



PANCAP

PAN CARIBBEAN PARTNERSHIP AGAINST HIV AND AIDS

SCALING UP THE CARIBBEAN'S RESPONSE TO HIV AND AIDS

FINAL DRAFT

CARICOM MODEL ANTI-DISCRIMINATION BILL

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CARICOM MODEL ANTI-DISCRIMINATION BILL

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to provide for the protection of persons against discrimination, including discrimination involving harassment, victimisation and vilification on the grounds of [HIV status], [sexual orientation], [lawful sexual activity], [disability], [gender] and [status as an orphan]; and to provide for related matters.

Part 1, clauses 1-3, provides for preliminary matters.

Clause 1 provides for the short title and commencement.

Clause 2 contains definitions for words or terms used throughout the [Act/Law].

By virtue of **clause 3** the [Crown/State] would be bound by the provisions of the [Act/Law].

Part 2, Clauses 4 to 11, make provision for the prevention of discrimination in work:

Clauses 4-7 would prohibit an employer, a principal, or a partner in a partnership, from discriminating against a person, employee, commission agent or contract worker, as the case may be.

Under **clause 8**, a person who is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation is prohibited from discriminating against a person on the specified grounds by refusing or failing to confer, renew or extend the authorisation or qualification or in the terms or conditions on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification by revoking or withdrawing the authorisation or qualification or varying the terms or the conditions upon which it is held.

Under **clause 9**, a professional or industrial organisation, the management committee of a professional or industrial organisation or a member of the management committee of a professional or industrial organisation is prohibited from discriminating against a person, by refusing or failing to accept the person's application for membership or in the terms or conditions on which the professional or industrial organisation is prepared to admit the person to membership. Further, a professional or industrial organisation, the management committee of a professional or industrial organisation or a member of the management committee of a professional or industrial organisation is prohibited from discriminating against a person who is a member of the professional or industrial organisation, by denying the member access or limiting the member's access, to any benefit provided by the professional or industrial organisation, by depriving the member of membership or varying the terms of membership or by subjecting the member to any other detriment.

Clause 10 prohibits an employment agency from discriminating against a person by refusing to provide the person with any of its services, in the terms or conditions on which it offers to provide the person with any of its services or in the manner in which it provides the person

with any of its services. An employment agency is not required to ensure that an employer complies with the [Act/Law].

Clause 11 provides that **clauses 4 to 10** shall not apply where avoiding the discrimination would impose an unjustifiable hardship on the person performing the discrimination. In determining whether a hardship that would be imposed on a person would be an unjustifiable hardship, all relevant circumstances of the particular case must be taken into account, including the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned, the financial circumstances and the estimated amount of expenditure required to be made.

Part 2, clauses 12-22, provide for the prevention of discrimination on the specified grounds in various areas.

By virtue of **clause 12**, an educational authority is prohibited from discriminating against a person by refusing or failing to accept the person's application for admission as a student; in the terms or conditions on which it is prepared to admit the person as a student of such an educational institution. An educational authority is prohibited from discriminating against a student by denying the student access, or limiting the student's access, to any benefit provided by the educational authority, by expelling the student from an educational institution administered by the educational authority, or by subjecting the student to any other detriment. **Clause 12** is not applicable in respect of admission to an educational institution established wholly or primarily for students who have a particular disability or are of a particular gender where the person does not have that particular disability or is not of that particular gender.

By virtue of **clause 13** a prohibition is placed on discrimination regarding access to premises or facilities in the premises, for example, by refusing the person access to, or the use of, any premises or facilities in the premises, that the public or a section of the public is entitled or allowed to enter or use; in the terms or conditions on which that person is prepared to allow the other person access to, or the use of, any such premises or facilities in the premises.

In terms of use of premises, **clause 14** prohibits a person, from discriminating against another person by, for example, refusing the other person's application for use of premises; or by deferring the other person's application for use of the premises or according to the other person a lower order of precedence in any list of applicants for the premises.

Clause 15 prohibits discrimination by a person who, whether for payment or not, provides goods or services, or makes facilities available, for example, by refusing to provide another person with those goods or services or to make those facilities available to the other person. By virtue of *subclause (2)* the [Act/Law] would not prohibit 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 was affected by reference to actuarial or other data from a source on which it was reasonable to rely; and was reasonable having regard to the data and any other relevant factors.

Clause 16 prohibits a person, from discriminating against another person by refusing or failing to dispose of an estate or interest in land to the other person; or in the terms or conditions on which an estate or interest in land is offered to the other person. **Clause 16** shall not apply in relation to a disposal of an estate or interest in land by will or by gift.

Clause 17 prohibits an association, the management committee of an association from discriminating against a person who is not a member of the association, for example by refusing or failing to accept the person's application for membership; or in the terms or conditions on which the association is prepared to admit the person to membership.

By virtue of **clause 18**, a person is prohibited from discriminating against another person by excluding that other person from a sporting activity. However, the prohibition does not apply where the person excluded is not reasonably capable of performing the actions reasonably required in relation to the sporting activity; 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 gender, skills and abilities relevant to the sporting activity and relative to each other; or if a sporting activity is conducted only for persons who have a particular disability or is of a particular gender and that person does not have that disability or is not of that particular gender.

Clause 19 prohibits a person from discriminating against another person by denying or restricting that person from travelling within, or entering or exiting [name of Member State], or a place in [name of Member State]; or placing that person in quarantine or isolation or deporting that person from [name of Member State].

Clause 20 prohibits a person, who performs any function or exercises any power under a written law or for the purposes of a programme or has any other responsibility for the administration of a written law or the conduct of a programme, from discriminating against another person in the performance of that function, the exercise of that power or the fulfillment of that responsibility.

Discrimination with regard to requests for information is provided for in **clause 21**.

Clause 22 provides for the adoption of certain measures not to be declared as discrimination against a person.

Part 3, clauses 23 -30, prohibit discrimination by the harassment, victimisation, vilification and serious vilification of a person.

Clause 23 defines the term "public act" to include any form of communication to the public, any conduct observable by the public, and distribution or dissemination of any matter to the public.

Clause 24 provides that a person shall not discriminate against another person by harassing that other person.

Clause 25 provides that a person shall not discriminate against another person by an act of victimisation against that other person.

Clause 26 provides that a person shall not knowingly discriminate against another person by vilification or by a public act that knowingly incites hatred towards, contempt for, or ridicule of that person.

Clause 27 provides that a person shall not discriminate against another person by serious vilification or by threatening physical harm towards that other person, or towards any property

of that other person or inciting others to threaten physical harm towards, or towards any property of that other person.

Clause 28 prohibits a person from publishing or displaying; or causing or permitting 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/Law].

Clause 29 prohibits a person from inciting, or assisting or promoting, whether by financial assistance or otherwise, the contravention of a provision of this *Part*.

[By virtue of **clause 30**, [Part 2 and this *Part*] do not apply to an order of the court or anything done by a person in direct compliance with a written law.]

Part 4, clauses 31-36, provides for prevention and care and HIV testing.

By virtue of **clause 31**, [Part 4] is not applicable to discrimination against a person if the discrimination is reasonably necessary to protect national security, public health and public safety.

