child in accordance with section 54(4);
- (b) in the case of a person with inability to comprehend the results, the person's spouse, guardian or representative;
- (c) the court, or such person as the court may order, if the HIV testing was court ordered; or
- (d) a third party with the consent in writing of the person who has undergone the test.

Observance of confidentiality in handling medical records

56.—(1) Subject to subsection (2), a custodian of any medical record, file, data, or test results shall observe confidentiality in the handling of medical information or documents, including in relation to the identity and HIV status of a person.

(2) For purposes of subsection (1), the expression “a custodian of a medical record” includes but is not limited to, a healthcare provider, healthcare facility, public officer, an educational authority, employee, employer, employment agency, insurance company, data encoder, and any other custodian of any medical record, file, data, or test results.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or both.

(4) A person convicted under this section is also liable to suspension or revocation of the person's licence to practice the person's profession, and the cancellation or withdrawal of any licence to operate the person's business entity.

(5) It shall not be an offence under subsection (3) if the medical information or document is disclosed—

- (a) to a healthcare provider or healthcare facility or a person employed by or under the direction of a healthcare provider or healthcare facility, in

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connection with the treatment of the person to which that information relates, or for the prevention of the spread of HIV;

- (b) when complying with reporting requirements under this Act or any other written law, in relation to HIV;
 - (c) when responding to a witness summons issued by the Tribunal in relation to proceedings in which the main issue is the HIV status of the person;
 - (d) when providing information relating to the HIV status of the person for the purposes of research, monitoring, or an evaluation programme without revealing the identity of any person concerned; or
 - (e) is responding to an order of a court, the Commission or the Tribunal.
- (6) In the circumstances mentioned in subsection (5)(c), (d) and (e)–
- (a) the confidential medical record shall be properly sealed by its lawful custodian after being checked for accuracy by the head of the office or department that is the lawful custodian or is the employer of the lawful custodian, hand delivered and personally opened by the Chairperson or the Judge of the Tribunal considering a dispute under this Act; and
 - (b) the proceedings of the Tribunal shall be held in camera.

Disclosure of HIV status

57. A person shall not disclose the name, picture, or any other information that would identify another person as a person living with HIV, without the prior written consent of that other person except where the information is already available to the public.

Protection from liability for strategies for reducing risk of HIV transmission

58. Notwithstanding any provision in any law in force in Belize–

- (a) the implementation or use of any strategy for reducing the risk of HIV transmission; or
- (b) the provision of or possession of any article for reduction of risk of HIV transmission,

shall not be prohibited, impeded, restricted or prevented and shall not be a criminal offence or attract civil liability if it is approved by the National Aids Commission or Minister responsible for Health.

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PART VII

The Equal Opportunities Commission

Establishment and composition of Commission

59.—(1) There is established a body to be known as the Equal Opportunities Commission to which Part V of the Interpretation Act, Cap. 1 shall apply.

(2) Subject to subsection (3), the Commission shall comprise five commissioners who shall be appointed by the Governor General after consultation with—

- (a) the Prime Minister;
- (b) the Leader of the Opposition;
- (c) the entity responsible for education;
- (d) National AIDS Commission;
- (e) the Belize Council of Churches and Evangelical Association of Churches;
- (f) the Belize Chamber of Commerce and Industry and the Belize Business Bureau;
- (g) the Belize Bar Association;
- (h) National Trade Union Congress; and
- (i) Civil Society Steering Committee.

(3) Subject to section 61, a person is eligible to be appointed as a commissioner if that person has recognised training and experience in one or more of the following fields—

- (a) human rights or constitutional law;
- (b) sociology;
- (c) employment and industrial relations;
- (d) organisational administration;
- (e) education; or
- (f) other fields related to any of those in paragraphs (a) to (e).

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(4) Two of the commissioners, in and by the terms of their respective appointments under subsection (2), shall be appointed as the Chairperson and Deputy Chairperson of the Commission.

(5) A person appointed as a commissioner shall act in the public interest to carry out the purposes of this Act and not based on the person's personal, business or professional interest.

(6) The Governor General shall, in appointing the commissioners under this section, give due regard to the recognition of the diversity of the population of Belize.

(7) If at any time the Commission is not functioning, all the powers, rights, authorities and functions conferred upon the Commission by this Act shall be exercised by the Minister who shall be charged with all the duties and obligations with which the Commission is charged.

(8) The Minister may delegate in writing any of the powers and functions conferred upon the Minister under subsection (7) to the Chief Executive Officer of the Ministry for which the Minister is responsible.

(9) The Minister may make Regulations to provide for the establishment and procedures of panels of advisers to the Commission.

(10) Subject to this Act, the Commission shall regulate its own procedure.
Commissioners

60.—(1) The Chairperson shall hold office for a period of five years from the date of appointment as a commissioner.

(2) The Deputy Chairperson shall hold office for the period as specified in the instrument of appointment but not exceeding five years from the date of appointment as Commissioner.

(3) A commissioner other than the Chairperson and the Deputy Chairperson, shall hold office for the period as specified in the instrument of appointment not exceeding three years.

(4) Subject to sections 61, 62, and 63, on the expiry of a commissioner's period of appointment, the commissioner shall be eligible for reappointment but shall serve for a maximum of two consecutive terms.

(5) A person appointed as commissioner to fill a vacancy occurring before the expiration of the term of office of a commissioner, shall hold office for the unexpired term of the predecessor.

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(6) A commissioner shall, before entering upon the duties of the commissioner's office, take the oath or make the affirmation as set out in Schedule 1.

(7) A commissioner shall be paid such salary and other allowances as may be approved from time to time by Cabinet.

Disqualification for membership

61. A person shall not be qualified to be appointed as a commissioner or having been appointed, is not eligible to continue as a commissioner if that person—

- (a) has filed for bankruptcy in a court or is declared by a court to be a bankrupt;
- (b) has become incapacitated from the due execution of the commissioner's office by reason of physical infirmity or mental illness;
- (c) has a criminal record except an irrelevant criminal record;
- (d) is guilty of misconduct;
- (e) is disqualified on grounds of national security;
- (f) is nominated, elected or appointed to any other office of emolument or engages in any other occupation for reward;
- (g) is absent from three consecutive meetings of the Commission, unless the absence is approved by the Governor General; or
- (h) is incapable, for whatever reason, of performing the commissioner's duties and functions under this Act.

Resignation of commissioners

62.—(1) A commissioner other than the Chairperson may at any time resign from the office of commissioner by instrument in writing addressed to the Governor General and transmitted through the Chairperson and, from three months after the date of receipt of the instrument by the Governor General, that commissioner ceases to be a commissioner.

(2) The Chairperson may at any time resign from the office of Chairperson by instrument in writing addressed to the Governor General and, from three months after the date of receipt of the instrument by the Governor General, that Commissioner ceases to be the Chairperson and a commissioner.

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Removal from office

63. A commissioner may be removed from office by the Governor General if, upon evidence, the Governor General is satisfied that the commissioner—

- (a) is disqualified, under section 61, to continue as a commissioner;
- (b) is unable or has failed to perform the functions of the office of commissioner;
- (c) has been disqualified or suspended on grounds of professional misconduct, by a competent authority, from practising a profession; or
- (d) has been placed, by conduct or otherwise, in a position that is incompatible with the effective performance of the functions of office of commissioner.

