

CAYMAN ISLANDS



GENDER EQUALITY LAW, 2011

(Law 21 of 2011)

Supplement No. 2 published with Gazette No. 22 dated 24 October, 2011.

PUBLISHING DETAILS

Commenced: 31st day of January, 2012



CAYMAN ISLANDS



GENDER EQUALITY LAW, 2011
(Law 21 of 2011)

Arrangement of Sections

Section	Page
PART 1 - PRELIMINARY	
1. Short title and commencement	5
2. Interpretation	5
PART 2 - PROTECTION AGAINST GENDER DISCRIMINATION	
3. Prohibited grounds of discrimination	7
4. Prohibition on discrimination in employment	8
5. Exception for genuine occupational qualification	8
6. Special measures to promote equality	9
7. Sexual harassment	10
8. Equal remuneration	10
9. Professional partnership	10
10. Qualifying bodies	11
11. Vocational training bodies	11
12. Employment agencies	11
13. Goods, services and facilities	12
14. Imposition of requirement or conditions	12
15. Advertisements	12
16. Application forms, etc.	13
17. Liability of employers	13



PART 3 - EXCEPTIONS

18.	Charities	13
19.	Religious bodies	13
20.	Provisions in other Laws	14

PART 4 - OFFENCES RELATING TO GENDER DISCRIMINATION

21.	Pressure to discriminate	14
22.	Victimization	14

PART 5 - GENDER EQUALITY TRIBUNAL

23.	Establishment of Tribunal	15
24.	Functions of Tribunal	15
25.	Independence of Tribunal	15
26.	Composition of Tribunal	15
27.	Tenure of members	16
28.	Declaration of interest	16
29.	Resignation	16
30.	Revocation	17
31.	Vacancy	17
32.	Remuneration and expenses	17
33.	Complaint	17
34.	Hearing of complaint	18
35.	Findings of Tribunal	19
36.	Agreement	19
37.	Confidentiality	20
38.	Protection from liability	21

PART 6 - MISCELLANEOUS

39.	Proof of exceptions	21
40.	Appeal	21
41.	Regulations	21
42.	Law binding on Crown	21



CAYMAN ISLANDS



GENDER EQUALITY LAW, 2011

(Law 21 of 2011)

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

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

Short title and commencement

1. (1) This Law may be cited as the *Gender Equality Law, 2011*.
- (2) This Law shall come into force on the 31st day of January, 2012.

Interpretation

2. In this Law —

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

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

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

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

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

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

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

“**employer**” means any person who has entered into or stands ready to enter into a contract of employment with an employee, and includes any agent, representative or manager of such person who is placed in authority over an employee;

“**employment**” includes —

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

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

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

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

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



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

“**marital status**” means the status or condition of being —

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

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

“**member**” means a member of the Tribunal appointed under section 26;

“**Minister**” means Minister responsible for gender affairs;

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

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

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

PART 2 - PROTECTION AGAINST GENDER DISCRIMINATION

Prohibited grounds of discrimination

3. (1) For the purposes of this Law, a person discriminates against another person on grounds specified in subsection (2) if the first-mentioned person makes, on any of the grounds specified in subsection (2), any distinction, exclusion or preference the intent or effect of which is to nullify or impair equality of opportunity or treatment in any employment or occupation.
- (2) The grounds referred to in subsection (1) are —
- (a) sex, marital status or pregnancy; or
 - (b) any characteristic based on gender which appertains generally or is generally imputed to persons of a particular sex or marital status or pregnant state.

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

Prohibition on discrimination in employment

4. (1) A person who is an employer, shall not in relation to the recruitment, selection or employment of any other person, discriminate against that other person on any ground specified in section 3(2) —
- (a) in an advertisement of a job;
 - (b) in an interview or other arrangements made for the purpose of determining who should be offered employment;
 - (c) in determining who should be offered employment;
 - (d) in the terms or conditions on which employment is offered; or
 - (e) in the creation, classification or abolition of jobs.
- (2) An employer shall not discriminate against an employee on any ground specified in section 3(2) —
- (a) in the terms or conditions of employment afforded to the employee by the employer;
 - (b) in conditions of work or occupational safety and health measures;
 - (c) in the provision of facilities related to or connected with employment;
 - (d) by denying access, or limiting access to opportunities for advancement, promotion, transfer or training, or to any other benefits, facilities or services associated with employment;
 - (e) by retrenching or dismissing the employee; or
 - (f) by subjecting the employee to any other disadvantage.
- (3) Subsection (1) does not apply to employment for the purposes of a private household.

