

Caribbean Community (CARICOM) Secretariat

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CARICOM MODEL LEGISLATION ON EQUALITY FOR WOMEN IN EMPLOYMENT

Explanatory memorandum:

A detailed description of the provisions of the model is set out hereunder:

The Long Title

This indicates the main objectives of the legislation which are to promote equality of opportunity and treatment for women in employment and to provide remedies in respect of discrimination on the ground of sex, marital status or pregnancy.

Short Title

The Act is entitled, The Employment of Women (Equal Opportunity and Treatment) Act.

Section 2 - Objects

This sets out the objects of the Act with specific reference to the implementation of certain provisions of the Convention on the Elimination of All Forms of Discrimination Against Women and the promotion of the recognition and acceptance of the equality of men and women.

Section 3 - Interpretation

Various terms are defined, including the following which are of particular significance:

"de facto spouse"

A *de facto* spouse in relation to a person is a person of the opposite sex to that person who lives with the other person as a husband or wife although they are not legally married to each other.

"Marital status"

This includes the status of being single, married, married but living separately and apart, divorced, widowed or a *de facto* spouse.

"Commissioner"

Commissioner is the Commissioner of Equal Opportunity.

"Tribunal"

Tribunal is the Equal Opportunity Tribunal.

Section 4 - Discrimination on the grounds of sex, marital status or pregnancy

This section describes the circumstances in which a person may be regarded as discriminating against another person. This section deals specifically with discrimination on the ground of sex, marital status or pregnancy.

Subsection (1) refers to a situation where less favourable treatment is given to a person than is given or would be given to another person in the same or substantially similar circumstances.

Section 5 - Discrimination against employees and prospective employees

This section makes it unlawful for an employer to discriminate against a prospective employee or an employee on the ground of sex, marital status or pregnancy, in the arrangements for selecting persons for employment or in the terms or conditions on which employment is offered.

Subsection (2) deals with discrimination in the workplace in relation to employees, including denial of access to promotion, the dismissal of the employee or subjection to other detriment.

Subsection (3) sets out the exception in relation to employment in a private household, or to employment by a private educational authority.

Subsections (4) and (5) also contain exceptions in relation to employment in a private household, or to employment by a private educational authority.

Subsection (6) sets out the benefits which are outside the scope of subsection (2). These include benefits which are regulated by the contract of employment, certain benefits which are provided to the public by that employer, but **subsection (2)** will apply if the provision to the employee differs in a material respect from the provision to his other employees, or if the provision in question is regulated by a contract of employment or if the benefits etc. relate to training.

Subsection (7) exempts from unlawful discrimination, the dismissal of a woman who is pregnant if the woman was pregnant at the date she applied for employment or the date she was interviewed unless at that date, the woman did not know or could not reasonably have known that she was pregnant.

Section 6

This section sets out exceptions where sex or marital status is a genuine occupational qualification.

Subsection (1) sets out the situations, i.e. where the position requires a married couple; where the position is for the purpose of an organised religion and is limited to one sex so as to comply with the doctrines; or where being a man is a genuine occupational qualification for the job.

Subsection (2) describes the circumstances in which being a man or woman is a genuine occupational qualification for the job.

Section 7

This section makes it unlawful for a firm consisting of six or more partners or six or more persons proposing to form a partnership, to discriminate against a woman on the ground of sex, marital status or pregnancy.

Subsections (2) and (3) set out the exceptions.

Section 8

This section deals with unlawful discrimination by organisations of employers, trade unions or other organisations.

Section 9

This section deals with unlawful discrimination by an authority or body 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.

Section 10

This section deals with unlawful discrimination by vocational training bodies.

Subsection (3) provides that a breach is not committed by an educational establishment maintained wholly or principally for students of one sex.

Section 11

This section deals with employment agencies.

Subsection (2) excludes from the section employment which the employer could lawfully refuse to offer a person.

Subsection (3) provides that an employment agency is exempt from liability if it proves that it relied on a statement made by an employer to the effect that the agency's action would not be unlawful by reason of the operation of **subsection (2)** and that it was reasonable to rely on that statement.

Subsection (4) deals with the offence of recklessly or knowingly making a statement which is false or misleading and provides for a penalty on occupation.

Sections 12-14

These sections deal with unlawful discrimination against persons in education, in connection with the provision of goods or services or facilities, and in relation to accommodation.

Section 15

This section deals with discrimination by subterfuge. It provides that where a requirement or condition which is not apparently in contravention of any provision of the Act but has the effect of giving preference to a person of a particular sex or marital status in a situation where such preference would be unlawful, the imposition of the condition or requirement shall be unlawful unless it is proved that there was good reason for its imposition and that this is not a subterfuge to avoid complying with the Act.

Section 16

This section makes it unlawful for any person to publish or display or cause the publication or display of any advertisement or notice which indicates or could reasonably be understood as indicating an intention to commit a breach of Part III or IV.

Subsection (2) exempts the use in advertising for employment, of any term which in its generally accepted usage is not taken to refer exclusively to any particular sex.

Subsection (3) exempts the publisher of an advertisement from liability if he proves that it was published in reliance on a statement by the person who caused the publication to the effect that it would not be unlawful by virtue of **subsection (2)**, and that it was reasonable to rely on the statement.

Subsection (4) makes it an offence to knowingly or recklessly make a false or misleading statement and provides for a penalty on conviction.

Section 17

This section makes it unlawful for a person to ask a person to provide information that would not in the same circumstance be required of other persons of a different sex or marital status or persons who are not pregnant.

Subsection (2) excludes from this provision a request or requirement for a person to provide information concerning that person's medical history, being information relating to a medical condition that affects persons of a particular sex only, or a request for a pregnant woman to provide medical information concerning her pregnancy.

Sections 19, 19, 20 and 21 contain the general exceptions to the provisions of the Act with regard to unlawful discrimination. These exceptions relate to charities, voluntary bodies, religious bodies and educational institutions established for religious purposes.

Section 22 provides for the appointment of a Commissioner of Equal Opportunity.

Section 23 sets out the grounds on which the Commissioner's appointment will be terminated.

Section 24 provides for the appointment of public officers to assist the Commissioner in the performance of his functions.

Section 25

This section sets out the functions of the Commissioner which are concerned with the elimination of discrimination on the grounds mentioned in the Act and promoting recognition and acceptance of the principle of equality of men and women.

Section 26

This empowers the Minister to refer a matter to the Commissioner in relation to a law or proposed law that conflicts with the Act or that may give rise to such conflict. The Minister may also refer a practice, alleged practice or proposed practice of any person or class of persons that poses similar problems.