Clause 32 authorises the [Chief Medical Officer] to designate certain places as an HIV testing centre. **Clause 32** additionally provides for a health practitioner performing or otherwise involved in the performance of a HIV test to take all measures to ensure that the testing process is carried out promptly and efficiently and that the result of the HIV test is communicated in accordance with the [Act/Law].

Clause 33 provides for a person who is the owner, manager, or in charge of a HIV testing centre to 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.

Clause 34 provides a prohibition on compulsory testing but allows consent to be given in writing by the parent or guardian of a child or the representative of a person with an inability to comprehend the result of the HIV testing. **Clause 34** also provides for consent not to be required for HIV testing under an order of a court or of the donor of human organs and tissues. A person attending a health care facility must be counseled and offered HIV testing. **Clause 34 (8)** makes it an offence for a health practitioner to compel a person to undergo HIV testing without the knowledge or consent of that person but a health practitioner responsible for the treatment of a person may undertake HIV testing in respect of that person without the knowledge or consent of that person if the person is unconscious and unable to give consent and the health practitioner believes that the test is clinically necessary or otherwise desirable in the interest of the person.

Clause 35 provides for the results of an HIV test to be confidential and to be released confidentially and directly only to the person tested: Except that the results may be released confidentially and directly, in the case of a child, to his or her parent or [guardian]; in the case of a person with inability to comprehend the results, to his or her spouse or his or her representative; to the court; or to a third party with the consent in writing of the person who has undergone the test.

The observance of medical confidentiality in handling medical records is provided for in **clause 36** so that a health practitioner, worker, employer, recruitment agency, insurance company, data recorder and any other custodian of any medical record, file, data or test results shall observe confidentiality in the handling of all medical information and documents, particularly the identity and HIV status of a person.

Part 5, clauses 37-48, provides for the establishment and functions of the Anti-Discrimination Commission.

Clause 37 makes provision for the composition of the Commission. The members are to be appointed by the [Minister/President/Governor/Governor General after consultation with the Prime Minister and the Leader of the Opposition] and include an attorney at law of at least 10 years experience.

Clause 38 provides for the terms of office of the Chairperson, Deputy-Chairperson and other Commissioners. The tenure of a Commissioner is for a period of not less than 3 years, subject to eligibility for reappointment for a further term.

Clause 39 provides for the disqualification of membership on the Commission.

Clause 40 provides for the resignation of a Commissioner. Where it is a Commissioner other than the Chairperson it must be by notice in writing submitted to the Chairperson and where it is the Chairperson it must be by notice in writing to the [Minister/President/Governor/Governor General].

Under **clause 41**, the [Minister/President/Governor/Governor General after consultation with the Prime Minister and the Leader of the Opposition] is empowered to remove a Commissioner from office where, among other things, the Commissioner becomes disqualified, has been disqualified or suspended on grounds of personal misconduct by a competent authority from practising a profession or has been placed, by conduct or otherwise, in a position that is incompatible with the effective performance of the functions of his or her office.

Clause 42 makes provision for the circumstances in which an office of a Commissioner is vacated, namely by: death, disqualification, resignation, revocation or if the Commissioner's appointment is not renewed by the [Minister/President/Governor/Governor General after consultation with the Prime Minister and the Leader of the Opposition].

Clause 43 provides for a person to be the Secretary to the Commission.

Clause 44 provides for the Secretary of the Commission to publish in the *Gazette* the appointment, resignation, removal from office, or death of a Commissioner.

Clause 45 provides for the Commission to meet at such times as may be expedient for the Commission to carry out its functions.

Clause 46 provides for the appointment of staff and conciliators by the [Minister].

Clause 47 provides for the Commission to share staff, services, equipment and supplies with any other [Government] entity. **Clause 47** also provides for the expenses of the Commission

which includes the remuneration of Commissioners and any other expenses made pursuant to the carrying out of their functions.

Clause 48 provides for the address of and service of documents on the Commission.

Part 6, clauses 49-52, provides for the functions of the Anti-Discrimination Commission.

By virtue of **Clause 49** the Commission would work towards the elimination of discrimination against a person, receive, investigate and, as far as possible, conciliate complaints or allegations of discrimination against a person; collect and analyse data relating to complaints and to prepare and publish guidelines for the avoidance of discrimination against a person.

Clause 50 provides for the independence of the Commission and stipulates that the Commission is not subject to the direction or control of any other person or authority in the exercise of its functions.

Under **Clause 51**, the Commission may delegate any of its functions.

Clause 52 empowers the Commission, for the purpose of discharging the functions, to determine the procedures to be followed in any investigation or conciliation and adopt such procedures as it considers appropriate in the circumstances to investigate a particular complaint. The Commission may compel the production of documents or other matter or thing from any person the Commission has reasonable grounds to believe is committing, facilitating or has documents relating to discrimination, under this [Act/Law].

Part 7, clauses 53-62, provides for complaints, investigation and conciliation.

Clause 53 makes provision for the lodging of a complaint of discrimination to the Commission. enables a person who alleges that another person has discriminated against him or her or has contravened any provision in Parts 2 or 3 in relation to him or her, to lodge a [written] complaint [in the set out in Schedule 2/the prescribed form] with the Commission [setting out the details of the alleged act of discrimination and identifying the person against whom the complaint is made.

Clause 54 provides for the withdrawal of a complaint and states that a complainant may apply to the Commission to withdraw a complaint and an application to withdraw a complaint shall be accompanied by a statement of the reasons for the withdrawal identifying the person against whom the complaint is made.

Clause 55 provides for the investigation of complaints by the Commission. Where a complaint lodged under *section 53 (2)* is lodged by a person other than the individual who is alleged to be the victim of the discrimination, on grounds of HIV status, sexual orientation, lawful sexual activity, status as an orphan, disability and gender to which the complaint relates, the Commission may refuse to deal with the complaint unless the alleged victim consents to the lodging of the complaint. For the purpose of discharging its functions the Commission is charged with powers of investigation.

Clause 56 empowers the Commission to request information from any person in the exercise of its functions.

Clause 57 imposes certain restrictions on complaints for and discontinuation of an investigation; to this end the Commission may not undertake an investigation in a complaint or discontinue an investigation of a complaint where it appears to the Commission that the complaint relates to action of which the complainant has had knowledge for more than [6 months] before the complaint was received by the Commission, the complaint, or a complaint of a substantially similar nature, has previously been the subject of an investigation as a result of which the Commission was of the opinion that there had been no evidence of discrimination against the person.

By virtue of **Clause 58**, where after an investigation of a complaint, the Commission finds that there is no evidence of discrimination, it shall dismiss the complaint, inform the complainant in writing and give its reasons therefor, whereupon no further action shall be taken by the Commission; where the complainant's allegations or its suspicions are frivolous or vexatious or that its suspicions are incorrect, the Commission shall dismiss the complaint and notify the complainant and the person against whom the claim was made in writing and give its reasons therefor.

Clause 59 stipulates the action to be taken following investigation by and decision of the Commission, namely: a complainant whose complaint is dismissed may apply to the Tribunal within 28 days after receipt of the decision of the Commission for the dismissal to be reviewed. However, where the complainant's allegations or its suspicions have been substantiated on investigation by the Commission it may direct that the complaint may be resolved by conciliation by a conciliator or inquiry by the Tribunal.