Exception for genuine occupational qualification

5. (1) Nothing in section 4 shall apply to any distinction, exclusion or preference based on any ground specified in section 3(2) where a genuine occupational qualification exists.
- (2) For the purposes of this Law a genuine occupational qualification for a job exists where —
- (a) the essential nature of the job calls for a man or woman for reasons of physique (excluding physical strength or stamina) or, in dramatic performances or other entertainment, for reasons of authenticity, so that



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

Special measures to promote equality

6. Special measures may be prescribed by Order made by the Governor in Cabinet to promote equality of opportunity in employment based on the grounds set out in section 3(2), and such special measures shall be deemed not to be discrimination within the meaning of section 4.
- (2) An Order pursuant to subsection (1) shall specify the period during which the special measures shall be effective.

Sexual harassment

7. (1) Any act of sexual harassment constitutes discrimination based on sex within the meaning of section 3.
- (2) A person shall not commit sexual harassment against any other person.
- (3) In deciding whether conduct has the effect referred in subsection (4) the following must be taken into account —
- (a) the perception of the person against whom the sexual harassment is alleged to have been committed;
 - (b) the other circumstances of the case; and
 - (c) whether it is reasonable for the conduct to have that effect.
- (4) In this section —
- “**sexual harassment**” means unwanted conduct of a sexual nature against an employee by an employer or another employee —
- (a) in the workplace; or
 - (b) in connection with the performance of, or recruitment for work,
- which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee, being conduct which has the purpose or effect of violating the dignity of the employee or intimidating, degrading, humiliating or offending the employee.

Equal remuneration

8. (1) An employer shall not pay unequal remuneration to men and women performing work of equal value for such employer.
- (2) The burden of proof to establish that equal remuneration has been paid rests on the employer.

Professional partnership

9. (1) Where employment in a particular profession is provided primarily through a partnership firm, any such firm of professionals, or any persons proposing to form themselves into such a partnership firm, shall not, discriminate against any person on any ground specified in section 3(2) —
- (a) in the arrangements they make for the purpose of determining who should be offered a position as a partner in the firm;
 - (b) by refusing or deliberately omitting to offer that position to that person;
 - (c) in the terms on which they offer that position to that person; or
 - (d) in a case where that person already holds that position —
 - (i) by denying or limiting access to any benefit arising from membership of the firm; or



- (ii) by expelling that person from the firm or subjecting that person to any other detriment.
- (2) Subsection (1) does not apply if the treatment afforded to the partner or potential partner is based on a genuine occupational qualification.

Qualifying bodies

- 10.** (1) An authority or body shall not, if the authority or body is empowered to confer, renew, extend, revoke or withdraw an authorization or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in an occupation, discriminate against a person on any ground specified in section 3(2) —
- (a) by refusing or failing to confer, renew or extend the authorization or qualification;
 - (b) in the terms or conditions on which it is prepared to confer the authorization or qualification or to renew or extend it; or
 - (c) by revoking or withdrawing the authorization or qualification or varying the terms or conditions upon which it is held.
- (2) In this section —
“authorization or qualification” includes recognition, registration, enrolment, approval and certification.

Vocational training bodies

- 11.** A person or educational authority recognised as providing facilities for training for employment shall not discriminate on any ground specified in section 3(2) against another person who is seeking or undergoing technical or vocational training which would help to fit that other person for any kind of employment or occupation —
- (a) in the arrangements made for the purpose of determining who should be offered training;
 - (b) in the terms and conditions on which that other person is afforded access to training courses or other facilities and services, including vocational counselling and guidance;
 - (c) by refusing or deliberately omitting to afford access to training courses or other facilities and services, including vocational counselling and guidance; or
 - (d) by terminating any training which has already started.

Employment agencies

- 12.** (1) An employment agency shall not discriminate against a person on any ground specified in section 3(2) —
- (a) by refusing to provide that person with any of its services;

- (b) in the terms on which it offers to provide that person with any of its services;
 - (c) in the manner in which it provides that person with any of its services; or
 - (d) in any other manner in which it facilitates the hire or employment of that person.
- (2) This section shall not apply if the discrimination concerns employment which the employer could lawfully refuse to offer that person.
- (3) An employment agency is not liable under this section if it proves —
- (a) that it acted in reliance on a statement made to it by an employer to the effect that by reason of the operation of subsection (2), its action would not be unlawful; and
 - (b) that it was reasonable for it to rely on the statement.
- (4) Any person who knowingly, or recklessly, makes a statement referred to in subsection (3) which is false or misleading in a material particular commits an offence and is liable on summary conviction to a fine of five thousand dollars.