Section 27

This section requires the Commissioner to undertake periodic reviews of laws, governmental practices and policies, in order to identify circumstances where discrimination occurs and to report on the findings to the Minister.

Section 28

This section provides for the lodging of complaints alleging contravention of a provision of the Act. A complaint must be in writing and may be lodged with the Commissioner by or on behalf of the aggrieved person or by a trade union of which that person is a member.

A complaint may also be in relation to the refusal or neglect of a person to obey or comply with an order of the Tribunal.

Section 29

This section requires the Commissioner to investigate each complaint lodged.

Section 30

This section permits the Commissioner to apply to the Tribunal for an interim order. This application may be made at any time after a complaint is lodged and before it is dismissed by the Commissioner, or resolved by conciliation or referred to the Tribunal.

Section 31

The Commissioner is empowered to obtain information or request documents relevant to an inquiry. The Commissioner must give written notice to the person required to give the information or produce the documents.

Section 32

This section empowers the Commissioner to direct persons to attend a conference for the purpose of inquiring into a complaint and endeavouring to settle the matter by conciliation under Section 36.

Section 33

This section provides for the holding of the conference.

Section 34

The Commission is empowered to dismiss a complaint which he considers frivolous, vexatious, misconceived or lacking in substance. If he decides to dismiss a complaint the Commissioner

must give the reasons and he must advise the complainant that the matter may be referred to the Tribunal.

Section 35

A complainant who is notified that the complaint is dismissed may require the Commissioner to refer the matter to the Tribunal.

Section 36

This section provides for the resolution of a complaint by conciliation.

Section 37

A complainant or respondent may appear personally or may be represented in conciliation proceedings by an agent or by counsel.

Section 38

This section provides for the reference of the complaint to the Tribunal. This is required where the Commission considers that the matter cannot be resolved by conciliation or where the efforts to resolve it by conciliation have failed, or where, in the Commissioner's opinion, the nature of the complaint warrants reference to the Tribunal.

Section 39

The Commissioner is required to submit an annual report of his activities.

Sections 40-48

Provide for the establishment of the Equal Opportunity Tribunal, the appointment and term of office of the members, the appointment of chairman and deputy chairman, the appointment of deputy members, decisions of the Tribunal and the appointment of a Registrar.

Section 49

The Tribunal is obliged to hold an inquiry into each complaint referred to it and the Minister is empowered to refer any matter to the Tribunal for inquiry as a complaint.

Sections 50-52 provide for certain procedural matters.

Section 55

This section describes the circumstances under which a complaint may be dealt with as a representative complaint.

Sections 56 and 57 provide for matters of procedure relating to representative complaints and ordinary complaints.

Section 58

This section enables the Tribunal to resolve complaints by conciliation and to take necessary steps to effect amicable settlements.

Section 59

This provides that for the purpose of an inquiry, the Tribunal is not bound by rules of evidence. The tribunal is required to act according to equity, good conscience and the merits of the case without regard to technicalities and legal forms, and is empowered to give directions aimed at reducing costs and achieving a prompt hearing.

Section 60 provides that an inquiry shall be held in public but the Tribunal is empowered, where it considers appropriate, that a private hearing be held.

Section 61 provides that the publication of evidence may be prohibited while **Section 62**

deals with the burden of proof where it is alleged that conduct is excepted from the Act.

Section 63

This section empowers the Tribunal to dismiss a complaint that it considers frivolous, vexatious, misconceived, lacking in substance or where it considers that for any other reason the complaint should not be entertained.

Section 64 empowers the Tribunal to grant an interim order.

Section 65

This section sets out the decisions that may be made by the Tribunal in relation to an inquiry. The Tribunal may dismiss a complaint but where it finds the complaint substantiated it may order the respondent to pay damages to the complainant, order the cessation of the offending conduct, order the respondent to do what is necessary to redress the complainant's loss or damage, declare void any agreement made in contravention of the Act, or the Tribunal may decline to take any further action in the matter.

Section 66

The general rule is that each party to an inquiry shall pay his own costs but the Tribunal is given the discretion to make such order as to costs as it sees fit.

Section 67

Where the Tribunal orders any amount to be paid, it may be registered in a court as a judgement debt.

Section 68

It is an offence to refuse or fail to obey or comply with an order of the Tribunal.

Section 69

If the Tribunal does not state its reasons for any decision made by it in relation to an inquiry, a party may request such decision and the Tribunal is obliged to comply with that request.

Section 70 provides for authentication of documents.

Section 71

Judicial notice shall be taken of the signature of the chairman or the registrar on a document issued by the Tribunal.

Section 72

This section provides for appeals to the Court of Appeal on a point of law by a party aggrieved by a decision or order of the Tribunal.

Section 73

This section deals with the offence of inducing a person to do an act which constitutes unlawful discrimination under the Act.

Section 74

This places liability on the employer for anything done in the course of a person's employment, whether or not it was done with the employer's knowledge or approval.

Subsection (2) provides a defence where the employer is able to prove that he took all reasonable steps to prevent the unlawful act.

Section 75

This deals with the offence of aiding an unlawful act.

Section 76

It is an offence to obstruct, hinder or resist the Commissioner or an officer of the Commissioner, a member of the Tribunal or the Registrar in the exercise of a function under the Act.

Section 77

Persons who are so directed are obliged to attend conciliation proceedings and conferences and a penalty is provided for non-attendance.

Sections 78 and 79

It is an offence to refuse to furnish information or to make false or misleading statements.

Section 80

The Tribunal, the members thereof, the Commissioner or a person acting under the direction of the Tribunal or the Commissioner are protected from suit in respect of acts done in good faith in the performance of functions under the Act.

Section 81

The Commissioner, members of the Tribunal and members of the Commissioner's staff are required to keep confidential information acquired in the exercise of functions.

Section 82

This provides for the furnishing of information stored by computer or similar equipment.

THE EMPLOYMENT (EQUAL OPPORTUNITY AND TREATMENT) ACT, 1991 (Act of 1991)

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Model Legislation on Equality for Women in Employment

AN ACT to Promote Equality of Opportunity and Treatment in Employment and other areas and to provide remedies in respect of discrimination on the grounds of sex, marital status or pregnancy.

ENACTING CLAUSE

PART I - PRELIMINARY

Short title

1. This Act may be cited as Equal Opportunity and Treatment Act.

Objects

2. The objects of this Act are -

(1) to give effect to certain provisions of the Convention on the Elimination of All Forms of Discrimination Against Women;

(2) to eliminate, as far as possible, discrimination against persons on the grounds of sex, marital status or pregnancy in employment;

(3) to promote recognition and acceptance of the principle of equality of the sexes.