Clause 60 provides for complaints to be resolved by conciliation if the Commission is of the opinion that the subject matter of the complaint involves no, or a minor form of discrimination against a person. The Commission shall assign a person, appointed conciliator under section 46, to be the conciliator in any complaint. The Commission shall not participate in any conciliation. Where a complaint has been settled by conciliation, the settlement shall be embodied in a written agreement and registered with the Tribunal.

Clause 61 provides for the initiation of proceedings by the Commission before the Tribunal with the consent and on behalf of the complainant, where the Commission is of the opinion that the [nature or subject matter of a] complaint cannot be resolved by conciliation or it has attempted to resolve a complaint of that [nature or the subject matter] by conciliation but has not been successful in that attempt.

By virtue of **clause 62** where at any stage after the filing 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 Tribunal for approval or rejection. If the Commission approves or rejects the terms of a settlement it will certify the same and notify the parties. A settlement which is approved by the Commission may, for the purpose of enforcement, be registered with the Tribunal as an order of the Tribunal.

Part 8, clauses 63-73 provides for the establishment of the Anti-Discrimination Tribunal, the jurisdiction of the Tribunal, staff of and the procedures to be adopted by the Tribunal.

Clause 63 provides for the establishment of Anti-Discrimination Tribunal; as a superior court of record. The Tribunal shall have, in addition to the jurisdiction and powers conferred on it by

this [Act/Law] all the powers inherent in such a court. The Tribunal shall comprise a Judge of the High Court.

Clause 64 stipulates the jurisdiction of the Tribunal. The Tribunal shall have jurisdiction to hear and determine discrimination complaints referred to it by the Commission. In the exercise of its jurisdiction the Tribunal may require persons to attend before it for the purpose of giving evidence and producing documents.

By virtue of **Clause 65** the Tribunal shall not be subject to the direction or control of any other person.

Clause 66 addresses the appointment of staff of the Tribunal.

Clauses 67 and 68 provide for the procedure to be adopted by the Tribunal. The complainant and the respondent may appear before the Tribunal in person or by their attorney-at-law. The Tribunal, shall have all the powers, rights and privileges as are vested in the High Court of Justice on the occasion of an action as respects the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry on inspection of property, and other matters necessary or proper for the due exercise of its jurisdiction.

Clause 69 provides that 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.

Clause 70 provides for the payment of compensation or damages to an aggrieved party.

Under clause 71 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.

Clause 72 provides for the hearing of appeals from the decisions of the Tribunal by the Court of Appeal.

Under clause 73 an order or award of the Tribunal shall be binding on all parties who appear or are represented before the Tribunal; and all persons who have been summoned to appear as parties, whether they have appeared or not.

Part 9, clauses 74-78, provides for financial administrative provisions.

By virtue of **clause 78** the Commission and the Tribunal would be exempt from the payment of taxes, duties, levies, and fees on its income, property and documents.

Part 10, clauses 79-87, contains miscellaneous provisions.

Clause 79 makes it mandatory for a Commissioner to declare any interest in a matter before the Commission.

Under clause 80 the staff of the Commission and the Tribunal shall be required to take the oath of secrecy set out in Schedule 3.

Clause 81 provides for the preservation of confidentiality on the part of a Commissioner and a conciliator.

Clause 82 makes it an offence for a person who without lawful excuse, to wilfully obstruct, hinder, interfere with or resist the Commission, the Tribunal or any other person in the performance of their functions under this [Act/Law].

A person who fails to comply with an order of the Tribunal also commits an offence under **clause 83**.

Clause 84 provides for the protection of a Commissioner from liability in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of his or her functions under the [Act/Law].

Under clause 85 the Commission shall, within [3/6 six months] after the end of each [financial year/calendar year], submit to the [Minister/President/ Governor/Governor General] a full report on [its operations/ the performance of the functions of the Commission] during that [financial year/calendar year], which shall include a general survey and statistics in relation to complaints received by the Commission.

Clause 86 provides for the Minister to amend the Schedules by Order.

The power of the Minister to make Regulations after consultation with the Commission is contained in **clause 87**.

The oath (or affirmation) of office for Commissioners is contained in *Schedule 1*.

The complaint form to be filled out by complainant or his or her delegate is contained in *Schedule 2*.

The oath of secrecy to be taken by members of the Tribunal is contained in *Schedule 3*.

CARICOM MODEL ANTI-DISCRIMINATION BILL

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[Member State]

—————
No. of 2012

**A
Bill
Entitled**

An [Act/Law] to provide for the protection of a person against discrimination, including discrimination involving harassment, victimization and vilification on the grounds of [HIV status], [sexual orientation,] [lawful sexual activity], [disability], [gender] and [status as an orphan]; and to provide for related matters.

[Date]

[BE IT ENACTED.....]—

**PART 1
PRELIMINARY**

1. Short title and commencement

- (1) This [Act/Law] may be cited as the Anti-Discrimination [Act/Law] [20--].
- (2) This [Act/Law] shall come into force on a date to be fixed by the [Minister by Order published in the *Gazette*].

2. Interpretation

(1) In this [Act/Law] [unless the context otherwise requires] —

“act” includes an omission;

“AIDS” means Acquired Immune Deficiency Syndrome, being the condition characterized by a combination of signs and symptoms, caused by HIV and which attacks and weakens the body’s immune system, making the affected individual susceptible to other life threatening infections;

“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 —

(a) any person with whom the person associates, whether socially or in business or commerce, or otherwise; and

(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 chairperson of the Commission under section [37(4)];

[“child” includes a natural child, adopted child, stepchild or foster child who —

(a) is [unmarried and is] under the age of [sixteen/eighteen] years;] or

(b) has attained the age of [sixteen/eighteen] years and is wholly or substantially dependent on one or both of his or her parents, for care or support;]

“Commission” means the Anti-Discrimination Commission established under section [37(1)];

“Commissioner” means a person appointed under section [37(2)] [as a Commissioner of the Commission;

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

“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 he or she 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 it in subsection (2);

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

“educational authority” in relation to an educational institution, means a person 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 his or her 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 where appropriate; and

(b) includes a prospective employer being a person or body of persons who or which 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;

“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;
- “gender” means the state of being male or female or transsexual;
- “harassment” has the meaning assigned to it in section [24];
- “health care facility” means a facility that provides health care services to the public;
- “health practitioner” has the meaning assigned to it under the [Health Practitioners Act];
- “HIV” means Human Immunodeficiency Virus, being the virus which causes AIDS;
- “HIV negative” means the absence of HIV or HIV antibodies upon HIV testing;
- “HIV positive” means the presence of HIV or HIV antibodies in the body of a person upon HIV testing;
- “HIV status” means the status of being HIV positive;
- “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 Minister pursuant to section [32];
- “industrial organisation” means an employees’ organisation or an employers’ organisation;
- “judge” includes a judge of the Supreme Court;
- “Minister” means the Minister responsible for [];
- [“orphan” means a child who has lost a parent or both parents through death as a result of the parent’s or parents’ HIV status;]
- “parent” includes a step parent, adoptive parent and foster parent;
- “person” includes an individual, an unincorporated body and a body corporate;
- “post-test counseling” 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 counseling” means the process of providing an individual before he or she 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;

“principal” means —

- (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;

“services” includes but is not limited to —

- (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/State] or a public authority;
- (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;

“sexual activity” means activity associated with sexual relations and includes not engaging in or refusing to engage in sexual relations;

[“sexual orientation” means a person’s preference in sexual relations;]

“trade union” has the meaning assigned to it under the [Trade Union Act];

“Tribunal” means the Anti-Discrimination Tribunal established under section [63];

“victimisation” has the meaning assigned to it in section [25(2)];

“voluntary HIV testing” means HIV testing done on an individual who after having undergone pre-test counseling, willingly submits to such testing.