Goods, services and facilities

- 13.** A person who, whether for payment or not, provides goods and services or makes facilities available, shall not discriminate against another person on any ground specified in section 3(2) —
- (a) by refusing to provide that person with those goods or services or to make those facilities available; or
 - (b) in the manner in which or in the terms and conditions on which those goods or services are provided or those facilities are made available to that person.

Imposition of requirement or conditions

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

Advertisements

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



Application forms, etc.

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

Liability of employers

- 17.** (1) Any act done by an employee in the course of his employment shall be treated as done by his employer whether or not it was done with the employer's knowledge or approval.
- (2) In proceedings under this Law against an employer in respect of an act alleged to have been done by an employee in the course of the employee's employment, it is a defence for the employer to show that the employer took all reasonable steps to prevent the employee —
- (a) from doing the act; or
 - (b) from doing any act of that description.
- (3) This section shall not apply to an offence under this Law.

PART 3 - EXCEPTIONS

Charities

- 18.** (1) Nothing in Part 2 affects —
- (a) a provision of a deed, will or other document, whether made before or after the date of commencement of this Law, that confers charitable benefits or enables charitable benefits to be conferred on persons on the basis of any ground specified in section 3(2); or
 - (b) an act that is done in order to give effect to such a provision.
- (2) In this section —
- “charitable benefits”** means benefits for purposes that are exclusively charitable according to law.

Religious bodies

- 19.** Nothing in Part 2 affects —
- (a) the ordination of priests, ministers of religion or members of a religious order;

- (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;
- (c) the selection or appointment of persons to perform duties or functions for the purposes of, or in connection with, or otherwise to participate in any religious observance or practice; or
- (d) any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of a religion or is necessary to avoid injury to the religious susceptibilities of adherents to that religion.

Provisions in other Laws

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

PART 4 - OFFENCES RELATING TO GENDER DISCRIMINATION

Pressure to discriminate

- 21.** (1) A person shall not induce or attempt to induce another person to do any act which contravenes Part 2 by —
- (a) providing or offering to provide that other person with any benefit; or
 - (b) subjecting or threatening to subject that other person to any detriment.
- (2) An offer or threat is not prevented from falling within subsection (1), because it is not made directly to the person in question, if it is made in such a way that the person is likely to hear it or hear of it.
- (3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars.

Victimization

- 22.** (1) A person shall not subject or threaten to subject another person to any detriment —
- (a) on the ground that the second mentioned-person —
 - (i) has made, or proposes to make, a complaint under this Law;
 - (ii) has furnished or proposes to furnish, any information, or has produced, or proposes to produce, any document to a person exercising or performing any power or function under this Law;
 - (iii) proposes to provide evidence or testimony as a witness; or
 - (iv) has made a good faith allegation that a person has committed an act of discrimination in contravention of this Law; or



- (b) on the ground that the first-mentioned person believes that the second-mentioned person has done, or proposes to do, an act or thing referred to in paragraph (a)(i) to (iv).
- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars.

PART 5 - GENDER EQUALITY TRIBUNAL

Establishment of Tribunal

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

Functions of Tribunal

- 24.** The Tribunal shall hear and determine discrimination complaints submitted to the Tribunal under this Law.

Independence of Tribunal

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

Composition of Tribunal

- 26.** (1) Subject to subsections (2) and (3) and to section 27, the Tribunal shall comprise of five members, who shall be appointed by the Governor in Cabinet on such terms and conditions as the Governor in Cabinet may specify in the members' instruments of appointment.
- (2) The members of the Tribunal shall be —
- (a) an attorney-at-law who shall be the Chairperson; and
 - (b) four other persons each of whom has experience and qualifications in any of the following or related fields —
 - (i) gender;
 - (ii) social development;
 - (iii) human rights; or
 - (iv) labour.
- (3) A person shall be disqualified from being a member and is not eligible to be appointed as a member, or having been appointed, is not eligible to continue as a member if that person —
- (a) has filed for bankruptcy in a court or is declared by a court to be a bankrupt;