Interpretation

3. In this Act -

"*commission agent*" means an agent who is remunerated by commission;

"*commissioner*" means the Commissioner of Equal Opportunity appointed under Section 22;

"*complainant*" in relation to a complaint, means a person who lodges a complaint under this Act;

"*complaint*" means -

- (a) a complaint [(whether or not a representative complaint)] lodged under Section 28; and
- (b) a matter referred to the Tribunal for inquiry as a complaint under section 40;

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

"*de facto spouse*" in relation to a person, means a person of the opposite sex to the first-mentioned person who lives with the first-mentioned person as a husband or wife of that person although not legally married to that person;

"*education authority*" means a body of persons administering an educational institution;

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

"*employee*" includes a commission agent and contract worker;

"*employer*" includes a principal in relation to a commission agent or a contract worker'

"*employment*" includes -

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

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

"*functions*" includes powers, authorities and duties;

"*man*" means a member of the male sex irrespective of age;

"*marital status*" means the status or condition of being -

- (a) single;
- (b) married;
- (c) married but living separately and apart from one's spouse;
- (d) divorced;
- (e) widowed; or
- (f) the *de facto* spouse of another person;

"*principal*" means -

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

"*representative complaint*" means a complaint lodged under section 30(3) by a person on that person's own behalf or on behalf of other persons or both, and which is treated by the Tribunal as a representative complaint;

"*respondent*" in relation to a complaint, means the person who is, or each of the persons who are, alleged to have done the act to which the complaint refers;

"*Tribunal*" means the Equal Opportunity Tribunal established under Section 40;

"*woman*" means a member of the female sex irrespective of age.

PART II - UNLAWFUL DISCRIMINATION

Discrimination on the grounds of sex, marital status or pregnancy

4.(1) For the purposes of this Act, a person discriminates against another person on the grounds of sex, marital status or pregnancy if -

(a) by reason of sex, marital status or pregnancy; or

(b) in the case of discrimination on the ground of sex, by reason of a characteristic that appertains generally or is generally imputed to persons of the opposite sex,

the person in the same or substantially similar circumstances treats that other person less favourably than the person treats or would treat a person of the opposite sex, a person of a different marital status or a person who is not pregnant.

(2) For the purposes of subsection (1), but without limiting the generality of that subsection, the fact that a woman is or may become pregnant is a characteristic that appertains generally to women.

(3) For the purposes of this section, a person discriminates against another person on the grounds of sex, marital status or pregnancy if the person requires that other person to comply with a requirement or condition -

(a) with which a substantially higher proportion of persons of the opposite sex or, persons of a different marital status or persons who are not pregnant is able to comply;

(b) which is not reasonable having regard to the circumstances of the case; and

(c) which is to the detriment of the person discriminated against because that person cannot comply with it.

PART III - MATTERS RELATING TO EMPLOYMENT

Discrimination against applicant and employees

5. (1) It is unlawful for any person who is an employer or any person acting or purporting to act on behalf of a person who is an employer, in relation to employment of any other person by the employer, to discriminate against that other person on the grounds of her sex, marital status or pregnancy -

(a) in the arrangements made for the purpose of determining who should be offered that employment;

(b) in determining who should be offered employment;

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

(2) It is unlawful for an employer to discriminate against an employee on the grounds of sex, marital status or pregnancy -

(a) in the terms or conditions of employment afforded to that employee by the employer;

(b) by denying access, or limiting access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services associated with employment;

(c) by dismissing the employee or

(d) by subjecting the employee to any other detriment.

(3) Subsections (1) and (2) do not apply to employment -

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

(4) Subsections (1)(c) and (2) do not apply to provision in relation to death or retirement.

(5) Subsection (1)(c) does not apply to any provision for the payment of money which, if the person in question were given the employment, would be included (directly or by reference to a collective agreement or otherwise) in the contract under which the person was employed.

(6) Subsection (2) does not apply -

- (a) to benefits consisting of the payment of money when the provision of those benefits is regulated by the person's contract of employment;
- (b) to benefits, facilities or services of any description if the employer is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public including the person in question, unless -
 - (i) the provision differs in a material respect from the provision of the benefits, facilities or services by the employer to employees;
 - (ii) the provision of the benefits, facilities or services to the person in question is regulated by the contract of employment; or
 - (iii) the benefits, facilities or services relate to training.

(7) Nothing in subsection (2)(c) renders unlawful discrimination by an employer against a woman on the ground of her sex in respect of the dismissal by an employer of a woman who is pregnant -

- (a) if at the date on which the woman applied to the employer for employment; or
- (b) where the employer interviewed the woman in relation to her application for employment, at the date of the interview, the woman was pregnant, unless, at that date, the woman did not know and could not reasonably be expected to have known that she was pregnant.

Exceptions where sex or marital status is genuine occupational qualification

6. (1) Nothing in Section 5 shall apply to preferential treatment based on sex or marital status where -

- (a) the position requires a married couple;
- (b) the position is for the purposes of an organised religion and is limited to one sex so as to comply with the doctrines or rules of the religion or to avoid offending the religious susceptibilities of its adherents;
- (c) being a man or a woman is a genuine occupational qualification for the job.

(2) For the purposes of this Act, being a man or a woman is a genuine occupational qualification for a job only where -

- (a) the essential nature of the job calls for a man or a woman for reasons of physiology (excluding physical strength or stamina) or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a person of the opposite sex; or
- (b) the job needs to be held by a man or woman to preserve decency or privacy because -
 - (i) it is likely to involve physical contact with persons of the same sex in circumstances where those persons might reasonably object to its being carried out by a person of the opposite sex; or
 - (ii) the holder of the job is likely to do work in circumstances where persons of the same sex might reasonably object to the presence of a person of the opposite sex

because they are in a state of undress or are using sanitary facilities;

(c) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer and -

(i) the only premises which are available for persons holding that kind of job are occupied or normally occupied, by persons of the same sex and are not equipped with separate sleeping accommodation and sanitary facilities for persons of the opposite sex ; and

(ii) it is not reasonable to expect the employer either to equip those premises with such accommodation and facilities or to provide other premises for persons of the opposite sex; or

(d) the nature of the establishment, or of the part of it with which the work is done, requires the job to be held by a person of the particular sex because -

(i) it is, or is part of, a hospital, prison or other establishment for persons requiring special care, supervision or attention;

(ii) those persons are all of the same sex (disregarding any person of the opposite sex whose presence is exceptional); and

(iii) it is reasonable, having regard to the essential character of the establishment or that part, that the job should not be held by a person of the opposite sex; or

(e) the holder of the job provides individuals with personal services promoting their welfare or education, or similar personal services, and those services can most effectively be provided by a person of a particular sex; or

(f) the job needs to be held by a person of a particular sex because -

(i) of restrictions imposed by the laws regulating the employment of persons of a particular sex; or

(ii) it is likely to involve the performance of duties in a country whose laws or customs are such that the duties could not, or could not effectively, be performed by a person of a particular sex.