Vacancy in Commission

64.—(1) The office of a commissioner becomes vacant—

- (a) on the death of the commissioner;
- (b) if the commissioner becomes disqualified under section 61;
- (c) if the commissioner resigns under section 62;
- (d) if the commissioner is removed from office under section 63; or
- (e) if the commissioner's appointment is not renewed by the Governor General as of the date of expiry of the commissioner's term of appointment.

(2) Where a vacancy exists in the membership of the Commission, the Governor General shall, in accordance with section 59, appoint a person to fill the vacancy.

Secretary to Commission

65.—(1) There shall be a Secretary to the Commission appointed in accordance with section 68.

(2) The duties of the Secretary shall be—

- (a) to attend meetings of the Commission;
- (b) to record the minutes of each meeting in proper form; and

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- (c) to perform duties connected with the work of the Commission.

Appointment of commissioners to be notified in the *Gazette*

66. The appointment of all commissioners including the Chairperson, Deputy Chairperson as first constituted and every change of commissioners and the termination of any such appointment shall be published in the *Gazette* by the Secretary to the Commission.

Proceedings and meetings

67.—(1) The Commission shall meet at such places, times and days as may be expedient for the Commission to carry out its functions.

- (2) Notice of all meetings shall be given to each commissioner by the Secretary.

(3) The Chairperson of the Commission may at any time call a meeting of the Commission and shall call a special meeting to be held within seven days after the receipt of a written request for that purpose addressed to the Chairperson by not less than two commissioners.

- (4) At a meeting of the Commission—

(a) the Chairperson of the Commission shall preside;

(b) if the Chairperson of the Commission is not present, the Deputy Chairperson shall preside; or

(c) if neither the Chairperson of the Commission nor the Deputy Chairperson is present, the members present shall choose one of their numbers to preside.

- (5) The quorum for a meeting of the Commission is three commissioners.

(6) Every question for decision at a meeting of the Commission shall be determined by a majority of votes of the members present and, in the event that voting is equally divided, the Chairperson of the meeting shall have a casting vote.

(7) A commissioner shall be deemed to be present at a meeting of the Commission if the commissioner participates by telephone or other electronic means and all commissioners participating in the meeting are able to hear or otherwise effectively communicate with each other.

(8) A resolution in writing signed by all of the commissioners entitled to receive notice of a meeting of the Commission shall be valid and effectual as if it had been passed

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in a meeting of the Commission duly convened and held and may consist of several documents in the like form each signed by one or more commissioners.

(9) Minutes of each meeting of the Commission shall be kept and shall be confirmed by the commissioners as soon as practicable at a subsequent meeting.

(10) A decision of the Commission is not invalidated merely because there is a vacancy in the Commission.

Appointment of staff

68.—(1) The Commission shall be provided with such staff, including a Secretary to the Commission, as the Minister, after consultation with the Commission, considers necessary for the efficient administration of this Act.

(2) Notwithstanding subsection (1), the Commission may, from time to time, appoint—

(a) persons to carry out alternative dispute resolution services for the purposes of section 89; or

(b) professional or technical advisers to assist the Commission in the performance of its functions.

(3) A person appointed under subsection (2) may be paid such remuneration as the Minister may approve.

(4) Any remuneration payable under subsection (3) shall be paid out of the funds of the Commission.

Shared staff, services and expenses

69.—(1) Notwithstanding section 68, the Commission may share staff, services, equipment and supplies with any other Government entity.

(2) The expenses of the Commission shall be paid by the Commission out of the monies allocated to the Commission by the National Assembly under section 110(1)(a).

Address and service of documents

70.—(1) The Commission shall at all times have a fixed address for the service of documents on the Commission.

(2) All documents to be served on the Commission may be served by leaving the documents at or by sending the documents by registered post to the Commission at its fixed address.

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(3) The address for service of documents on the Commission shall be published in the *Gazette*.

PART VIII

Functions and Powers of Commission

Functions of Commission

71.—(1) The functions of the Commission are—

- (a) to receive, investigate, enquire into and, as far as possible—
 - (i) conciliate and resolve allegations of discrimination or a contravention of Part II, III or V, as applicable; or
 - (ii) refer complaints or allegations of discrimination or a contravention of Part II, III or V, as applicable, to alternative dispute resolution;
- (b) to develop a strategic plan for the elimination of discrimination and contraventions of Part II, III or V;
- (c) to prepare and publish guidelines on any matter relating to its functions in accordance with section 72;
- (d) register action plans in the Register of Action Plans kept and maintained by the Commission under section 74;
- (e) to initiate a matter that could be the subject of a complaint against discrimination or a contravention of Part II, III or V, as applicable, which is in the opinion of the Commission of such a nature that it should be so investigated and determined because of—
 - (i) its gravity; or
 - (ii) its exceptional circumstances;
- (f) to develop, conduct and undertake research and educational programmes and other programmes for the purpose of eliminating discrimination and contraventions of Part II, III or V;
- (g) to collect and analyse data relating to complaints;

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- (h) to ensure access to justice of vulnerable groups, including the provision of litigation support;
 - (i) to initiate legal proceedings to challenge laws in force in Belize on the grounds of discrimination;
 - (j) to act as *amicus curiae* in cases which are related to its mandate;
 - (k) to keep under review the working of this Act by—
 - (i) carrying out within three years of the commencement of this section a review of this Act and all relevant laws in force in Belize for compatibility with this Act; and
 - (ii) undertaking such reviews every five years thereafter,
and, where it thinks necessary, draw up and submit to the Minister recommendations for amendment;
 - (l) to do any other thing conducive or incidental to the carrying out of its functions; and
 - (m) to carry out any other functions as may be prescribed.
- (2) The Commission may investigate a matter referred to in subsection (1) in the following circumstances—
- (a) where a complaint is lodged, in writing, to the Commission by a person alleging that the person or any other person has been discriminated against, harassed or subjected to an act of victimisation;
 - (b) in any other circumstance in which the Commission considers that it ought to investigate the matter on the ground that an individual or a body of persons has or may have been discriminated against; or
 - (c) as prescribed by any other law.
- (3) Subject to this Act, the Commission may—
- (a) make rules governing its procedures regarding its functions and powers under this Act; and
 - (b) establish committees for the purposes of performing its functions under this Act.

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(4) Recommendations made to the Minister under subsection (1)(k) shall be laid in the National Assembly.

Guidelines

72.—(1) The Commission may prepare and issue guidelines on any matter relating to its functions under this Act.

(2) The procedure for the issuance of such guidelines under this section shall be as prescribed.

(3) In preparing the guidelines under subsection (1), the Commission shall consult with persons or bodies representing the sectors, industries or persons to whom the practice guidelines relate.

(4) Guidelines issued under subsection (1) are not legally binding, but a court or the Tribunal may consider evidence of compliance with guidelines if relevant to any matter before the court or Tribunal under this Act.