- (2) For the purposes of this [Act/Law], a person has a disability, if that person has a physical or mental impairment and that impairment has a substantial or long term adverse effect on the person’s ability to carry out normal day to day activities.

- (3) For the purposes of this [Act/Law], the term “discriminate against” means to make a distinction, create an exclusion, or show a difference in treatment in relation to a person, whether directly or indirectly, by reason of that person falling within a particular description by virtue of that person’s —

- (a) [HIV status];
- (b) [sexual orientation];
- (c) [lawful] sexual activity;
- (d) [disability];
- (e) [status as an orphan]; or
- (f) [gender],

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

3. [Act/Law] to bind [Crown/State]

This [Act/Law] binds the [Crown/State].

PART 2

PREVENTION OF DISCRIMINATION IN EMPLOYMENT AND OTHER AREAS

4. Discrimination in employment

- (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; or
 - (c) in the terms or conditions on which employment is offered.
- (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.

5. Discrimination against commission agent

- (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.

6. Discrimination against contract workers

- 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.

7. Partnerships

- (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.

8. Qualifying bodies

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

9. Professional and industrial organisations

- (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.
- (3) For the purposes of this section —
 - (a) “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”; and
 - (b) “industrial organisation” means an organisation relating to or concerned with workers in an industry.

10. Employment agencies

- (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/Law].

11. Exception-unjustifiable hardship

- (1) Sections [4] to [10] 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 this section, in determining whether a hardship that would be imposed on a person would be an unjustifiable hardship, all relevant circumstances of the particular case must 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
 - (c) the availability of financial and other assistance to the person on whom the hardship is imposed.
- (3) For the purposes sections [4] to [10], the burden of proving that something would impose unjustifiable hardship lies on the person claiming unjustifiable hardship.

12. Education

- (1) An educational authority shall not discriminate against a person —
 - (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 —
 - (a) by developing curricula or training courses that will either exclude the person from participation, or subject the person to any other detriment; or
 - (b) by accrediting curricula or training courses.
- (4) This section shall not apply in respect of admission to an educational institution established wholly or primarily for students who have a particular disability or are of a particular gender where the person does not have that particular disability or is not of that particular gender.

13. Access to premises

A person shall not discriminate against another person, in relation to any premises, or facilities in the 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;
- (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 facilities in the premises; or
- (g) by subjecting the other person to any other detriment.

14. Transactions relating to premises

(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;
- (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, 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;
 - (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 if —
 - (a) the premises is provided by a charitable or other voluntary body solely for persons who have a particular disability; and
 - (b) the person discriminated against does not have that particular disability.
- (5) For the purposes of this section “transactions relating to premises” include buying, selling, renting, negotiating, listing, advertising, inspecting, or financing and the terms, conditions, privileges, services or facilities connected to the transactions.

15. Goods, services and facilities in premises

- (1) A person who, whether for payment or not, provides goods or services, or makes facilities available, shall not discriminate against another person who seeks to obtain those goods or services or use those facilities —
 - (a) by refusing to provide the other person with those goods or services or to make those facilities available to the other person;
 - (b) in the terms or conditions on which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person; or
 - (c) in the manner in which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person.

- (2) Nothing in this [Act/Law] 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.

16. Land

- (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 disposal of an estate or interest in land by will or gift.

17. Association

- (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 (however described) of the association are restricted only to persons who have a particular disability or are of a particular gender and the first-mentioned person does not have that disability or is not of that particular gender.
- (4) In this section “association” means an incorporated or unincorporated body of persons associated together for a lawful purpose.

18. Sport

- (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 gender, 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 gender and the first-mentioned person does not have that disability or is not of that particular gender.

[19. Travel, etc.

A person shall not discriminate against another person by —

- (a) denying or restricting his or her travel within, entry into or exit from [name of Member State] or a place in [name of Member State];
- (b) placing him or her in quarantine or isolation; or
- (c) deporting him or her from [name of Member State].]

20. Administration of laws and programmes

- (1) A person who —
- (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.
- [(2) For the avoidance of doubt, in this section a “programme” includes any programme undertaken by any person.]

21. Requests for information

Subject to section 30, a person shall not request or require another person (whether by completing a form or otherwise) to provide information, where the information requested or required would cause the first-mentioned person to discriminate against the other person.

22. Special measures

- (1) The adoption by a person of a special measure as described in subsection (2) is declared not to be an act that discriminates against another person.
- (2) A special measure referred to in subsection (1) shall —
- (a) be designed to promote equality of opportunity for a disadvantaged group
 - (b) be appropriate to the situation to be remedied;
 - (c) be legitimate;
 - (d) be necessary in a democratic society;
 - (e) respect the principles of fairness and proportionality;
 - (f) be temporary; and
 - (g) be designed and implemented on the basis of need, founded on a realistic appraisal of the current situation of the individuals and communities concerned and carried out on the basis of accurate data.

PART 3
PREVENTION OF DISCRIMINATION, INVOLVING HARASSMENT,
VICTIMISATION AND VILIFICATION

23. Interpretation of words used in this Part

For the purposes of sections [26] and [27], “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.

24. Harassment

- (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 —
 - (i) violating that other person’s dignity; or
 - (ii) 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 must 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
 - (c) all of the other circumstances of the case.

25. Victimisation

- (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/Law] against any person;
 - (ii) has brought, or proposes to bring, proceedings under this [Act/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/Law];
 - (iv) has attended, or proposes to attend, a conciliation or hearing held under this [Act/Law];
 - (v) has appeared, or proposes to appear, as a witness in a proceeding under this [Act/Law];
 - [(vi) has reasonably asserted, or proposes to assert, any rights to which he or she or any other person is entitled under this [Act/Law]; or]
 - (vii) has made an allegation that a person has done an act which contravenes this Part; 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) A person who contravenes this section commits an offence and is liable on summary conviction to a [fine not exceeding [\$5000] or to imprisonment for a term not exceeding [12] months]].

26. Vilification

- (1) A person shall not discriminate against another person by vilification of that other person.
- (2) A person discriminates against another person by vilification of that other person if that first-mentioned person knowingly, by a public act, incites hatred towards, contempt for, or ridicule of that other person.

- (3) Nothing in this section renders the following a contravention of subsection (1) —
- (a) a fair report of a public act referred to in subsection (2);
 - (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 and expositions of any act or matter.
- [(4) A person who contravenes subsection (1) commits an offence [of vilification] and is liable on summary conviction to a [fine not exceeding [\$5000] or to imprisonment for a term not exceeding [12] months, or to both.]]