PART IV - DISCRIMINATION BY OTHER BODIES

Partnership

7. (1) It is unlawful for a firm consisting of six or more partners or for six or more persons proposing to form themselves into a partnership, to discriminate against any person on the grounds of sex, marital status or pregnancy -

(a) in the arrangements they make for the purpose of determining who should be offered a position as partner in the firm;

(b) by refusing or deliberately omitting to offer that position to that person;

(c) in the terms on which they offer that position to that person; or

(d) in a case where that person already holds that position -

(i) by denying or limiting access, to any benefit arising from membership of the firm;

(ii) by expelling that person from the firm or subjecting that person to any other detriment.

(2) Subsections (1)(a) and (b) do not apply to a position as a partner where, if it were employment, being a woman would be a genuine occupational qualification for the job.

(3) Subsections (1)(c) and (d) do not apply to provision made in relation to death or retirement.

Professional or trade organisations

8. (1) This section applies to an organisation of employers, to trade unions and other organisations of employees or to any other organisation whose members carry on a particular

profession or trade for the purpose of which the organisation exists.

(2) It is unlawful for an organisation to which this section applies to discriminate against a person on the grounds of sex, marital status or pregnancy -

- (a) by refusing or failing to accept that person's application for membership, or
- (b) in the terms on which it is prepared to admit that person to membership; or
- (c) in the case of a person who is a member of the organisation -
 - (i) by denying or limiting access to any benefits, facilities or services provided by the organisation;
 - (ii) by depriving that person of membership or varying the terms of membership;
 - (iii) by subjecting that person to any other detriment.

Qualifying bodies

9. (1) It is unlawful for an authority or body 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, to discriminate against a person on the grounds of sex, marital status or pregnancy -

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

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

Vocational training bodies

10. (1) This section applies to -

- (a) any association which comprises bodies employers and has as its principal object, or one of its principal objects, affording their employees access to training facilities;
- (b) any other person recognised as providing facilities for training for employment.

(2) it is unlawful for a person to whom this section applies to discriminate, on the grounds of sex, marital status or pregnancy, against a person who is seeking or undergoing training which would help to fit that person for any employment -

- (a) in the terms on which that person is afforded access to training courses or other facilities;
- (b) by refusing or deliberately omitting to afford such access to that person; or
- (c) by terminating that person's training.

(3) An educational establishment maintained wholly or principally for students of one sex or the authority responsible for the control of any such establishment, does not commit a breach of this section by refusing to afford access to a person of the opposite sex to its facilities.

Employment agencies

11. (1) It is unlawful for an employment agency to discriminate against a person on the grounds of sex, marital status or pregnancy -

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

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

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

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

(4) Any person who knowingly or recklessly makes a statement referred to in subsection (3) (a) which is false or misleading in a material respect commits an offence and it is liable on summary conviction to a fine not exceeding \$[].

PART V - DISCRIMINATION IN OTHER AREAS

Education

12. (1) It is unlawful for an educational authority to discriminate against a person on the ground of sex, marital status or pregnancy -

- (a) by refusing or failing to accept that person's application for admission as a student; or
- (b) in the terms or conditions on which it is prepared to admit that person as a student;
- (c) where the person is a student at an educational institution -
 - (i) by denying or limiting her access to any benefit provided by the authority;
 - (ii) by expelling or subjecting the student to any other detriment.

(2) Nothing in subsection (1) applies to or in respect of a refusal or failure to accept a person's application for admission as a student at an educational institution that is conducted solely for students of the opposite sex.

Goods, services and facilities

13. It is unlawful for a person who, whether for payment or not, provides goods and services, or makes facilities available, to discriminate against a person on the ground of her sex, marital status or pregnancy -

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

Accommodation

14. (1) It is unlawful for a person, whether as principal or agent, to discriminate against a person on the grounds of sex, marital status or pregnancy -

- (a) by refusing that person's application for accommodation;
- (b) in the terms or conditions on which accommodation is offered to that person;
- (c) by deferring that person's application for accommodation or according to that person a lower order of precedence in any list of applicants for accommodation;
- (d) by denying or limiting access to any benefit associated with accommodation occupied by that person;
- (e) by evicting that person from such accommodation or by subjecting that person to any other detriment in relation to such accommodation.

(2) Nothing in this section applies to or in respect of -

- (a) the provision of accommodation in premises if -
 - (i) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and
 - (ii) the accommodation provided in those premises is for not more than three persons other than a person referred to in sub-paragraph (i);
- (b) accommodation provided by a religious body;
- (c) accommodation provided by a charitable or other non-profit body solely for persons of a particular sex.

Discrimination by subterfuge

15. Where a requirement or condition which is not apparently in contravention of any provision of this Act, has the effect of giving preference to a person of a particular sex or a particular marital status, in a situation where such preference would be unlawful under this Act, the imposition of that condition or requirement shall be unlawful unless the person imposing it establishes good reason for its imposition and shows that its imposition is not a subterfuge to avoid complying with this Act.

Advertisement

16. (1) It shall be unlawful for any person to publish or display, or to cause or allow to be published or displayed, any advertisement or notice which indicates or could reasonably be understood as indicating, an intention to commit a breach of any provision of parts III and IV of this Act.

(2) Nothing in subsection (1) shall prevent the use, in an advertisement for employment, of any term which, in its generally accepted usage, is not taken to refer exclusively to any particular sex.

(3) The publisher of an advertisement made unlawful by subsection (1) shall not be subject to any liability under that subsection if the publisher proves -

- (a) that the advertisement was published in reliance on a statement made by the person who caused it to be published to the effect that the publication would not be unlawful by reason of the operation of subsection (2); and
- (b) that it was reasonable for the publisher to rely on the statement.

(4) A person who knowingly or recklessly makes a statement referred to in subsection (3) which is false or misleading in a material respect commits an offence and is liable on summary conviction to a fine not exceeding \$[].

Application forms etc.

17. (1) Subject to subsection (2), where by virtue of any provision of Part II or III, it would be unlawful, in particular circumstances, for a person to discriminate against another person on the grounds of sex, marital status or pregnancy, it is unlawful for that person to request or require that other person to provide information (whether by way of completing a form or otherwise) that would not, in the same or substantially similar circumstances be required or requested of persons of the opposite sex or of a different marital status or persons who are not pregnant, as the case may be.