(5) If the Commission issues guidelines under this section, the Commission shall publish—

- (a) the guidelines on its internet site; and
- (b) a notice of the issue of the guidelines in the *Gazette* and in such other media as the Commission deems appropriate and the notice shall state that the guidelines may be inspected on the Commission's internet site.

(6) If the Commission revokes guidelines issued under this section, the Commission shall publish notice of the revocation in the *Gazette* and in such other media as the Commission deems appropriate.

Commission may conduct review of compliance

73.—(1) On request of a person, the Commission may enter into an agreement with the person to review that person's programmes and practices to determine compliance with this Act.

(2) An agreement to review may provide for payment of the Commission's reasonable costs of undertaking the review.

(3) If, after undertaking a review, the Commission gives the person advice about whether programmes or practices are compliant with this Act, the giving of that advice does not give rise to—

- (a) any liability of, or other claim against, the Commission;

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- (b) any right, expectation, duty or obligation that would not otherwise be conferred or imposed on the person who has been given the advice; or
- (c) any defence that would not otherwise be available to that person.

Action plan

74.—(1) A person may prepare an action plan that specifies steps necessary to improve compliance with this Act.

(2) The Commission may—

- (a) provide advice about preparing and implementing action plans; and
- (b) set minimum requirements for action plans.

(3) An action plan is not legally binding, but a court or the Tribunal may consider an action plan if relevant to any matter before the court or Tribunal under this Act.

(4) A person who prepares an action plan may give a copy of the action plan to the Commission.

(5) The Commission may include the action plan in a Register of Action Plans to be kept and maintained by the Commission.

(6) The Commission shall make the Register of Action Plans available on the internet site of the Commission and may publish the Register in any other manner it thinks fit.

Strategic statement

75.—(1) The Commission shall prepare and issue an annual strategic statement setting out the key objectives and related strategies, including the use of resources of the Commission for the ensuing financial year.

(2) The Commission shall, in preparing an annual strategic statement—

(a) have regard to the—

- (i) need to ensure the most beneficial, effective and efficient use of the resources of the Commission; and
- (ii) key objectives and priorities of the Commission; and

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- (b) consult in such manner as the Commission considers appropriate with such bodies and groups as it sees fit including educational institutions, representatives of relevant agencies and civil society, departments of Government and other public bodies.

Commission not subject to control

76. Subject to section 68(1), the Commission shall not be subject to the direction or control of any other person or authority in the exercise of its functions.

Delegation

77.-(1) The Commission, in writing, may delegate any of its functions.

(2) A delegation made under subsection (1)–

- (a) is revocable at will, in whole or in part; and
- (b) does not derogate from the functions, duties and powers of, or the exercise thereof by the Commission as it may think fit or as the occasion requires.

Powers of Commission

78. Subject to the provisions of this Act and any Regulations made under section 129, for the purpose of discharging the functions of the Commission under this Act, the Commission shall, as is reasonably required, have the power–

- (a) to determine the procedures to be followed in any investigation, inquiry or alternative dispute resolution and adopt such procedures as it considers appropriate in the circumstances to investigate a particular complaint.
- (b) to lease premises and acquire equipment and supplies as are necessary for the efficient operation of the Commission; and
- (c) to do anything necessary or convenient to discharge the functions of the Commission.

Part IX

Complaints, Investigation and Alternative Dispute Resolution

Lodging of complaint

79.-(1) Any of the following persons may lodge a complaint alleging discrimination–

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- (a) any person who alleges being discriminated against or who alleges a contravention of Part II, III or V by another person;
- (b) any person authorised to act on behalf of a person who alleges being discriminated against;
- (c) any person who has reasonable grounds for believing that another person is engaging or has engaged in discrimination against a person contrary to this Act;
- (d) a person acting as a member of, or in the interests of, a group or class of persons;
- (e) any person acting in the public interest; or
- (f) the Commission.

(2) A person making a complaint under this section, shall set out the details of the alleged discrimination or contravention of Part II, III or V, as applicable, identifying the persons against whom the complaint is made.

(3) A person shall not make a complaint on behalf of another person, or make a complaint, not being a person directly affected without the approval of the Commission.

(4) An approval under subsection (3) may be given in writing or in such other manner as approved by the Commission.

(5) In deciding whether to give approval under subsection (3), the Commission shall have regard to—

- (a) the objects of the Act.
- (b) whether the case raises a serious justiciable issue;
- (c) whether the party bringing the action has a real stake or a genuine interest in its outcome; and
- (d) whether, having regard to a number of factors, the proposed case is a reasonable and effective means to bring the case to court.

(6) A person aggrieved by a decision by the Commission to refuse approval under this section may, within ten days after being notified of the decision, apply to the Tribunal for a review of Commission's decision under Part X.

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(7) If a person is unable to make a complaint due to disability, age or other incapacity, the Commissioner may appoint a litigation guardian for the child or other person.

(8) A litigation guardian may make a complaint on behalf of a child or other person referred to in subsection (1).

(9) If a litigation guardian has been appointed on behalf of a child or other person referred to in subsection (1), the provisions of this Act apply to the litigation guardian as if that guardian were the complainant.

(10) A complaint under this section shall be lodged with the Commission, within twelve months from the date of the alleged act of discrimination or contravention of Part II, III or V as applicable.

(11) Notwithstanding subsection (10), the Commission, in exceptional circumstances, may accept a complaint which is lodged more than twelve months after the date of the alleged act of discrimination or contravention of Part II, III or V, as applicable, where it is reasonable to do so.

(12) Upon receiving a complaint under this section, the Commission shall—

- (a) record it in the prescribed form and furnish to the complainant a copy of that record signed by the person receiving the complaint; and
- (b) furnish to the complainant a prescribed statement setting out the procedures that will be followed respecting the complaint and the rights of the complainant.

Withdrawal of complaint

80.—(1) A person who lodges a complaint under section 79 may apply to the Commission to withdraw a complaint.

(2) An application to withdraw a complaint shall be accompanied by a statement of the reasons for the withdrawal.

(3) The Commission, on receipt of an application to withdraw a complaint, may investigate the circumstances relating to the application.

(4) If the Commission is satisfied that an application to withdraw a complaint is made voluntarily, the Commission shall—

- (a) grant the withdrawal;

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- (b) record the term of any agreement or settlement reached between the complainant and the respondent, and in such a case section 82(2) and (3) shall apply to such agreement or settlement; and
- (c) refer any application for costs to the Tribunal.

(5) Where the Commission is of the opinion that it is in the public interest to do so, the Commission may undertake or continue an investigation into a complaint notwithstanding the fact that the complainant has withdrawn the complaint and, in such a case, the provisions of this Act apply to the Commission and the complainant as if the complaint had not been withdrawn.

(6) A complainant who withdraws a complaint under this section is not entitled to make another complaint to the Commission in relation to the same matter without the permission of the Commission.