27. Serious vilification

- (1) A person shall not discriminate against another person or a group of persons by serious vilification of that other person or group of persons.
- (2) A person discriminates against another person or a group of persons by serious vilification if that first mentioned person, by a public act, incites hatred towards, serious contempt for, or severe ridicule of the other person or group of persons, by means which include —
- (a) threatening physical harm towards, or towards any property of, the other person or group of persons; or
 - (b) inciting others to threaten physical harm towards, or towards any property of, the other person or group of persons.
- [(3) A person who contravenes this section commits an offence [of serious vilification] and is liable on summary conviction to a [fine not exceeding [\$10,000] or to imprisonment for a term not exceeding [2] years, or to both.]]

28. Advertisements

- (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/Law].
- [(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a [fine not exceeding [\$5000] or to imprisonment for a term not exceeding [12] months.]]

- (3) 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 exhibition of pictures, models or films; or
 - (f) in any other way.

29. Promotion of unlawful acts

- (1) A person shall not assist or promote, whether by financial assistance or otherwise, the contravention of a provision under this Part.
- [(2) A person who contravenes subsection (1) commits an offence and is liable [on summary conviction to a fine not exceeding [\$10,000] or to imprisonment for a term not exceeding [2] years.]]

[30. Acts done under statutory authority or order of court

Part 2 and this Part shall not apply to —

- (a) an order of a court; or
- (b) anything done by a person in direct compliance with a written law.]

**PART 4
PREVENTION AND CARE**

31. Public interest considerations

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.

32. HIV testing centres

- (1) For the purposes of facilitating HIV testing, the [Chief Medical Officer] shall in writing designate any public health care facility or an HIV testing centre as an HIV testing centre for the purposes of this [Act/Law].

- (2) A [health practitioner] 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/Law].

33. Counselling

A person who is the owner, manager or in charge of a 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.

34. HIV testing

- (1) A person attending a health care facility shall be counselled and offered voluntary HIV testing.
- (2) Any HIV test administered pursuant to 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 knowledge and consent of a person.
- (4) Notwithstanding subsection (3), a child may undergo HIV testing only after the written consent thereto of his or her parent or guardian.
- (5) 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 his or her personal representative.
- (6) Notwithstanding subsection (3), a [medical practitioner/health practitioner] responsible for the treatment of a person may undertake a 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 [medical practitioner/health practitioner] reasonably believes that such a test is clinically necessary or otherwise desirable in the interest of that person.
- (7) 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.
- (8) Subject to subsection (6), a [medical practitioner/health practitioner] 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 \$10,000 or imprisonment for a term not less than 6 months.]

35. Test results

- (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, his or her parent or guardian;
 - (b) in the case of a person with inability to comprehend the results, his or her spouse or his or her 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.

36 Observance of confidentiality in handling medical records

- (1) Subject to subsection (4), a custodian of any medical record, file, data, or test results must 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 health practitioner, health care provider, health care 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 of \$10,000 [or to imprisonment for a term not exceeding [6] months or both].
- (4) A person convicted pursuant to this section is also liable to suspension or revocation of his or her licence to practice his or her profession, and the cancellation or withdrawal of any licence to operate his or her business entity.
- (5) It shall not be an offence under subsection (1) if the medical information or document is disclosed —
 - (a) to a health practitioner, health care provider or health care facility or a person employed by or under the direction of a health practitioner, health care provider or health care facility, in connection with the

- treatment of the person to which that information relates, or for the prevention of the spread of HIV/AIDS;
- (b) for the purpose of the treatment of the person or prevention of the spread of HIV/AIDS;
 - (c) when complying with reporting requirements under this [Act/Law] or any other written law [, in relation to HIV/AIDS];
 - (d) when responding to a witness summons issued by the Tribunal or the [Labour Tribunal] in relation to proceedings in which the main issue is the HIV status of the person;
 - (e) 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; and
 - (f) is responding to an order of a court, the Commission or the Tribunal.
- (6) In the circumstances mentioned in subsection (4) (c), (d) and (e) —
- (a) the confidential medical record must 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 pursuant to this [Act/Law] or the [President of the Labour Tribunal] a Judge; and
 - (b) the proceedings of the [Court or Labour Tribunal] must be held in camera.

PART 5 THE ANTI-DISCRIMINATION COMMISSION

37. Establishment and composition of the Commission

- (1) There is established a body to be known as the Anti-Discrimination Commission [to which section [] of the Interpretation Act shall apply].
- (2) The Commission shall comprise five Commissioners who shall be appointed by the [Minister/President/Governor/Governor General after consultation with the Prime Minister and the Leader of the Opposition], on such terms and conditions as may be specified in the Commissioners instruments of appointment.

- (3) Subject to section [39], 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),
- and who has served in one of these specified fields or other fields related to any of those specified fields for a period of not less than 10 years or who has served in more than one of these fields for a period which in the aggregate is not less than 10 years.
- (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/Law] and not based on his or her personal, business or professional interest.

38. Terms of office of Chairperson, Deputy-Chairperson and other Commissioners

- (1) The Chairperson shall hold office for a period of [5] 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 [5/3] years from the date of appointment as Commissioner.
- (3) A Commissioner other than the Chairperson and the Deputy-Chairperson, shall, subject to this section, hold office for a period of [3] years from the date of appointment as Commissioner:
- Except that such a Commissioner may be appointed for a period of less than [3] years so as to assist in providing continuity of experience as a Commissioner.
- (4) [Subject to sections 39, 40 and 41,] on the expiry of his or her period of appointment a 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.

- (6) A Commissioner shall, before entering upon the duties of his or her 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 recommended from time to time by the [Salaries Review Commission] and approved by the Minister to whom responsibility for finance is assigned.

39. Disqualification for membership

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 his or her office by reason of physical infirmity or mental illness;
- (c) has been convicted of a criminal offence except where the offence-
 - (i) is a minor traffic offence;
 - (ii) is spent in accordance with [Criminal Rehabilitation of Offenders Act, []];
- (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 3 consecutive meetings of the Commission, unless the absence is approved by the [Minister/ President/ Governor/ Governor General]; or
- (h) is incapable, for whatever reason, of performing his or her duties and functions under this [Act/Law].

40. Resignation of Commissioners

- (1) A Commissioner other than the Chairperson may at any time resign his or her office by instrument in writing addressed to the [Minister/ President/Governor/Governor General] and transmitted through the Chairperson and, from the date of receipt of the instrument by the [Minister/President/Governor/Governor General], that Commissioner ceases to be a Commissioner.
- (2) The Chairperson may at any time resign his or her office by instrument in writing addressed to the [Minister/President/Governor/Governor General] and, from the date of receipt of the instrument by the [Minister/President/Governor/Governor General], that Commissioner ceases to be the Chairperson and a Commissioner.

41. Removal from Office

A Commissioner may be removed from office by the [Minister/President/Governor/Governor General after consultation with the Prime Minister and the Leader of the Opposition] if, upon evidence, the [Minister/President/Governor/Governor General after consultation with the Prime Minister and the Leader of the Opposition] is satisfied that the Commissioner —

- (a) is not eligible, pursuant to section [39], to continue as a Commissioner;
- (b) is unable or has failed to perform the functions of his or her office;
- (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 his or her office.