(2) Nothing in subsection (1) renders it unlawful for a person to request or require -

(a) a person to provide information concerning such part of that person's medical history as relates to medical conditions that affects persons of a particular sex; or

(b) a woman who is pregnant to provide medical information concerning the pregnancy.

PART VI - GENERAL EXCEPTIONS

Charities

18. Nothing in Parts III and IV affects -

(a) a provision of a deed, will or other document, whether made before or after the coming into operation of this Act, that confers charitable benefits or enables charitable benefits to be conferred on persons of a particular, sex; or

(b) an act that is done in order to give effect to such a provision.

(2) In this section "charitable benefits" means benefits for purposes that are exclusively charitable according to the laws of [].

Voluntary bodies

19. Nothing in this Act renders it unlawful for a voluntary body to discriminate against a person of a particular sex on any one or more of the grounds of discrimination referred to in this Act, in connection with -

(a) the admission of persons as members of that body; or

(b) the provision of benefits, facilities or services to members of that body.

Religious bodies

20. Nothing in this Act affects -

(a) the ordination of priests, ministers of religion or members of any religious order;

(b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;

(c) the selection or appointment of persons to perform duties or functions for the purposes of or in connection with, or otherwise to participate in any religious observance or practice; or

(d) any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents to that religion.

Educational institutions established for religious purposes

21. Nothing in this Act renders it unlawful for Institutions a persons to discriminate against another person in any one or more of the grounds of discrimination referred to in this Act, in connection with the provision of education or training by an educational institution that is

conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the discrimination is done in good faith in favour of adherents of that religion or creed generally, but not in a manner that discriminates against a particular class or group of persons who are not adherents of that religion or creed.

PART VII - COMMISSIONER FOR EQUAL OPPORTUNITY

Appointment of Commissioner

22. (1) There shall be a Commissioner for Equal Commissioner Opportunity who shall be appointed by the [Minister] [Governor-General] [].

(2) The Commissioner shall and subject to this Part be a person having training and experience in the field of law, industrial relations or public relations or a suitable equivalent and hold office for such period not exceeding [seven] years as specified in the instrument of appointment, and shall be eligible for re-appointment.

(3) A person who is a member of Parliament shall not be appointed as the Commissioner.

(4) The Commissioner shall be entitled to such terms and conditions of service, including remuneration, travelling and other allowances, as shall be determined from time to time by the [Minister].

Vacation of office

23. (1) The appointment of the Commissioner shall be terminated if the Commissioner -

(a) becomes permanently incapable of performing the duties of the office of Commissioner;

(b) is nominated for election as a member of Parliament;

(c) becomes bankrupt or compounds with creditors.

(2) The Commissioner may by notice in writing to the [Governor-General] [Minister] [], resign from the office of Commissioner.

Staff

24. There may be appointed from time to time such public officers as may be required for the purpose of assisting the Commissioner in the effective performance of the Commissioner's functions under this Act.

General functions of the Commissioner

25. (1) The Commissioner is hereby empowered to carry out the functions specified in subsection (2) for the purposes of eliminating discrimination on the grounds of sex, marital status or pregnancy, and promoting recognition and acceptance of the principle of equality of the sexes.

(2) For the purposes of subsection (1) the Commissioner may -

(a) carry out investigations, research and inquiries relating to discrimination of the kinds rendered unlawful under this Act;

(b) acquire and disseminate knowledge on all matters relating to the elimination of such discrimination, and the achievement of the principle of equality of the sexes;

(c) arrange and coordinate consultations, inquiries, discussions, seminars and conferences;

(d) review from time to time the laws of [].

(e) consult with governmental, business, industrial and community groups in order to ascertain means of improving services and conditions affecting persons who are subject

to discrimination on the grounds of sex, marital status or pregnancy;

(f) develop programmes and policies promoting the achievement of the principle of equality of the sexes;

(g) do anything conducive or incidental to the performance of the Commissioner's functions under this Act.

Reference by Minister to Commissioner

26. (1) The Minister may refer to the Commissioner or report any matter relating to -

(a) a law or proposed law; or

(b) a practice, an alleged practice or proposed practice of any person or class of persons,

that conflicts with or may give rise to conflict with this Act.

(2) The Commissioner shall conduct an examination into any matter referred by the Minister under subsection (1) and shall report to the Minister the findings and conclusions of such examination.

Reviews of legislation etc.

27. The Commissioner shall from time to time, order a review of -

(a) laws in force in [];

(b) governmental policies and practices,

with a view to identifying circumstances where discrimination on the grounds referred to in this Act occur, in substance and effect, and shall furnish a report of the findings of the reviews to the Minister.

Making of complaints to Commissioner

28. (1) A complaint alleging that a person has contravened a provision of this Act, other than a contravention in respect of which a specific penalty is imposed, may be lodged in writing with the Commissioner -

(a) by or on behalf of the person aggrieved by the alleged contravention; or

(b) by a trade union of which the person aggrieved is a member, on behalf of that person.

(2) A complaint may be lodged in writing with the Commissioner that a person has refused, neglected or failed to obey or comply with an order of the Tribunal.

(3) A complaint under subsection (1) -

(a) may be lodged either as a representative complaint or as a complaint other than a representative complaint.

(b) shall be lodged within 12 months after the date on which the contravention which is the subject of the complaint is alleged to have been committed.

(4) Notwithstanding subsection (3)(b) the Commissioner, on good cause being shown, may accept a complaint which is lodged more than 12 months after the date conferred to in subsection (3)(b).

(5) In this section "trade union" means an organisation of employees or an organisation of employers.

Investigation of complaint by Commissioner

29. The Commissioner shall investigate each complaint lodged under section 28.

Application for interim order

30. The Commissioner, at any time after a complaint is lodged under section 28, and before the Commissioner dismisses the complaint, resolves it by conciliation or refers it to the Tribunal under Section 38, as the case may be, may apply to the Tribunal for an interim order under Section 64 or for the variation or revocation of any such order.

Power to information and documents

31. (1) Where the Commissioner has reason to believe that a person is capable of furnishing information or producing documents, as the case may be, relevant to an inquiry under this Part, the Commissioner may by notice in writing served on the person require the person, as such place and within such period or on such date as may be specified in the notice -

(a) to furnish to the Commissioner, in writing and signed by the person, or in the case of a body corporate, by an office of that body, such relevant information as may be specified in the notice; and

(b) to produce to the Commissioner such relevant documents (if any) as are specified in the notice.