Rejection or acceptance of complaint

81.—(1) The Commission may reject any complaint if—

- (a) in the opinion of the Commission, it is trivial, vexatious, misconceived or lacking in substance; or
- (b) the complaint does not relate to discrimination or prohibited conduct;
- (c) the complainant has commenced proceedings in another commission, or a court or tribunal in relation to the same events, and that other commission or court or tribunal may order remedies similar to those available under this Act;
- (d) a person other than the complainant has commenced proceedings in another commission or court or tribunal in relation to the same subject matter of the complaint and the Commission is satisfied that the subject matter may be adequately dealt with by that other commission or court or tribunal;
- (e) in the opinion of the Commission, there is a more appropriate remedy that is reasonably available;
- (f) the subject matter of the complaint has already been adequately dealt with by the Commission or another commission or court or tribunal.
- (g) in the opinion of the Commission, the subject matter of the complaint may be more effectively or conveniently dealt with by another commission or court or tribunal; or

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(h) in the opinion of the Commission, the complaint relates to conduct that is within the scope of an exemption under Part IV.

(2) The Commission shall decide whether to accept or reject a complaint within forty-two days after its receipt.

(3) In determining whether to accept a complaint that is lodged under section 79 by a person other than the person that has been discriminated against, the Commission may take into account the consent or absence of consent of the person who was discriminated against and where the Commission considers that consent of that individual is a reasonable requirement, the Commission may reject a complaint on the basis of the absence of consent.

(4) If the Commission decides to accept a complaint, the Commission shall, within ten days after the decision to accept is made—

- (a) notify the complainant and respondent of that acceptance;
- (b) provide the complainant and respondent with reasons for accepting the complaint; and
- (c) provide the respondent a copy of the complaint and a summary of the complaint.

(5) If the Commission decides to reject a complaint, the Commission shall, within ten days after the decision to reject is made—

- (a) notify the complainant of the decision to reject the complaint;
- (b) provide a written statement of the reasons for the rejection of any complaint to the complainant; and
- (c) inform the complainant that the rejection may be reviewed by the Tribunal under Part X.

(6) If the Commission rejects a complaint under this section, the complainant may, within ten days after being notified of the decision under subsection (5) apply to the Tribunal for a review of Commission's decision under Part X.

(7) If, on reviewing the rejection or dismissal of a complaint, the Tribunal is satisfied that the Commission made a correct decision in rejecting or dismissing the complaint, the complaint lapses.

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(8) If, on reviewing the rejection of a complaint, the Tribunal is not satisfied that the Commission made a correct decision in rejecting the complaint, the Tribunal shall refer the complaint back to the Commission for investigation.

(9) If, on reviewing the dismissal of a complaint, the Tribunal is not satisfied that the Commission made a correct decision in dismissing the complaint, the Tribunal to deal with the complaint as if it were an inquiry under Part X.

Settlement

82.—(1) Where, at any stage after the lodging of a complaint and before the commencement of an investigation by the Commission, a settlement is agreed by the parties, the terms of the settlement shall be referred to the Commission for approval or rejection.

(2) If the Commission approves or rejects the terms of a settlement referred to in subsection (1), it shall so certify and notify the parties.

(3) A settlement approved under this section may, for the purpose of enforcement, be registered with the Tribunal as an order of the Tribunal.

Investigation of complaint

83.—(1) Subject to section 86, the Commission shall investigate each complaint accepted by the Commission under section 81, in a manner it considers appropriate to the particular complaint.

(2) Where the Commission decides not to investigate a complaint made under section 79, the Commission shall give a written notice of its decision to the complainant setting out the reason for its decision.

Request for information by Commission

84.—(1) Subject to sections (2) (3), (4) and (5), the Commission may by notice in writing—

- (a) require any person to furnish such information as may be described in the notice;
- (b) specify the time within which the required information is to be furnished; and
- (c) require the person to attend at such time and place specified in the notice and to give oral evidence about and produce all documents in the possession or control of the person relating to, any matter specified in the notice.

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(2) The Commission shall not, without the consent of a person, require the production of—

- (a) records of counselling or therapy sessions undergone by that person; or
- (b) records or notes made by an advocate for that person in relation to subject matter of the alleged contravention of the Act.

(3) This section does not empower the Commission to require the production of books, papers or documents relating to—

- (a) proceedings in the National Assembly; or
- (b) the exercise or purported exercise of, judicial powers or functions, or the discharge or purported discharge, of judicial duties, by a judicial officer in court or in chambers.

(4) A person is not obliged to produce books, papers or documents under this section if—

- (a) the contents of the books, papers or documents would tend to incriminate that person of an offence; or
- (b) by producing the books, papers or documents, the person would commit a breach of legal professional privilege.

(5) Nothing in this section empowers the Commission to require that a book, paper or document that is required for the day to day operation of a business be produced at a place other than the premises from which the business is operated.

(6) The Commission may retain books, papers or documents produced under this section only for so long as is reasonably necessary to peruse their contents and take copies of the books, papers or documents.

(7) Where a person fails to comply with subsection (1), the Commission may apply to the Tribunal for the grant of an order requiring a person to comply with subsection (1).

(8) Where the Tribunal grants an order applied for under subsection (8), a person aggrieved by the decision of the Tribunal under this section may appeal to the Court of Appeal against that order.

(9) A person who—

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- (a) destroys or alters, or causes to be destroyed or altered, any document, or other matter or thing required to be produced under subsection (1); or
- (b) hinders, obstructs, prevents or interferes with the Commission in the exercise of a power under this section,

commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both.

Anonymity

85.—(1) If, any time before a complaint is referred to the Tribunal or in the process of an investigation under this Part, the Commission is of the reasonable opinion that the preservation of anonymity of a person who is, or has been, involved in a proceeding under this Act is necessary to protect the person from discrimination, the Commission may give a direction prohibiting the disclosure of the person's identity or information that would be reasonably likely to identify the person.

(2) A person shall comply with a direction given under subsection (1).

(3) It is a defence to an offence against subsection (2) if the defendant has a reasonable excuse.

(4) In this section, a reference to involvement in a proceeding under the Act includes—

- (a) making a complaint under the Act and continuing with the complaint, whether by investigation, alternative dispute resolution, hearing or otherwise;
- (b) being a respondent to such a complaint;
- (c) involvement in a prosecution for an offence against the Act;
- (d) supplying information and producing documents to a person who is performing a function under the Act; and
- (e) appearing as a witness in a proceeding under the Act.

Discontinuation of investigation

86.—(1) The Commission may discontinue an investigation of a complaint—

- (a) on any ground referred to under section 81(1); or

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(b) if any investigation or further investigation is for any other reason unnecessary.

(2) Where the Commission decides not to continue an investigation into a complaint, it shall inform the complainant, in writing, of its decision and of its reasons.

Decision of Commission

87.—(1) After an investigation of a complaint, the Commission may—

(a) dismiss a claim—

(i) on the basis that there is no evidence of discrimination;

(ii) on any ground referred to under section 81(1); or

(b) determine that a claim is substantiated.

(2) The Commission, shall, as soon as practicable—

(a) notify the decision under subsection (1) to—

(i) the complainant; and

(ii) the respondent;

(b) in the case of dismissal of a complaint, provide a written statement of the reasons for the dismissal of the complaint; and

(c) subject to section 88(3), issue such directions as it sees fit.

Action following investigation by and decision of Commission

88.—(1) A complainant whose complaint is dismissed by the Commission may, within twenty-eight days after receipt of the notification and statement under section 87(2) or such other period as the Commission may specify, apply to the Tribunal for the dismissal to be reviewed.