42. Vacancy in the Commission

- (1) The office of a Commissioner becomes vacant —
 - (a) on the death of the Commissioner;
 - (b) if the Commissioner becomes disqualified pursuant to section [39];
 - (c) if the Commissioner resigns pursuant to section [40];
 - (d) if the Commissioner is removed from office pursuant to section [41]; or
 - (e) if the Commissioner's appointment is not renewed by the [Minister/President/Governor/Governor General after consultation with the Prime Minister and the Leader of the Opposition] 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 [Minister/President/Governor/Governor General] shall, in accordance with section [37], appoint a person to fill the vacancy.

43. Secretary to the Commission

- (1) There shall be a Secretary to the Commission appointed in accordance with section [46].
- (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

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

44. Appointment of Commissioners to be notified in the *Gazette*

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.

45. Proceedings and meetings

- (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 [7] days of the receipt of a written request for that purpose addressed to the Chairperson by not less than [2] 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 3 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 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.

46. Appointment of staff

- (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/Law].
- (2) Notwithstanding subsection (1), the [Commission] may, from time to time, appoint—
 - (a) conciliators for the purposes of section [60]; 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 pursuant to subsection (3) shall be paid out of the funds of the Commission.

47. Shared staff, services and expenses

- (1) Notwithstanding section [46], 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 funds allocated to the Commission by the [Parliament/House of Assembly/National Assembly] under section 74 (1)(a).

48. Address and service of documents

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

PART 6 FUNCTIONS AND POWERS OF THE COMMISSION

49. Functions of the Commission

- (1) The functions of the Commission are —
 - (a) to work towards the elimination of discrimination;
 - (b) to receive, investigate and, as far as possible, conciliate complaints or allegations of discrimination;
 - (c) to initiate a matter that could be the subject of a discrimination complaint 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;
 - (d) to develop, conduct and undertake research and educational programmes and other programmes for the purpose of eliminating discrimination;
 - (e) to collect and analyse data relating to complaints;
 - (f) to prepare and publish guidelines for the avoidance of discrimination;
 - (g) to keep under review the working of this [Act/Law] and any relevant law and, when so required by the [Minister], or otherwise when it thinks it necessary, submit, to the [Minister], proposals for amending this [Act/Law] or any relevant law;
 - (h) to do any other thing conducive or incidental to the carrying out of its functions.
- (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;
 - (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.

50. Commission not subject to control

Subject to section [46(1)], the Commission shall not be subject to the direction or control of any other person or authority in the exercise of its functions.

51. Delegation

- (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.

52. Powers of the Commission

Subject to the provisions of this [Act/Law] and any regulations made under section [87], for the purpose of discharging the functions of the Commission under this [Act/Law], the Commission shall, as is reasonably required, have the power —

- (a) to determine the procedures to be followed in any investigation or conciliation and adopt such procedures as it considers appropriate in the circumstances to investigate a particular complaint.
- (b) to compel the production of documents or other matter or thing from any person the Commission has reasonable grounds to believe is committing, facilitating or has documents relating to discrimination, under this [Act/Law] [or is breaching any other provision of this [Act/Law]];
- (c) to lease premises and acquire equipment and supplies as are necessary for the efficient operation of the Commission;
- (d) to do anything necessary or convenient to discharge the functions of the Commission.

PART 7

COMPLAINTS, INVESTIGATION AND CONCILIATION

53. Lodging a complaint

- (1) A person who alleges that another person has discriminated against him or her or has contravened any provision in Parts 2 or 3 in relation to him or her, may lodge a [written] complaint [in the form set out in Schedule 2/in the prescribed form] with the Commission [setting out the details of the alleged act of discrimination and identifying the person against whom the complaint is made].

- (2) Notwithstanding subsection (1) and subject to section [55(3)], a person who has reasonable grounds for believing that another person is engaging or has engaged in discrimination against a person contrary to this [Act/Law] may lodge a [written] complaint [in the form set out in Schedule 2/in the prescribed form] with the Commission.
- (3) A child or any person who because of a disability or otherwise is unable to lodge a written complaint pursuant to subsection (1) may authorise another person, a guardian or representative to act on his or her behalf in relation to the complaint, and the person so authorised shall have the same powers in relation to the lodgement of the complaint as he or she would have if he or she were the person on whose behalf he or she acts.
- (4) An authorisation under subsection (3) may be given in writing or in such other manner as the Commission approves.
- (5) A complaint under this section shall be lodged with the Commission, within [6] months from the date of the alleged act of discrimination.
- (6) Notwithstanding subsection (5) the Commission, in exceptional circumstances, may accept a complaint which is lodged more than [6] months after the date of the alleged act of discrimination.
- (7) 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.

54. Withdrawal of a complaint

- (1) A complainant 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;
 - (b) record the term of any agreement or settlement reached between the complainant and the respondent, and in such a case sections [62(2)] and [62(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, it may undertake or continue an investigation into a complaint notwithstanding the fact that the complainant has withdrawn the complaint and, in any such case, the provisions of this [Act/Law] apply to the complaint 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.

55. Investigation of a complaint

- (1) Subject to subsections (2), (3) and (6) and section [57], the Commission shall investigate each complaint lodged with the Commission, pursuant to section [53], [in a manner it considers appropriate to the particular complaint].
- (2) Where a complaint is made under section [53(2)] by a person other than the individual who is alleged to have been discriminated against the Commission may refuse to investigate the complaint unless the individual who is alleged to have been discriminated against consents to the investigation by the Commission.
- [(3) Where the Commission decides not to investigate a complaint lodged pursuant to section [53(2)], the Commission shall give a written notice of its decision to the complainant setting out the reason for its decision.]
- (4) Every investigation shall be conducted in private and legal practitioners shall not have any right of audience before the Commission, but a legal practitioner may appear before the Commission if the Commission thinks fit.
- (5) Notwithstanding subsection (4), and section [56(1) (c)], it is not necessary for the Commission to hold a hearing, and a person is not entitled to be heard by the Commission.
- [(6) The Commission may not investigate a complaint lodged in relation to an alleged contravention of a provision of this [Act/Law] under which an offence has been prescribed.]

56. Request for information by the Commission

- (1) 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 his or her possession or control relating to, any matter specified in the notice.
- (2) A person who —
- (a) fails without reasonable excuse to comply with a requirement issued under subsection (1);
 - (b) destroys or alters, or causes to be destroyed or altered, any document, or other mater or thing required to be produced under subsection (1); or
 - (c) 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 [\$5000] or to imprisonment for a term not exceeding [12] months or to both.]

57. Restrictions on complaints for and discontinuation of investigation

- (1) The Commission may not undertake an investigation in a complaint or discontinue an investigation of a complaint where it appears to the Commission that —
- (a) the complaint relates to action of which the complainant has had knowledge for more than [6 months] before the complaint was received by the Commission;
 - (b) the complaint, or a complaint of a substantially similar nature, has previously been the subject of an investigation as a result of which the Commission was of the opinion that there had been no evidence of discrimination against the person;
 - (c) the complaint is frivolous or vexatious or is not made in good faith;
 - (d) the complainant cannot be identified or traced;
 - (e) the complaint is not made —
 - (i) with the consent of the person discriminated against; or
 - (ii) by the personal representative or by a member of the family, associate or other individual suitable to represent the person discriminated against, where the person by whom the complaint might have been made has died or is for any reason unable to act for himself or herself; or
 - (f) any investigation or further investigation is for any other reason unnecessary.