(2) Where documents are produced to the Commissioner in accordance with subsection (1) the Commissioner -

(a) may take possession of and may make copies of, or take extracts from, the documents;

(b) may retain possession of the documents for such period as is necessary for the purposes of the inquiry to which they relate;

(c) during that period, shall permit a person who would, if that were not in the Commissioner's possession, be entitled to inspect any one or more of the documents, to inspect such of the documents as that person would be so entitled to inspect.

Directions to attend

32. (1) For the purpose of inquiring into a complaint and endeavouring to settle the matter to which it relates in accordance with Section 36, the Commissioner may, by notice in writing, direct the persons referred to in subsection (2) to attend, at a time and place specified in the notice, a conference presided over by the Commissioner or a person appointed by the Commissioner.

(2) Directions under subsection (1) to attend a conference shall be given -

(a) to the complainant;

(b) to the person who is alleged to have done the act which is the subject matter of the complaint;

(c) to any other person who in the opinion of the Commissioner -

(i) is likely to be able to provide information relevant to the inquiry; or

(ii) whose presence at the conference is likely to be conducive to the settlement of the matter.

(3) The Commissioner may, in a notice under section (1) require the person to produce such

documents at the conference as are specified in the notice.

Conference

33. (1) The person presiding at a conference may require a person attending the conference to produce a document.

(2) A conference shall be held in private and, subject to this Act, shall be conducted in such manner as the person presiding at the Conference thinks fit.

(3) Subject to subsection (4), a body of persons whether corporate or incorporate, that is directed to attend a conference shall be deemed to attend if an officer or employee of that body attends on its behalf.

(4) Except with the consent of the person presiding at the conference -

(a) an individual must attend in person; and

(b) a body of persons must be represented by an officer or employee of that body.

Commissioner may dismiss certain complaints

34. (1) Where at any stage of the inquiry the Commissioner is satisfied that a complaint is frivolous, vexatious, misconceived, lacking in substance or relates to an act that is not unlawful by reason of a provision of this Act, the Commissioner may, by notice in writing addressed to the complainant, dismiss the complaint.

(2) The Commissioner shall, in a notice under subsection (1), advise the complainant of -

(a) the reason for dismissing the complaint; and

(b) the rights of the complainant under Section 35.

Reference of complaint to Tribunal at request of complainant

35. (1) Where the Commissioner has given a complainant a notice under Section 34, the complainant may, within 21 days after the receipt of that notice, by notice in writing served on the Commissioner, require the Commissioner to refer the complaint to the Tribunal.

(2) On receipt of a notice under subsection (1), the Commissioner shall refer the complaint to the Tribunal together with a report relating to any inquiries made by the Commissioner into the complaint.

Resolution of complaint by conciliation

36. (1) Where the Commissioner is of the opinion that a complaint (other than a complaint dismissed by the Commissioner under section 34) may be resolved by conciliation, the Commissioner shall endeavor to resolve the complaint by conciliation.

(2) The Commissioner may, by notice in writing, require the complainant and the respondent, or either of them, to appear before the Commissioner, either separately or together, for the purpose of endeavouring to resolve the complaint by conciliation.

Representation in conciliation proceedings

37. A complainant or respondent in conciliation proceedings before the Commissioner is entitled to appear personally or by an agent or counsel.

Reference of complaints to the tribunal

38. (1) Without prejudice to the Commissioner's powers complaints under Section 34, where the Commissioner -

(a) is of the opinion that a complaint cannot be resolved by conciliation;

(b) has endeavoured to resolve a complaint by conciliation but had not been successful in such endeavours; or

(c) is of the opinion that the nature of a complaint is such that it should be referred to the Tribunal,

the Commissioner shall refer the complaint to the Tribunal together with a report relating to any inquiries made by the Commissioner into the complaint.

(2) Where a complaint is referred to the Tribunal under subsection (1), the Commissioner shall, if the complainant so requests, either personally, or by counsel or representative, assist the complainant in the presentation of the complainant's case to the Tribunal.

(3) Evidence of anything said or done in the course of conciliation proceedings under Section 36 shall (not) be admissible in subsequent proceedings before the Tribunal.

Annual report

39. (1) The Commissioner shall [at the end of each year] prepare and present to the Minister a report relating to -

(a) The Commissioner's work for that year;

(b) the administration of the functions of the Commissioner during that year; and

(c) the research undertaken by the Commissioner during the year and any recommendations that the Commissioner considers appropriate for the elimination or modification of legislative provisions that discriminate against persons on any ground referred to in this Act.

PART VIII - THE EQUAL OPPORTUNITY TRIBUNAL

Establishment of Tribunal

40. (1) There is hereby established a Tribunal to be known as the Equal Opportunity Tribunal.

(2) The Tribunal shall consist of 3 members appointed by the [Governor-General] [Minister] by instrument in writing.

(3) One of the members of the Tribunal shall be an attorney-at-law and chairman of the Tribunal and other members shall be persons having training and experience in the field of industrial relations or public relations or suitably equivalent training and experience.

(4) A person who is a member of Parliament shall not be appointed as a member of the Tribunal.

Term of office

41. Each member of the Tribunal shall hold office for such term not exceeding three years as is specified in the member's instrument of appointment and shall be eligible for re-appointment.

Remuneration

42. The members shall be paid such remuneration including travelling and subsistence allowance, as the [Minister] may determine from time to time.

Vacation of office

43. The office of a member of the Tribunal shall become vacant if the member -

(a) dies;

- (b) is not reappointed on the expiration of the term of office;
- (c) resigns by notice in writing to the [Governor-General] [Minister];
- (d) is nominated for election as a member of Parliament;
- (e) is removed from office pursuant to Section 44.

Removal from office

44. The [Governor-General][Minister] may remove a member of the Tribunal, from office -

- (a) if the member is permanently incapable of performing the members's duties under this Act;
- (b) for neglect of duty; or
- (c) for dishonourable conduct.

Acting Chairman

45. The [Governor-General] [Minister] may at any time appoint a person qualified for appointment under Section 40(3) to act as chairman during the absence or illness of the chairman and to exercise the functions of chairman while so acting.

Deputy members

46.(1) The [Governor-General] [Minister] may at any time appoint not more than four [4] persons as deputy members of the Tribunal to provide a pool of persons to act as members, upon the request of the chairman, during the absence or illness of members other than the chairman.

(2) A deputy member who is requested to act as a member shall, while so acting, have and may exercise the functions of a member.

Decisions of the Tribunal

47. (1) The chairman shall preside at meetings of the Tribunal.