(2) A statement made by the Commission under section 87(2)(b) shall be submitted by the Commission to the Tribunal.

(3) Where the complainant's allegations or its suspicions have been substantiated on investigation by the Commission, the Commission may direct that the complaint may be resolved by—

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- (a) alternative dispute resolution; or
- (b) inquiry by the Tribunal.

Referral to alternative dispute resolution

89.—(1) If the Commission is of the opinion that, having regard to the nature and subject matter of a complaint, the complaint may be resolved by alternative dispute resolution, the Commission may refer the complaint to alternative dispute resolution.

(2) The Commission shall assign a person, appointed under section 68, to carry on the alternative dispute resolution service in any complaint.

(3) The alternative dispute resolution shall be held in private.

(4) The Commission shall not participate in any alternative dispute resolution.

(5) Participation in the alternative dispute resolution is voluntary and any party may withdraw at any time.

(6) The alternative dispute resolution may be terminated at any time.

(7) Where an attempt to deal with a complaint by alternative dispute resolution under this section is unsuccessful—

(a) the complaint is to be treated as if the alternative dispute resolution had not taken place; and

(b) the person carrying on the alternative dispute resolution service is excluded from participating as an investigating officer in any subsequent investigation of the complaint.

(8) Anything said or admitted during the alternative dispute resolution and any document prepared for the purposes of an alternative dispute resolution shall not be admissible in evidence—

(a) in any subsequent investigation of the complaint concerned unless the person who said or admitted the thing, or to whom the document relates, consents to its admission; or

(b) against any person in any court or at any inquiry or in any other proceeding and no evidence in respect of the alternative dispute resolution may be given against any person.

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(9) Where a complaint has been settled by alternative dispute resolution, the settlement shall be embodied in a written agreement and registered with the Tribunal.

Referral by Commission to Tribunal

90.—(1) Subject to subsection (3), where the Commission is of the opinion that the nature or subject matter of a complaint cannot be resolved by alternative dispute resolution or it has attempted to resolve a complaint of that nature or the subject matter by alternative dispute resolution but has not been successful in that attempt, the Commission shall—

- (a) prepare a report relating to the investigation with its recommendations;
- (b) send a copy of the report to the parties to the complaint;
- (c) publish the report in accordance with subsection (3); and
- (d) make the report available for inspection by the public.

(2) Where the subject matter referred to in subsection (1) remains unresolved and the Commission complied with subsection (1), the Commission shall, with the consent and on behalf of the complainant, initiate proceedings before the Tribunal.

(3) The Commission may publish the report referred to in subsection (1)(c)—

- (a) either in full or part; and
- (b) in accordance with the limitations on disclosure and the anonymisation requirements under this Act.

Determination of provision of assistance by Commission

91.—(1) The Commission shall, in relation to a complaint, decide whether, and to what extent, to provide representation for a party who requests the Commission to provide representation in proceedings before the Tribunal or in related proceedings seeking to enforce a settlement reached under this Act.

(2) In making a decision whether, and to what extent, to provide representation to a party under subsection (1), the Commission—

- (a) shall have regard to the matters stated in subsection (3); and
- (b) may have regard to any other matter that the Commission considers relevant.

(3) The matters referred to in subsection (2)(a) are—

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- (a) whether the complaint raises a significant question of law;
- (b) whether resolution of the complaint would affect a large number of people (for example, because the proceedings would be brought by or affect a large group of persons);
- (c) the level of harm involved in the matters that are the subject of the complaint;
- (d) whether the proceedings in question are likely to be successful;
- (e) whether the remedies available through proceedings of that kind are likely to suit the particular case;
- (f) whether there is likely to be any conflict of interest in the provision by the Commission of representation to any person described in subsection (1);
- (g) whether the provision of representation is an effective use of resources; and
- (h) whether or not it would be in the public interest to provide representation.

(4) As soon as practicable after making a decision under this section, the Commission shall notify the parties—

- (a) of the decision and the terms of the decision; and
- (b) if the Commission has decided not to provide representation, the reasons for the decision.

Public inquiry

92. The Commission may conduct a public inquiry into a matter relating to the operation of this Act—

- (a) that raises an issue that is serious in nature; and
- (b) that relates to a class or group of persons, if the Commission considers that it is in the public interest.

Report of public inquiry

93.—(1) After conducting a public inquiry, the Commission shall provide a report on the public inquiry to the Minister.

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(2) Where the Commission provides a report to the Minister under subsection (1), the Minister shall cause a copy of that report to be laid in the National Assembly.

(3) The Commission may publish a report on a public inquiry, whether or not the report has been provided to the Minister.

Manner of conducting public inquiry or investigation

94.—(1) Subject to this Part, the Commission may conduct an investigation or public inquiry in the manner it thinks fit.

(2) In conducting an investigation or public inquiry the Commission is bound by the principles of natural justice, unless otherwise expressly provided in this Part.

Publication of evidence, information or documents

95. The Commission may give directions prohibiting or limiting the publication of—

- (a) any evidence given before the Commission or any information given to the Commission as part of an investigation or public inquiry; or
- (b) the contents of any document produced to the Commission as part of an investigation or public inquiry.

Failure by public authority to comply with duty

96.—(1) Where the Commission thinks that a public authority has not complied with a duty under Part III, the Commission has the power to serve a compliance notice.

(2) The compliance notice under subsection (1) may require compliance with the duty or provide an opportunity for the written proposal to show the steps that will be taken to ensure compliance.

(3) This written proposal under subsection (2) shall be produced to the Commission within twenty-eight days of receipt of the compliance notice under subsection (1).

(4) A compliance notice under subsection (1) may also require further information to be produced to the Commission for the purposes of assessing compliance.

(5) A person who receives a compliance notice under this section shall comply with it.

(6) Where a person fails to comply with a compliance notice, the Commission may apply to the Tribunal for an order requiring compliance.

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(7) A person aggrieved by a decision of the Commission to issue a compliance notice under this section may, within seven days after receiving the compliance notice, or such further period as the Tribunal allows, appeal against the decision in writing to the Tribunal.

(8) The Tribunal may, after considering an appeal made under subsection (7), by order in writing confirm, revoke or vary the compliance notice.

(9) The operation of a compliance notice shall be suspended pending the decision of the Tribunal under subsection (8).

(10) Where the Tribunal confirms a compliance notice or varies a compliance notice under subsection (8), and the person to whom the compliance notice was issued does not comply with the compliance notice as affirmed or varied that person commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months.

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PART X

The Equal Opportunities Tribunal

Establishment of the Tribunal

97.—(1) There is established a Tribunal to be known as the Equal Opportunities Tribunal.

(2) The Tribunal shall be a superior court of record and shall have, in addition to the jurisdiction and powers conferred on it by this Act, all the powers inherent in such a court.

(3) The Tribunal shall comprise a Judge of the High Court.

(4) The Tribunal shall have an official seal which shall be judicially noticed in all courts.

Jurisdiction of Tribunal

98.—(1) The Tribunal shall have jurisdiction to—

(a) hear and determine complaints referred to it by the Commission; and

(b) review decisions of the Commission to dismiss or reject a complaint.