- (b) is declared by a court to be physically or mentally incapacitated by reason of unsoundness of mind;
 - (c) has been convicted of a criminal offence except where the offence is a minor traffic offence; or
 - (d) is a Member of the Legislative Assembly.
- (4) A decision of the Tribunal shall be by simple majority of the members present at a properly constituted hearing or meeting of the Tribunal.
- (5) Where a vacancy exists in the membership of the Tribunal, the Governor in Cabinet shall, in accordance with this section, appoint a person to fill the vacancy.
- (6) The Governor in Cabinet shall by notice published in the Gazette give notice of the names of the members of the Tribunal as first constituted and thereafter of every change in the constitution of the Tribunal.
- (7) A person appointed as a member shall act in the public interest to carry out the purposes of this Law and not based on his personal or business interest.
- (8) For the purposes of subsection (4), a hearing or meeting of the Tribunal shall be properly constituted if there is a quorum of at least three members of the Tribunal are present and participating in the meeting or hearing.

Tenure of members

27. The appointment of a member shall be at the pleasure of the Governor in Cabinet.

Declaration of interest

- 28.** (1) A member who is in any way, either directly or indirectly, interested in a matter before the Tribunal shall declare the nature of his interest to the Tribunal at the first instance where it is practicable to do so.
- (2) Where a member declares an interest under subsection (1), the Tribunal shall determine whether or not the member's interest in the matter, is material and where the Tribunal determines the member's interest is material, the member shall not sit to hear that particular matter.

Resignation

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



Revocation

- 30.** The Governor in Cabinet shall at any time, in writing, revoke the appointment of a member if, upon evidence, the Governor in Cabinet is satisfied —
- (a) that the member is disqualified from being a member under section 26(3);
 - (b) that the member is unable to perform the functions of his office;
 - (c) that the member is guilty of misconduct;
 - (d) that the member has been disqualified or suspended on grounds of misconduct, by a competent authority, from practising a profession;
 - (e) that the member is disqualified on grounds of national security; or
 - (f) that there is any other sufficient cause.

Vacancy

- 31.** (1) The office of a member is vacated —
- (a) upon the death of the member;
 - (b) if the member becomes disqualified under section 26(3);
 - (c) if the member resigns under section 29;
 - (d) if the Governor in Cabinet revokes the appointment of that member under section 30; or
 - (e) if the member's appointment is not renewed by the Governor in Cabinet as of the date of expiry of the member's term of appointment.
- (2) A decision of the Tribunal taken at a hearing is not invalidated merely because there is a vacancy in membership.

Remuneration and expenses

- 32.** (1) A member shall be paid such remuneration and allowances as may be determined by the Governor in Cabinet.
- (2) The expenses of the Tribunal shall be paid out of the general revenue of the Islands.

Complaint

- 33.** (1) A person who has reasonable grounds for believing that another person is engaging or has engaged in discrimination contrary to this Law may, in the form approved by the Tribunal, file a complaint with the Tribunal.
- (2) On receiving a complaint under subsection (1), the Tribunal shall —
- (a) record the complaint and furnish to the complainant and the person against whom the claim is made a copy of that record signed by the person receiving the complaint; and

- (b) furnish to the complainant and the person against whom the claim is made a prescribed statement setting out the procedures that will be followed respecting the complaint and the rights of the complainant.
- (3) A complaint shall be made within six months from the date on which the alleged acts, the basis of the complaint, were done except that, where a complaint is made after that time, the Tribunal may if the reasons for the delay are reasonable, accept that complaint.
- (4) The Tribunal may, adopt such procedures it considers appropriate in the circumstances to determine a particular complaint.