(2) Subject to subsection (3), a decision in which any two members concur shall be a decision of the Tribunal.

(3) The chairman shall determine any question relating to the admissibility of evidence, and any other question of law or procedure.

Registrar of Tribunal

48. There shall be a registrar of the Tribunal [who shall be a public officer].

Functions of Tribunal

49.(1)The Minister may refer any matter to the Tribunal for inquiry as a complaint under this Act.

(2) The Tribunal shall hold an inquiry into each complaint or matter referred to it under Sections 35(2), 38 and 49.

Single inquiry into several complaints

50. Where the Tribunal is of the opinion that two or more complaints arise out of the same or substantially the same circumstances or subject matter, it may hold a single inquiry into those complaints.

Joinder of parties

51. Where, before holding an inquiry or at any stage during the holding of an inquiry, the Tribunal is of the opinion that a person ought to be joined as a party to the inquiry, the Tribunal may, by notice in writing to that person, join the person as a party to the inquiry.

Notice of inquiry and rights of parties at inquiry

52. (1) The Tribunal shall -

(a) give a party to an inquiry such notice in such manner as the Tribunal determines, of the time and place at which it intends to hold the inquiry;

(b) give each party to an inquiry reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Tribunal.

(2) If a party to an inquiry to whom notice has been given under subsection (1)(a) fails to attend at the time and place specified for the inquiry, the Tribunal may hold the inquiry in the absence of that party.

Parties

53. The parties to an inquiry shall be the complainant, the respondent, any person joined by the Tribunal as a party and any person to whom the Tribunal grants leave to appear as a party.

Officer assisting at Tribunal

4. (1) The Tribunal may make arrangements with the Commissioner for an officer of the Commissioner to assist the Tribunal at an inquiry.

(2) An officer referred to in subsection (1) shall, in relation to the inquiry, be subject to the direction and control of the Tribunal.

Matters to be considered in determination of representative complaint

55. (1) The Tribunal shall not permit a complaint to be dealt with as a representative complaint unless it is satisfied that the complaint is made in good faith as a representative complaint.

(2) For the purposes of subsection (1) the Tribunal shall satisfy itself -

(a) of all of the following matters, that is to say -

(i) the complainant is a member of a class of persons, the members of which have been affected or may reasonably be likely to be affected, by the conduct of the respondent;

(ii) the complainant has in fact been affected by the conduct of the respondent;

(iii) the class is so numerous that joinder of all members is impracticable;

(iv) there are questions of law or fact common to all members of the class;

(v) the claims of the complaint are typical of the claims of that class;

(vi) multiple complaints would be likely to produce varying determinations which could have incompatible or inconsistent results for the individual members of the class; and

(vii) the respondent has acted on grounds applying to the class as a whole;

(b) that notwithstanding that the requirements of paragraph (a) have not been satisfied, the justice of the case demands that the matter be dealt with and a remedy provided as a representative complaint.

Amendment of complaint by Tribunal

56. Where the Tribunal is satisfied -

(a) that the complaint could be dealt with as a representative complaint if the class of persons on whose behalf the complaint is lodged is increased, reduced or otherwise altered, the Tribunal may amend the complaint so that it can be dealt with as a representative complaint;

(b) that the complaint has been wrongly made as a representative complaint, the Tribunal may amend the complaint by removing the names of the persons or class of persons on whose behalf the complaint was lodged so that it can be dealt with other than as a representative complaint.

Ordinary complaint not precluded by representative complaint

57. Nothing in this Act shall prevent a person from lodging a complaint, other than as a representative complaint, under Section 28, notwithstanding that the conduct in respect of which the complaint is lodged has also been the subject matter of a representative complaint.

Resolution of complaint by conciliation

58. The Tribunal -

(a) may endeavor, by all such means as it considers reasonable, to resolve a complaint by conciliation; and

(b) shall take all such steps as it considers reasonable to effect an amicable settlement of a complaint and for this purpose may adjourn an inquiry at any stage to enable the parties to negotiate with a view to settling the complaint by amicable arrangements.

Evidence

59. For the purposes of any inquiry, the Tribunal -

(a) shall not be bound by rules of evidence and may inform itself on any matter it thinks fit;

(b) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and

(c) may give directions relating to procedure that, in its opinion, will enable costs of delay to be reduced and will help to achieve a prompt hearing of the matters at issue between the parties.

Inquiries may be held in private

60. (1) Subject to subsection (2), an inquiry shall be held in public.

(2) The Tribunal may, of its own motion or on the application of a party to that inquiry, direct that an inquiry, or a part thereof, be held in private if it is satisfied that such action is appropriate.

Tribunal may prohibit publication of evidence

61. (1) The Tribunal may direct that -

(a) any evidence given before it;

(b) the contents of any document produced to the Tribunal; and

(c) any information that might enable a person who has appeared before the Tribunal to be identified,

shall not be published, or shall be published only in such manner, and to such persons, as the Tribunal may specify.

(2) Nothing in this section shall be taken to derogate from the Tribunal's powers under Section 60.

Proof of exceptions

62. Where by any provision of this Act, conduct is excepted from conduct that is unlawful under this Act or that is contravention of this Act, the onus of proving the exception in any inquiry lies upon the respondent.

Tribunal may dismiss certain complaints

63. (1) Where, at any stage of an inquiry, the Tribunal is satisfied that a complaint is frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the complaint should not be entertained, it may dismiss the complaint.

(2) Where the Tribunal dismisses a complaint under subsection (1), it may order the complainant to pay the costs of the enquiry.

Interim order

64. The Tribunal or, where the chairman is of the opinion that it is expedient that the chairman alone should exercise the functions of the Tribunal under this section the chairman, may on the application of the Commissioner under Section 30, or on the application of a party to an inquiry at any time after the lodging of the complaint into which that inquiry is held, make an interim order to preserve -

(a) the *status quo* between the parties to the complaint; or

(b) the rights of the parties to the complaint, pending determination of the matter that is the subject of the complaint.

Decisions of the Tribunal

65. After holding an inquiry, the Tribunal may -

(1) dismiss the complaint to which it relates;

(2) find the complaint substantiated and do any one or more of the following:

(a) except in respect of a representative complaint or a matter referred to the Tribunal by the Minister under Section 49(1), order the respondent to pay to the complainant damages of such amount as the Tribunal specifies by way of compensation for any loss or damages suffered by reason of the respondents's conduct;

(b) make an order enjoining the respondent from continuing or repeating any conduct rendered unlawful by this Act;

(c) except in respect of a representative complaint or a matter referred by the Minister under section 49(1), order the respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;

(d) make an order declaring void in whole or in part and either *ab initio* or from a specified time, any contract or agreement made in contravention of this Act.