(2) In the exercise of its jurisdiction the Tribunal may—

(a) require persons to attend before it for the purpose of giving evidence and producing documents;

(b) proceed to hear and determine a matter before it in the absence of any person who has been duly summoned to appear before the Tribunal and has failed to do so;

(c) order any person—

(i) who in the opinion of the Tribunal may be affected by an order or award; or

(ii) who in any other case the Tribunal considers it just to be joined as a party,

to be joined as a party to the proceedings under consideration on such terms and conditions as may be prescribed by rules made by the Chief Justice and published in the *Gazette*;

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- (d) refer a complaint to alternative dispute resolution, either before an inquiry is commenced or during an inquiry;
- (e) grant interim relief pursuant to an application;
- (f) make such declarations, orders and monetary awards as it thinks fit; and
- (g) generally give all such directions and do all such things as are necessary or expedient for the expedient and just hearing and determination of the complaint or any other matter before it.

(3) Subject to this Act, the Tribunal may, adopt such procedure it considers appropriate in the circumstances to determine a particular complaint.

Independence of Tribunal

99. The Tribunal shall not be subject to the direction or control of any other person.

Staff of Tribunal

100. There shall be appointed for the purpose of assisting the Tribunal in the performance of its functions a Registrar and such other officers and staff as the Minister thinks fit.

Procedure of Tribunal

101.—(1) The jurisdiction of the Tribunal and powers of the Tribunal are to be exercised by the Judge.

(2) Unless rules made under this section otherwise provide, the Tribunal shall give notice to the complainant and the respondent of the date fixed for the hearing which shall be at least fourteen days after the notice is received by the complainant and the respondent.

(3) The complainant or the respondent may appear before the Tribunal in person or by their attorneys-at-law.

(4) A summons signed by the Registrar of the Tribunal shall have the same force and effect as any formal process capable of being issued in any action taken in the High Court for enforcing the attendance of witnesses and compelling the production of documents.

(5) With the consent of the complainant and the respondent the Tribunal may order that written submissions be filed in addition to and in place of an oral hearing.

(6) The Chief Justice may make Rules, not inconsistent with this Act, governing the carrying on of the business of the Tribunal and the practice and procedure in

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connection with appeals, including the regulating of any matters relating to cost of proceedings before the Tribunal, but such Rules shall not have effect until it has been published in the *Gazette*.

(7) The Tribunal, in respect of the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry on inspection of the property, and other matters necessary or proper for the due exercise of its jurisdiction, shall have all such powers, rights and privileges as are vested in the High Court on the occasion of an action.

(8) Where the Tribunal exercises its powers to summon a person to give information under subsection (1), the Tribunal may direct that all or any part of the proceedings in the matter before it, as it may consider proper, be thereafter conducted in camera, and in any such case it may enjoin the parties or any of them and any member of the public and officers of the Tribunal from disclosing any such information given in their presence and hearing.

(9) A summons signed by the Registrar shall be equivalent to any formal process issuable in any action taken in the High Court for enforcing the attendance of witnesses and compelling the production of documents.

(10) The Tribunal may require evidence or argument to be presented in writing and may decide the matters upon which it will hear oral evidence or argument.

(11) The Tribunal may permit the Commission and other parties to appear before it as third parties, whether as *amicus curiae*, interveners or interested parties.

Special protection measures

102.—(1) The Tribunal may institute special protection measures to allow for a witness to give evidence during a hearing.

(2) For the purposes of this section, special protection measures include the following—

- (a) permitting a witness or other party to give evidence—
 - (i) from behind the screen;
 - (ii) from outside the courtroom via live video link; or
 - (iii) via a video recording statement to be played in court;
- (b) restricted attendance orders;

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- (c) intermediaries; or
- (d) any other measure designed to protect the safety and privacy of a witness.

Decision of Tribunal

103.—(1) After holding a hearing under this Act, the Tribunal may make an appropriate order including—

- (a) an order that the respondent shall not repeat or continue the discrimination or prohibited conduct;
- (b) an order for the payment of any damages in respect of any proven financial loss, including future loss, or in respect of impairment of dignity, pain and suffering or emotional and psychological suffering, as a result of the discrimination;
- (c) an order that the respondent shall re-employ the complainant;
- (d) an order that the respondent shall pay to the complainant, within a specified period, an amount of compensation or damages that the Tribunal thinks appropriate as for any loss or injury suffered by the complainant and caused by the respondent's discrimination or prohibited conduct;
- (e) an order for the implementation of special measures to address the unfair discrimination;
- (f) an order requiring the respondent to undergo an audit of specific policies or practices as determined by the Tribunal;
- (g) an order that a contract or agreement is to be varied or declared void in whole or in part;
- (h) an order requiring the respondent to make regular progress reports to the Tribunal or to the Commission regarding the implementation of the Tribunal order;
- (i) an order that it is inappropriate for any further action to be taken in the matter;
- (j) an order that within a specified period the respondent takes specified steps for the purpose of removing or reducing the adverse effect of any matter to which the proceedings relate—

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- (i) on the complainant; or
- (ii) on any other person;
- (k) an order to pay a specified sum to an organisation or fund that is acceptable to the Tribunal; or
- (l) any other order the Tribunal thinks appropriate.

Support friend

104. In any proceedings before the Tribunal, any person may attend as a friend of either party and such person may take notes, may quietly make suggestions, and give advice, and the Tribunal may allow the person to take part in the proceedings as an advocate, subject to the rules of the Tribunal.

Reconciliation

105. In any matter before the Tribunal, it shall make all such suggestions and do all such things as appear to be right and proper for reconciling the parties.

Recovery of compensation or damages

106.—(1) On the expiration of the time fixed for compliance with an order or award for the payment of compensation or damages, the amount thereof shall become due and payable and is recoverable in the manner provided by this section.

(2) Compensation or damages are, upon a certificate issued by the Registrar stating that the amounts specified therein are due and payable under an order or award of the Tribunal—

- (a) recoverable summarily as a civil debt; or
- (b) recoverable in the manner provided in subsection (3),

by the person for whose benefit the order or award for such compensation or damages was made.

(3) Upon the filing of a certificate issued under subsection (2) in the Registry of the High Court, the order or award for compensation or damages shall as from the date of filing be of the same force and effect and proceedings may be taken thereon and the order or award may be enforced as if it had been a judgment originally obtained or entered upon the date of filing in the High Court.

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(4) The High Court shall have the same control and jurisdiction over the order or award for compensation or damages as it has over the judgements given by itself but only in so far as it relates to execution.

(5) All costs and charges incurred under this section shall be recoverable in like manner as if included in the certificate.

Effective date of order

107. An order or award in any matter referred to the Tribunal for determination may be made operative from such date as the Tribunal may consider fair and just having regard to all the circumstances of the case.

Appeal

108.—(1) Any party to a matter before the Tribunal is entitled as of right to appeal to the Court of Appeal.

(2) On hearing of an appeal in any matter brought before it under this Act, the Court of Appeal shall have power—

- (a) if it appears to the Court of Appeal that a new hearing should be held, to set aside the order or award appealed against and order that a new hearing be held; or
- (b) to order a new hearing on any question without interfering with the finding or decision upon any other question, and the Court of Appeal may make such final or other order as the circumstances of the matter may require.