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

58. Decision of the Commission

[Subject to section [59],] where after an investigation of a complaint, the Commission finds that —

- (a) there is no evidence of discrimination, it shall dismiss the complaint, inform the complainant in writing and give its reasons therefor, whereupon no further action shall be taken by the Commission;
- (b) the complainant's allegations or its suspicions are frivolous or vexatious or that its suspicions are incorrect, the Commission shall dismiss the complaint and notify the complainant and the person against whom the claim was made in writing and give its reasons therefore and may order the complainant to pay the cost incurred; or
- (c) the complainant's allegations or its suspicions are substantiated, the Commission shall notify the complainant and the person against whom the complaint was made in writing and give its reasons therefore and subject to section [59 (3)], issue such directions as it sees fit.

59 Action following investigation by and decision of the Commission

- (1) A complainant whose complaint is dismissed by the Commission may apply to the Tribunal within 28 days after receipt of the decision of the Commission, for the dismissal to be reviewed.
- (2) An order made the Commission pursuant to section [58(b)] shall be registered with the Tribunal.
- (3) Where the complainant's allegations or its suspicions have been substantiated on investigation by the Commission it may direct that the complaint may be resolved by —
 - (a) conciliation by a conciliator; or
 - (b) inquiry by the Tribunal.

60. Investigating complaints by conciliation

- (1) The Commission may decide that a complaint may be investigated by conciliation if it is of the opinion, having regard to all the circumstances of the case, that the subject matter of the complaint involves no, or a minor form of discrimination against a person.

- (2) The Commission shall assign a person, appointed conciliator under section [46], to be the conciliator in any complaint.
- [(3) The conciliation shall be held in private.]
- (4) The Commission shall not participate in any conciliation.
- (5) Participation in the conciliation by the complainant and the person is voluntary, and any party may withdraw at any time.
- (6) The conciliator may terminate the conciliation at any time.
- (7) Where an attempt to deal with a complaint by conciliation under this section is unsuccessful—
 - (a) the complaint is to be treated as if the conciliation had not taken place; and
 - (b) the conciliator is excluded from participating as an investigating officer in any subsequent investigation of the complaint.
- (8) Anything said or admitted during the conciliation and any document prepared for the purposes of a conciliation 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;
 - (b) against any person in any court or at any inquiry or in any other proceeding and no evidence in respect of the conciliation may be given against any person.
- (9) Nothing in this section prevents a complaint from being dealt with otherwise than in accordance with this section.
- (10) Where a complaint has been settled by conciliation, the settlement shall be embodied in a written agreement and registered with the Tribunal.

61. Initiation of proceedings by the Commission before the Tribunal

- (1) Where the Commission is of the opinion that the [nature or subject matter of a] complaint cannot be resolved by conciliation or it has attempted to resolve a complaint of that [nature or the subject matter] by conciliation 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; 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 has fulfilled the requirements set out in subsection 1(a) to (d), the Commission shall, with the consent and on behalf of the complainant, initiate proceedings before the Tribunal.
- (3) Evidence of anything said or done in the course of conciliation proceedings under this Part is not admissible in proceedings before the Tribunal.

62. Settlement

- (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.]

PART 8 THE ANTI-DISCRIMINATION TRIBUNAL

63. Establishment of the Anti-Discrimination Tribunal

- (1) There is established a Tribunal to be known as the Anti-Discrimination 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/Law] 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.

64. Jurisdiction of the Tribunal

- (1) The Tribunal shall have jurisdiction to hear and determine discrimination complaints referred to it by the Commission.
- (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];
 - (d) refer a complaint to the Commission for conciliation or further conciliation.
 - (e) grant interim relief pursuant to an application;
 - (f) make such declarations, orders and awards of compensation 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/Law], the Tribunal may, adopt such procedure it considers appropriate in the circumstances to determine a particular complaint.

65. Independence of the tribunal

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

66. Staff of the Tribunal

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/ President/ Governor/ Governor General] thinks fit.

67. Procedure of Tribunal

- (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, 14 clear days' notice shall be given to the complainant and to the respondent of the date fixed for the hearing of a matter by the Tribunal.

- (3) The complainant and 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/Law] governing the carrying on of the business of the Tribunal and the practice and procedure in connection with appeals, including the regulating of any matters relating to cost of proceedings before the Tribunal; [but no such Rule shall have effect until it has been published in the *Gazette*.]

68. Other procedure

- (1) The Tribunal, as respects 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 of Justice on the occasion of an action.
- (2) 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.
- (3) A summons signed by the Registrar shall be equivalent to any formal process issuable in any action taken in the High Court of Justice for enforcing the attendance of witnesses and compelling the production of documents.
- (4) 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.

69. Reconciliation

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.

70. Recovery of compensation or damages

- (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 of Justice, the order or award 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 of Justice.]
- [(4) The High Court of Justice shall have the same control and jurisdiction over the order or award as it has over the judgements given by itself but 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.

71. Effective date of order

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.

72. Appeal

- (1) Subject to subsection (2), the hearing and determination of any proceedings before the Tribunal, and an order or award or any finding or decision of the Tribunal in any matter (including an order or award) —
 - (a) shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any account whatever; and
 - (b) shall not be subject to prohibition, mandamus or injunction in any Tribunal on any account whatever.

- (2) Subject to this [Act/Law], any party to a matter before the Tribunal is entitled as of right to appeal to the Court of Appeal on any of the following grounds, but no other —
- (a) that the Tribunal has no jurisdiction in the matter, but it shall not be competent for the Court of Appeal to entertain such ground of appeal, unless objection to the jurisdiction of the Tribunal has been formally taken at some time during the progress of the matter before the making of the order or award;
 - (b) that the Tribunal has exceeded its jurisdiction in the matter;
 - (c) that the order or award has been obtained by fraud;
 - (d) that any finding or decision of the Tribunal in any matter is erroneous in point of law;
 - (e) that the Tribunal has erred on a question of fact saved that no appeal shall lie except by leave of the Court of Appeal sitting in full court; or
 - (f) that some other specific illegality not mentioned above, and substantially affecting the merits of the matter, has been committed in the course of the proceedings.
- (3) On hearing of an appeal in any matter brought before it under this [Act/Law], 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.
- (4) 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.
- (5) A decision of the Court of Appeal in respect of an appeal from an order or award of the Tribunal shall be final.

73. On whom order or award to be binding

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 9 FINANCIAL ADMINISTRATIVE PROVISIONS

74. Funds of the Commission

- (1) The funds of the Commission shall consist of —
 - (a) monies that are appropriated to Commission by the [Parliament/House of Assembly/National Assembly] for the purposes of this [Act/Law];
 - (b) monies received by the Commission from agencies, other than the Government, approved by the Minister with responsibility for finance for the performance of their functions; and
 - (c) donations, endowments and other gifts received by the Commission.
- (2) The Commission shall cause to be prepared proper estimates of receipts and expenditure in respect of the performance of its functions for each [calendar year/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.

75. Funds of the Tribunal

- (1) The funds of the Tribunal shall consist of monies that are appropriated to the Tribunal by the [Parliament/House of Assembly/National Assembly] for the purposes of this [Act/Law].
- (2) The Tribunal shall cause to be prepared proper estimates of receipts and expenditure in respect of the performance of its functions for each [calendar year/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.