(e) decline to take any further action in the matter.

Costs

66. (1) Except as provided by Section 63 (2), and subsection (2) of this Section, each

Section, each party to an inquiry shall pay the party's own costs.

(2) Where the Tribunal is of the opinion in a particular case that the circumstances so warrant, the Tribunal may make such order as to costs and security of cost, whether by way of interim order or other wise, as it thinks fit.

Recovery of amounts ordered by Tribunal

67. Any amount ordered to be paid by the Tribunal may be registered as a judgement debt in a court of competent jurisdiction.

Compliance with order of Tribunal

68. A person who refuses or fails to obey or comply with an order of the Tribunal under Section 65(2)(b) and (c) or an interim order of the Tribunal commits an offence and is liable on conviction to a fine

(1) in the case of an individual, to a fine not exceeding \$[].

(2) in the case of a body corporate, to a fine not exceeding \$[].

Reasons for Tribunal's decision

69.(1) Where the Tribunal does not state its reasons for any decision or order made in relation to an inquiry, a party thereto may, by notice in writing to the Tribunal within 7 days after the date of the decision or order, require the Tribunal to state its reasons.

(2) The Tribunal shall, within 14 days after receipt of the notice referred to in subsection (1), state its reasons for the decision or order to which the notice relates.

Authentication of documents

70. Every document requiring authentication by the Tribunal may be sufficiently authenticated if it is signed by the chairman or the registrar.

Judicial notice

71. Judicial notice shall be taken of the signature of the chairman or the registrar when appearing on a document issued by the Tribunal.

Appeals

72. (1) A party aggrieved by a decision or an order of the Tribunal may appeal to the Court of Appeal on a question of law -

(a) except as provided in paragraph (b), within 21 days after the date of the decision or order; or

(b) where a notice has been served on the Tribunal under Section 69(1), within 21 days after the date on which the Tribunal states its reasons for that decision or order under Section 69(2).

(2) An appeal shall be made in accordance with rules of court.

(3) The Court of Appeal may in a particular case, extend the time within which an appeal may be commenced under subsection (1).

(4) The Court of Appeal shall hear and determine the question of law arising on the appeal and may -

(a) remit the Court's decision on that question to the Tribunal;

(b) make such other order in relation to the appeal as the Court thinks fit.

(5) The Tribunal and any member thereof shall not be liable to any costs in respect of a decision or order of the Tribunal or the appeal.

PART IX - GENERAL

Pressure to discriminate

73. (1) It is unlawful to induce or attempt to induce a person to do any act which contravenes Part III or IV by -

- (a) providing or offering to provide the person with any benefit; or
- (b) subjecting or threatening to subject the person to any detriment.

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

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$[].

Liability of employers and principals

74. (1) Anything done by a person in the course of employment and the person's employment shall be treated for the purposes of this Act as done by the person's employer as well as by the person, whether or not it was done with the employer's knowledge or approval.

(2) In proceedings under this Act against any person in respect of an act alleged to have been done by the person's employee, it shall be a defence for that person to prove that such persons took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing acts of that description in the course of the person's employment.

Aiding Unlawful acts

75. (1) A person who knowingly aids another person to do an act made unlawful by this Act shall be treated for the purposes of this Act as doing an unlawful act of like description.

(2) For the purposes of subsection (1) an employee for whose act the employer is liable under section 73(1) [or would be so liable but for Section 73(2)] shall be deemed to aid the doing of the act by the employer.

(3) Subsection (1) does not apply to a person if -

- (a) that person acts in reliance on a statement made by the other person that, by reason of any provision of this Act, the act which is aided would not be unlawful;
- (b) It is reasonable for the person to rely on the statement

(4) A person who knowingly or recklessly makes a statement referred to in subsection (3)(a) which is false or misleading in a material respect, commits an offence and is liable on summary conviction to a fine not exceeding \$[].

Obstruction

76. (1) A person shall not, without lawful excuse, wilfully obstruct, hinder or resist the Commissioner, an officer of the Commissioner, a member of the Tribunal or the registrar, in the exercise or the performance of a function under this Act.

(2) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction -

- (a) in the case of an individual, to a fine not exceeding \$[];

(b) in the case of a body corporate, to a fine not exceeding \$[].

Failure to attend conciliation proceedings or conference

77. (1) A person who has been directed under Section to attend a conference, or who has been served with notice under Section 36 to appear before the Commissioner, shall not, without reasonable excuse, fail or comply with such notice or direction.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction -

(a) in the case of an individual, to a fine not exceeding \$[];

(b) in the case of a body corporate, to a fine not exceeding \$[].

Failure to furnish information

78. (1) A person shall not, without reasonable excuse, refuse or fail, when required to do so under Section 31 -

(a) to furnish information; or

(b) to produce a document.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$[].

False or misleading information

79. A person who furnishes information or makes a statement to the Commissioner or to any other person exercising or performing functions under this Act, knowing that the information or statement is false or misleading in a material particular commits an offence and is liable on conviction -

(a) in the case of an individual, to a fine not exceeding \$[];

(b) in the case of a body corporate, to a fine not exceeding \$[].

Protection from civil action

80. (1) No action, suit or prosecution shall be brought against the Tribunal, a member thereof, the Commissioner or a person acting under the direction or authority of the Tribunal or of the Commissioner in relation to an act done or omitted to be done in good faith in the performance or purported performance of any function conferred on the Commissioner or the Tribunal.

(2) Where -

(a) a complaint had been made to the Commissioner; or

(b) a submission has been made, a document or information has been furnished, or evidence has been given to, the Tribunal or the Commissioner,

no action, suit or prosecution shall be brought in respect of any loss, damage or injury suffered by a person by reason only of the making of the complaint, the furnishing of the information or document or the giving of evidence.

Non-disclosure private information

81. (1) A person who is, or has at any time been, the Commissioner, a member of the Tribunal or a member of the staff of the Commissioner or has at any time been authorised to perform or exercise any function of the Commissioner or the Tribunal, shall not, either directly or indirectly, except in the performance of a function under or in connection with this Act -

(a) make a record of, or divulge or communicate to any person, any information relating to the affairs of another person, acquired by the first-mentioned person by reason of that person's office or employment under or for the purposes of this Act;

(b) make use of any such information; or

(c) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$[].

Information stored otherwise than in written form

82. Where information is recorded or stored by means of a mechanical, electronic or other device, any duty imposed by this Act to produce the document recording that information shall be construed as a duty to provide a document containing a clear reproduction in writing of the information.

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