(3) The Court of Appeal may in any matter brought on appeal before it, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred although it is of the opinion that any point raised in the appeal might have been decided in favour of the appellant.

Order or award to be binding

109. An order or award of the Tribunal shall be binding on—

- (a) all parties who appear or are represented before the Tribunal; and
- (b) all persons who have been summoned to appear as parties, whether they have appeared or not.

PART XI

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Financial and Administrative Provisions

Funds of Commission

110.—(1) The funds of the Commission shall consist of—

- (a) such sums as may from time to time be appropriated by the National Assembly for the purposes of the Commission; and
- (b) such sums as may in any manner become payable or vested in the Commission from any lawful source.

(2) The Commission shall cause to be prepared proper estimates of receipts and expenditure in respect of the performance of its functions for each financial year and the estimates shall be submitted to the Minister with responsibility for finance not later than such date as the Minister with responsibility for finance may direct.

Funds of Tribunal

111.—(1) The funds of the Tribunal shall consist of monies that are appropriated to the Tribunal by the National Assembly for the purposes of this Act.

(2) The Tribunal shall cause to be prepared proper estimates of receipts and expenditure in respect of the performance of its functions for each financial year and the estimates shall be submitted to the Minister with responsibility for finance not later than such date as the Minister with responsibility for finance may direct.

Accounts and audit

112.—(1) The Commission and the Tribunal shall cause proper accounts of all financial transactions of the Commission and the Tribunal to be kept in a form as the Auditor General may direct.

(2) The Commission and the Tribunal shall, within three months after the end of each financial year, prepare a statement of the accounts of the Commission and the Tribunal.

(3) The accounts required to be kept under subsection (1) and the statement of accounts required to be prepared under subsection (2) shall be audited, as soon as practicable and in any case within four months after the end of each financial year, by the Auditor General or an auditor appointed for the purpose by the Auditor General.

Fee prohibited

113. A person shall not be required to pay any fee in respect of a complaint or for any alternative dispute resolution or investigation undertaken under this Act.

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Costs

114. In any matter before the Tribunal, costs shall not be awarded unless a party has acted unreasonably.

Exemption from taxes

115. The Commission and the Tribunal are exempt from the payment of taxes, duties, levies, and fees on income, property and documents.

PART XII

Miscellaneous

Conflict of interest

116.—(1) Where a commissioner or the Judge of the Tribunal has any actual or reasonably perceived interest in a complaint, the commissioner or Judge shall disclose the nature of such interest at the first practicable opportunity and shall not deal with the complaint.

(2) If a commissioner or the Judge of the Tribunal has dealt with a complaint before such interest has been identified or disclosed, the investigation by the Commission or the proceedings before the Tribunal, as the case may be, relating to such complaint shall be null and void.

(3) Where a situation arises under subsection (1), a fit and suitable person shall be appointed in accordance with this Act to act for the commissioner or the Judge of the Tribunal, as the case may be, to deal with the complaint as a new complaint.

Oath or affirmation of secrecy and confidentiality

117. A person appointed under section 68 or 100 shall be required to take the oath of secrecy or make the affirmation of secrecy set out in Schedule 2.

Maintenance of secrecy

118.—(1) Each commissioner and every person appointed under section 68 or 100 shall, subject to subsections (2) and (3), maintain secrecy in respect of all matters that—

(a) arise from any investigation or complaint made to the Commission; and

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- (b) come to the actual knowledge of the commissioner or person appointed under section 68 or 100 in the exercise of the commissioner's or person's functions.
- (2) A person who is, or has at any time been a commissioner or employed by the Commission or a member of the staff of the Tribunal shall not, either directly or indirectly—

 - (a) make a record of, or divulge or communicate to any person, any information relating to the affairs of another person acquired because of the person's office for the purposes of this Act;
 - (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 Act.
- (3) Subsection (1) shall not apply so as to prevent a commissioner or any person appointed under section 68 or 100 from—

 - (a) disclosing in the course of proceedings for an offence under this Act, matter relevant to those proceedings;
 - (b) reporting evidence of any crime to such authority as the person or member of staff considers appropriate;
 - (c) disclosing to a person any matter referred to in subsection (1) which, in the opinion of the commissioner or the person so appointed—

 - (i) may be grounds for a complaint by that person; or
 - (ii) is necessary to be disclosed to that person for the purposes of investigating a complaint or deciding whether an investigation should be undertaken, continued or discontinued.
 - (d) making a record of information that is required or permitted by a written law to be recorded, if the record is made for the purposes of or under that written law; or
 - (e) divulging or communicating information, or producing a document that is required or permitted by a written 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 written law.

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(4) Subject to subsection (3), the Commission and the Tribunal may disclose in any report or decision made under this Act such matters as in their opinion ought to be disclosed in order to establish grounds for their conclusions and recommendations.

(5) A person who fails to comply with subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years, or both.

Offences

119. A person who—

- (a) without lawful excuse, wilfully obstructs, hinders, interferes with or resists the Commission, the Tribunal or any other person in the performance of their functions under this Act;
- (b) without lawful excuse, refuses or wilfully fails to comply with any lawful requirement of the Commission or the Tribunal or any other person under this Act;
- (c) destroys or alters, or causes to be destroyed or altered, any document, or other mater or thing required to be produced under this Act; or
- (d) wilfully makes any false statement to or misleads or attempts to mislead the Commission or the Tribunal or any other person in the exercise of the person's functions under this Act,

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years, or both.

Offence: Failure to comply with order of Tribunal

120. A person who fails to comply with an order of the Tribunal given under this Act commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding three years, or to both.

Liability of directors etc.

121.—(1) Subject to subsection (2), if—

- (a) an employee or agent of a person does an act in connection with the employee's duties as an employee or agent; and
- (b) the act is unlawful under this Act if it were done by the person,

this Act applies as if the person has also done the act.

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(2) Subsection (1) does not apply to an act done by an employee or agent of person if it is established that the person took all reasonable steps to prevent the employee or agent from doing the act.

Vicarious liability

122. Where an offence against the provisions of the Act is committed by a partnership, company, association or other body of persons, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such partnership, company, association or other body of persons or was purporting to act in such a capacity shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

Protection from liability

123. A commissioner, member of the Tribunal or officer or employee of the Commission or Tribunal shall not be held to be personally liable for anything done, permitted to be done or omitted to be done in good faith in the exercise or purported exercise of the person's functions under this Act.

Discrimination questionnaire

124.—(1) Subject to the provisions of this Act, a person who believes that a contravention of this Act has occurred—

- (a) in relation to that person; or
- (b) in the case of a person intending to lodge make a complaint, in relation to another person,

may request information relevant to the alleged contravention of the Act from the person who is alleged to have contravened the Act.

(2) A request under subsection (1) shall be in the form of a questionnaire issued and approved by the Commission.

(3) The Commission shall have regard to a questionnaire completed by a person to whom a request is made under subsection (1) or a person's failure to complete a questionnaire when requested in determining whether or not to accept a complaint under section 81, and in the conduct of investigations under section 83.