Hearing of complaint

- 34.** (1) Where a complaint is made by a person other than the individual who is alleged to be the victim of the discrimination on grounds specified in section 3(2) to which the complaint relates, the Tribunal shall refuse to deal with the complaint unless the alleged victim consents thereto.
- (2) Where in accordance with subsection (1) the Tribunal decides not to hear and determine a complaint, the Tribunal shall give a written notice of its decision to the complainant setting out the reason for its decision.
- (3) Where the Tribunal decides to hear and determine a complaint, the Tribunal shall give a written notice of the complaint and the date, time and place of the hearing to the parties to the complaint and section 35 shall apply.
- (4) For the purpose of discharging the functions of the Tribunal under this Law, the Tribunal shall, as is reasonably required, have the power to —
- (a) compel the production of documents or any other matter or thing from any person the Tribunal has reasonable grounds to believe is committing discrimination on any ground specified in section 3(2) or is breaching any other provision of this Law;
 - (b) issue summonses to compel the attendance of witnesses at the hearing; and
 - (c) examine witnesses on oath, affirmation or otherwise at the hearing.
- (5) A summons issued by the Tribunal under this section shall be under the hand of the Chairperson.
- (6) A person who —
- (a) fails without reasonable excuse to comply with a requirement or a summons under subsection (4);
 - (b) destroys or alters, or causes to be destroyed or altered, any document, or other matter or thing required to be produced under subsection (4); or
 - (c) hinders, obstructs, prevents or interferes with the Tribunal in the exercise of a power under this section,



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

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

Findings of Tribunal

- 35.** (1) Where after a hearing under section 34, the Tribunal finds that —
- (a) the complainant's allegations or its suspicions are substantiated, the Tribunal —
 - (i) shall notify the complainant and the person against whom the complaint was made in writing of its findings;
 - (ii) shall issue directions requiring the person against whom the complaint was made to stop the discrimination and take remedial action within a specific time period or requiring the person to pay compensation (which is limited to an amount not exceeding twenty thousand dollars) to any person aggrieved by the discrimination within a specific time period; and
 - (iii) may make an award for costs;
 - (b) the complaint is frivolous or vexatious or that its suspicions are incorrect, the Tribunal shall, in writing, notify the complainant and the person against whom the complaint was made and order the complainant to pay the cost incurred by the Tribunal and the person against whom the complaint was made.
- (2) A direction under subsection (1) may include an order directing an employer to redress the contravention including an order, if the employer and aggrieved person agree, to reinstate such aggrieved person.
- (3) A person who fails to comply with a direction of the Tribunal given pursuant to subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars.

Agreement

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

Confidentiality

- 37.** (1) Subject to subsection (4), a person who is, or has at any time been a member shall not, either directly or indirectly —
- (a) divulge or communicate to any person, any information relating to the affairs of another person acquired by the member because of his office for the purposes of this Law;
 - (b) make use of any such information as is mentioned in paragraph (a); or
 - (c) produce to any person a document relating to the affairs of another person given for the purposes of this Law.
- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars.
- (3) A person who is, or has at any time been a member, shall not be required —
- (a) to divulge or communicate to a court any information relating to the affairs of another person acquired by the member because of his office for the purposes of this Law; or
 - (b) to produce in a court a document relating to the affairs of another person of which the member has custody, or to which he has access, because of his office for the purposes of this Law,
- except where it is necessary to do so for the purposes of this Law.
- (4) This section shall not prohibit a person from —
- (a) making a record of information for the purposes of exercising a function under this Law or any other law in force in the Islands; or
 - (b) divulging or communicating information, or producing a document that is required or permitted by a Law to be divulged, communicated or produced as the case may be, if the information is divulged or communicated, or the document is produced, for the purposes of or under that Law.
- (5) A defendant bears an evidential burden in relation to a matter in subsection (4).
- (6) Subsection (3) shall not prevent a person from being required, for the purposes of or under a Law, to divulge or communicate information, or to produce a document, that is required or permitted by that Law to be divulged, communicated or produced.
- (7) In this section —
- “**court**” includes any tribunal, authority or person having power to require the production of documents or the answering of questions; and
- “**produce**” includes permit access to.



Protection from liability

- 38.** (1) A member shall not be liable in damages for anything done or omitted in the discharge or purported discharge of his functions, responsibilities, powers and duties under this Law unless it is shown that the act or omission was in bad faith.
- (2) The Government shall indemnify a member against all claims, damages, costs charges or expenses incurred by that member in the discharge or purported discharge of his functions, responsibilities, powers and duties under this Law, except claims, damages, costs, charges or expenses caused by the bad faith of that member.

PART 6 - MISCELLANEOUS**Proof of exceptions**

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

Appeal

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

Regulations

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

Law binding on Crown

- 42.** This Law binds the Crown.

Passed by the Legislative Assembly the 14th day of September, 2011.

Mary J. Lawrence
Speaker.

Zena Merren-Chin
Clerk of the Legislative Assembly.