76. Accounts and audit

- (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/Director of Audit] may direct.
- (2) The Commission and the Tribunal shall, within [3] months after the end of each [calendar year/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 [4] months after the end of each [calendar year/financial year], by the [Auditor-General/Director of Audit] or an auditor appointed for the purpose by the [Auditor-General/Director of Audit].

77 Fees prohibited

A person shall not be required to pay any fee in respect of a complaint or for any conciliation or investigation undertaken pursuant to this [Act/Law].

78. Exemption from taxes

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

**PART 10
MISCELLANEOUS****79. Conflict of interest**

- (1) Where a Commissioner or the Judge of the Tribunal has any actual or reasonably perceived interest in a complaint, he or she 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 (2), a fit and suitable person shall be appointed in accordance with this [Act/Law] to act for the Commissioner or the Judge of the Tribunal, as the case may be, to deal with the complaint *de novo*.

80. Oath of secrecy and confidentiality

- (1) The staff of the Commission and the Tribunal shall be required to take the oath of secrecy set out in Schedule 3.
- (2) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a [fine not exceeding [\$5,000.00] or to imprisonment for a term not exceeding [12] months, or to both.]

81. Commission and staff to maintain secrecy

- (1) Each Commissioner and every person appointed under section 46 (2) 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
 - (b) come to his or her actual knowledge in the exercise of his or her 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 his or her office for the purposes of this [Act/Law];
 - (b) make use of any such information as is mentioned in paragraph (a); or
 - (c) produce to any person a document relating to the affairs of another person given for the purposes of this [Act/Law].
- (3) Subsection (1) shall not apply so as to prevent a Commissioner or any person appointed under section 46 or a member of the staff of the Tribunal from —
 - (a) disclosing in the course of proceedings for an offence under this Act, any matter relevant to those proceedings;
 - (b) reporting evidence of any crime to such authority as he or she 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.

- (4) Subject to subsection (3), the Commission and the Tribunal may disclose in any report or decision made under this [Act/Law] 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 (3) commits an offence and is liable on summary conviction to a [fine of [\$10,000.00] or to imprisonment for a term not exceeding [2 years], or both.]

82. Offences

- (1) A person who —
- (a) without lawful excuse, willfully obstructs, hinders, interferes with or resists the Commission, the Tribunal or any other person in the performance of their functions under this [Act/Law];
 - (b) without lawful excuse, refuses or willfully fails to comply with any lawful requirement of the Commission or the Tribunal or any other person under this [Act/Law]; or
 - (c) destroys or alters, or causes to be destroyed or altered, any document, or other mater or thing required to be produced under subsection (4); 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 his or her functions under this [Act/Law],
- commits an offence and is liable on summary conviction to a fine not exceeding [\$10,000.00] or to imprisonment for a term not exceeding [2 years], or both.
- (2) A person who contravenes or fails to comply with any provision of this Act, where the provision does not expressly create an offence or provide for a penalty, commits an offence and is liable on summary conviction—
- (a) in the case of an individual, to a fine of [\$20,000]; and
 - (b) in the case of a company, to a fine of [\$50,000].

83. Offence: Failure to comply with order of the Tribunal

A person who fails to comply with an order of the Tribunal given pursuant to this Act commits an offence and is liable on summary conviction to [a fine not exceeding [\$20,000.00] or to imprisonment for a term not exceeding [3] years, or to both.]

84. Protection from liability

A Commissioner 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 his or her functions under this [Act/Law].

85. Commission's Report

- (1) The Commission shall, within [3/6 six months] after the end of each [financial year/calendar year], submit to the [Minister/President/Governor/Governor General] —
 - (a) a full report on [its operations/ the performance of the functions of the Commission] during that [financial year/calendar year], which shall include —
 - (i) a general survey and statistics in relation to complaints received by the Commission;
 - (ii) the results of conciliations and investigations conducted under this [Act/Law];
 - (iii) steps taken to implement its recommendations; and
 - (iv) any other matter or development it thinks fit; and
 - (b) a copy of the statement of accounts required under section [75(2)] 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/President/Governor/Governor General] shall cause the reports of the Commission to be laid in the [Parliament/House of Assembly/National Assembly] within a period of 3 months of the date of their receipt.

86. Amendment of Schedules

- (1) The Minister may by Order amend the Schedules.
- (2) An Order made under subsection (1) shall be subject to [negative] resolution of the (House of Assembly/Parliament/National Assembly).

87. Regulations

The Minister may make Regulations for the purpose of giving effect to this [Act/Law].

SCHEDULE 1

[Section 38(6)]

OATH (OR AFFIRMATION) OF OFFICE FOR COMMISSIONERS

I, A. B., having been appointed as a Commissioner of the Anti-Discrimination 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 53)

COMPLAINT FORM

(To be filled out by complainant or his or her delegate).

Part A—About you (The Complainant)

Name: oMr. oMrs. oMiss. oMs. oDr. oProf.

.....

Address:

.....

.....

Contact Numbers: Home: Mobile:

Fax: Other:

e-mail:

Fill out this box only if you are complaining on behalf

Of another person

Name of that other person:

What is your relationship to that other person?

Fill out this box only if another person is assisting you with the complaint — for example, an Attorney-at-law or your representative

Name of your representative:

Organisation:

Address:

Telephone numbers: Home: Mobile:

Office :.....

Fax: e-mail:

Part B — Your complaint

Who are you complaining about? (The Respondent)

1. Name/Organisation:

Address:

.....

Telephone numbers: Home:

Mobile:

Office: Fax:

e-mail:

What is this person's/organisation's relationship to you?

.....

.....

2. Name/organisation:

Address:

.....

Telephone numbers: Home: Mobile:

Office: Fax:

e-mail:

What is this person's/organisation's relationship to you?

.....

.....

My complaint relates to:

(a) Discrimination in relation to:

- Employment
- Education
- As a Commission Agent
- As a Contract Worker
- A Partnership
- Qualifying Body
- Industrial Organisation
- Access to premises
- Goods, services and facilities
- Land
- Association
- Sport
- Some other reason (please state)

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Part C — Further information

Supporting evidence

Please attach copies of any documents that may assist in investigating the complaint. If you are unable to provide this information, please indicate where such information may be obtained.

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Please indicate the remedy you are seeking?

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Please indicate whether you have made a complaint on these facts to another agency?

(For example—an employers’ association, employers’ association, a trade union, the [Ombudsman/ Parliamentary Commissioner/Complaint Commission] or the Industrial Court).

If so, you must provide details of the complaint, the person or organisation it was made to and any outcome. You should also attach copies of any letters you have received from the person or organisation.

.....

Please indicate whether you have attempted to resolve this complaint in any other way.

(For example: — through an internal complaint process or through an employers’ association, employees’ association or trade union.) If so, please give details:

.....

STATEMENT OF TRUTH

I certify that the information provided above is true and correct to the best of my knowledge and understanding.

Complainant Signature: **Date:**

Witness Signature: **Date:**

SCHEDULE 3

(Section 80)

OATH OF SECRECY

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

I,.....(name) swear and affirm that I will well and faithfully discharge the duties as a staff member of the [Anti-Discrimination Commission] / [Anti-Discrimination Tribunal] established pursuant to the Anti-Discrimination [Act/Law], [] 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.

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

Speaker.

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

President.