(4) A questionnaire completed by a person to whom a request is made under subsection (1) is admissible in proceedings before the Tribunal.

(5) The Tribunal may draw an inference from—

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- (a) a failure by a person to whom a request is made under subsection (1) to complete a questionnaire; or
- (b) an evasive or equivocal answer,

unless it would be unreasonable or unjust in the circumstances.

(6) Subsection (5) shall not apply if the person to whom a request is made under subsection (1) reasonably asserts that—

- (a) to have answered differently or at all might have prejudiced a criminal matter;
- (b) to have answered differently or at all would have revealed the reason for not commencing or not continuing criminal proceedings; or
- (c) the information falls within the scope of section 84(2), (3), (4) or (5).

Burden of proof

125. (1) If the complainant makes out a *prima facie* case of discrimination—

- (a) the respondent shall prove, on the facts before the Tribunal, that the discrimination did not take place as alleged; or
- (b) the respondent shall prove that the conduct is not based on one or more of the protected characteristics.

(2) If the discrimination on the basis of a protected characteristic did take place, then it constitutes a breach of the Act, unless the respondent proves that the conduct falls within an exception under Part IV.

(3) This section does not apply to proceedings for an offence under this Act.

Proof of exceptions

126. Where by any provision of this Act, conduct is excepted from conduct that is unlawful under this Act, or that is a contravention of this Act, the onus of proving the exception lies upon the party claiming the exception.

Commission's report

127.—(1) The Commission shall, within six months after the end of each financial year, submit to the Minister—

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- (a) a full report on the performance of the functions of the Commission during that financial year, which shall include—
 - (i) a general survey and statistics in relation to complaints received by the Commission;
 - (ii) the results of alternative dispute resolutions and investigations conducted under this Act;
 - (iii) steps taken to implement its recommendations; and
 - (iv) any other matter or development it thinks fit; and
- (b) a copy of the annual strategic statement required under section 75 and the auditor's report on that statement of accounts.

(2) No information or data shall be provided with respect to any particular complaint under this Act.

(3) The Minister shall cause the reports of the Commission to be laid in the National Assembly within a period of three months of the date of their receipt.

Amendment of Schedules

128.—(1) The Minister may by Order amend the Schedules.

(2) An Order made under subsection (1) shall be subject to negative resolution of the National Assembly.

Regulations

129.—(1) The Minister may make Regulations for the purpose of giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), Regulations made under subsection (1) may, in particular—

- (a) prescribe anything required to be prescribed under this Act;
- (b) make further provision relation to alternative dispute resolution including the procedures to be followed; or
- (c) provide exceptions to any provision of this Act.

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Consequential amendments of enactments

130. The enactments specified in first column of the table in the Schedule 3 are amended as specified in the second column of the table in that Schedule, being minor amendments and amendments consequential on the provisions of this Act.

Commencement.

131. The following provisions of this Act shall come into force two years after the date that the Act is published—

- (a) Part II;
- (b) Part IV;
- (c) Part V;
- (d) Part IX;
- (e) Part X; and
- (f) section 130.

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SCHEDULE 1

(Section 60(6))

OATH OR AFFIRMATION OF OFFICE FOR COMMISSIONERS

I, A. B., having been appointed as a commissioner of the Equal Opportunities Commission do swear by (solemnly affirm) that I will bear true faith and allegiance to [] and will uphold the Constitution and the law, and I will conscientiously, impartially and to the best of my knowledge, judgement and ability discharge the functions of my office and do right to all manner of people after the laws and usages of [] without fear or favour, affection or ill-will.

This [] day of [20---]

SCHEDULE 2

(Section 117)

OATH OR AFFIRMATION OF SECRECY

Form of oath to be taken by staff of the Commission and of the Tribunal.

I,.....(name) [swear/affirm] that I will well and faithfully discharge the duties as a [staff member/person carrying on an alternative dispute resolution service /adviser] of the [Equal Opportunities Commission] /[Equal Opportunities Tribunal] established pursuant to the Equal Opportunities Act 2022 and the Regulations made thereunder and that I will not without due authority in that behalf disclose or make known any matter or thing that comes to my knowledge by reason of my office.

SCHEDULE 3

(Section 130)

CONSEQUENTIAL AMENDMENTS TO OTHER ENACTMENTS

Enactment	Amendment
Education and Training Act 2010	The Education and Training Act, 2010 is amended by repealing section 48(1) and substituting the following subsection— “(1) No person shall be refused admission to any school on the ground of a protected characteristic as defined in section 2 of the Equal Opportunities Act, 2022.”.
Family and Children’s Act, Cap. 173	The Family and Children’s Act, Cap. 173 is amended by inserting after Part V, the following Part— “Part VA Protective Measures relating to the health of children Access to health services 47A (1) Notwithstanding the provisions of any other law in force in Belize, any person over the age of sixteen may give consent to, and access services related to, the prevention, diagnosis and care of all sexually transmitted infections and diseases. (2) The consent of the parent, parents or legal guardian of a person referred to in subsection (1) shall not be necessary to access the services referred to in that subsection. 47B. Notwithstanding the provisions of any other law in force in Belize— (a) the implementation or use of any strategy approved by the Minister with

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	<p>responsibility for health for reducing the risk of transmission of sexually transmitted diseases or infections; or</p> <p>(b) the provision of or possession of any tool or paraphernalia or reduction of risk of such transmission,</p> <p>shall not be prohibited impeded, restricted or prevented and shall not be a criminal offence or attract civil liability.”.</p>
<p>Immigration Act, Cap. 156</p>	<p>Immigration Act, Cap 156 is amended in subsection (1) by deleting paragraph (e).</p>
<p>Labour Act, Cap. 297</p>	<ol style="list-style-type: none"> 1. The Labour Act, Cap. 297 is amended in section 16 by inserting the following proviso at the end of subsection (1)– <ul style="list-style-type: none"> “Provided that no records so required to be kept shall contain any information as to the HIV/AIDS status of any worker.”. 2. The Labour Act, Cap. 297 is amended by inserting after section 30 the following subsections– <ul style="list-style-type: none"> “(2) No contract of service shall contain any term requiring any worker to undergo and mandatory HIV/AIDS testing as a prerequisite for acquiring or maintaining employment. (3) Any term in any contract of service that contravenes subsection (1) or subsection (2) shall be void and of no effect.”. 3. The Labour Act, Cap. 297 is amended in section 40 by inserting after subsection (2), the following subsection <ul style="list-style-type: none"> “(3) No worker may be terminated by notice or otherwise on the basis of the worker’s HIV/AIDS status and no employer shall in any way discriminate against any worker on the basis of the worker’s HIV/AIDS status.”.

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	<p>4. The Labour Act, Cap. 297, section 53 is amended by inserting after subsection (4), following new subsections–</p> <p>“(5) No medical examination required under this section shall include any mandatory HIV/AIDS test and no worker shall be required to undergo any mandatory HIV/AIDS test.</p> <p>(6) Any term in any contract of service that contravenes subsection (5) shall be void and of no effect.”</p>

Passed in the National Assembly the [] day of [20---],

Speaker.

Passed in the [Senate] day [] of [20---],

President.