

A BILL

entitled

HUMAN RIGHTS AMENDMENT ACT 2021

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WHEREAS it is expedient to amend the Human Rights Act 1981 to provide for matters relating to the Human Rights Tribunal and other associated matters;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Human Rights Act 1981 (the "principal Act"), may be cited as the Human Rights Amendment Act 2021.

Amends section 2

2 Section 2 of the principal Act is amended by deleting the definition of "tribunal" and substituting the following definition—

“Tribunal” means the Human Rights Tribunal established under section 17A of the Act;”.

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Amends Part heading

3 Part III of the principal Act is amended in the heading by inserting after the word “Commission” the words “and Human Rights Tribunal”.

Amends section 13B

4 Section 13B of the principal Act is amended—

- (a) in subsection (1), by deleting “; and” and inserting a semi-colon;
- (b) by inserting after subsection (1)(a) the following—

“(aa) invite applications from the general public, through advertisement and direct invitation, to serve on a panel as members of the Tribunal; and ”and

- (c) in subsection (1)(b), by inserting after the word “Commissioners” the words “or on a panel as members of the Tribunal”.

Amends section 14D

5 Section 14D(8) of the principal Act is amended by deleting the words “board of inquiry” wherever it appears and substituting the words “the Tribunal”.

Repeals and replaces section 17A

6 Section 17A of the principal Act is repealed and replaced as follows—

“Human Rights Tribunal

17A (1) There is established a Human Rights Tribunal which, subject to the provisions of this Act, shall be responsible for hearing complaints.

(2) Schedule 3 shall have effect with respect to the appointment of the panel of members to serve on the Tribunal, and the constitution of, and proceedings before, the Tribunal.”.

Repeals and replaces section 19

7 Section 19 of the principal Act is repealed and replaced as follows—

“Procedure of Tribunals

19 Sections 9, 10, 12 and 13 of the Commissions of Inquiry Act 1935 shall apply to the hearing of complaints by the Tribunal.”.

Inserts sections 19A to 19E

8 The principal Act is amended by inserting after section 19 the following—

“Power of Tribunal to determine any matter, etc.

19A Without prejudice to any other powers conferred upon the Tribunal under this Act, the Tribunal may—

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- (a) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of a matter before the Tribunal;
- (b) proceed to hear and determine any matter in the absence of any party who has been duly summoned to appear before the Tribunal and has failed to do so.

Power to obtain information

19B (1) For the purpose of dealing with any matter referred to it, the Tribunal may, by writing under the hand of the Chairman—

- (a) require any person to furnish, in writing or otherwise, such particulars in relation to the matter as the Tribunal may specify;
- (b) require a person to attend before the Tribunal and give evidence on oath or otherwise, or produce documents,

and shall not be bound by any rule of evidence in civil or criminal proceedings.

(2) No person shall—

- (a) without reasonable excuse fail to furnish particulars in compliance with a requirement under subsection (1);
- (b) without reasonable excuse fail to attend before the Tribunal in compliance with such a requirement; or
- (c) when in attendance before the Tribunal, refuse to take an oath or otherwise, or to produce a document or give evidence, in compliance with such a requirement.

(3) But a person does not commit an offence under subsection (2) for refusing to answer any question or to produce any document which he could not be required to answer or produce in proceedings before a court of law in Bermuda, or for failing or refusing to answer any question or produce any document which is not relevant to the matters in issue.

(4) No person shall—

- (a) threaten, intimidate or restrain;
- (b) use violence to or inflict injury on;
- (c) cause or procure violence, damage, loss or disadvantage to;
- (d) cause or procure the punishment of or the loss of employment of;
or
- (e) penalize or otherwise discriminate against,

another person for or on account of his having appeared or being about to appear before the Tribunal.

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(5) For the avoidance of doubt, the powers conferred on the Tribunal under subsection (1) can be exercised either on its own volition or on the application of a party.

(6) In this section—

“injury” includes injury to a person in respect of his person, business, occupation, employment or other source of income, and includes any actionable wrong; and

“intimidate” means to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependants or of violence or damage to any person or property.

Power to exclude public

19C (1) Proceedings of the Tribunal shall be open to the public but the Tribunal may with the consent of both parties exclude the public or any representative of the press where it considers it necessary or desirable to protect the privacy of the parties to a hearing.

(2) Subject to subsection (3), whenever any representatives of the press are present at any such proceedings, and not otherwise, a fair and accurate report or summary of the proceedings including the evidence adduced at such proceedings may be published.

(3) No person shall publish any report on, or comment in respect of any proceedings before the Tribunal other than as authorized by this section.

Tribunal to submit reports

19D The panel Chairman (as appointed under paragraph 2 of Schedule 3) shall, from time to time and at least once in each calendar year, submit to the Executive Officer a report setting out the decision and awards made by the Tribunal under this Part; but any such report shall not reveal the names of any of the parties affected.

Immunity

19E In the exercise of the jurisdiction conferred upon the Tribunal, the members of the Tribunal shall enjoy such immunities as are enjoyed by magistrates in the exercise of their jurisdiction.”.

Amends section 21

9 Section 21 of the principal Act is amended by inserting after subsection (5) the following—

“(5A) The lodging of an appeal under this section shall act as a stay of any order of the Tribunal.”.

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Amends section 22

10 Section 22(3)(b) of the principal Act is amended by deleting the words “a board of inquiry” and substituting the words “the Tribunal”.

Inserts Schedule 3

11 The principal Act is amended by inserting after Schedule 2 the following—

“SCHEDULE 3

(section 17A)

HUMAN RIGHTS TRIBUNAL

APPOINTMENT OF PANEL

1 The Selection and Appointment Committee shall, in consultation with the Executive Officer, by notice published in the Gazette, appoint a panel of not less than 12 persons and not more than 15 persons as follows to serve as members of the Tribunal—

- (a) not more than 6 barristers and attorneys of not less than five years' standing; and
- (b) not more than 9 persons with experience, interest in, understanding or knowledge of human rights law or human rights issues.

2 The Selection and Appointment Committee, in consultation with the Executive Officer, shall appoint from the panel a Chairman (“panel Chairman”) and a Deputy Chairman (“panel Deputy Chairman”) who shall hold office for a period of three years, and may be reappointed from time to time for a like period.

3 No person shall be qualified to be the panel Chairman or panel Deputy Chairman appointed under paragraph 2 unless—

- (a) he is a barrister and attorney of at least five years' standing; and
- (b) he has knowledge of human rights law.

4 A person who has been appointed as a Commissioner under this Act is not eligible to be appointed as a member of the Tribunal unless a period of more than two years has elapsed since he has completed his service as a Commissioner.

5 (1) The members of the panel shall hold office for a period not exceeding three years.

(2) The initial members of the panel shall be appointed as follows—

- (a) at least one for a term of two years; and

(b) at least one for a term of three years.

(3) The members of the panel may be reappointed for a period not exceeding a further three years.

6 The Selection and Appointment Committee may at any time, by notice published in the Gazette, appoint a person to act in the place of any member of the panel who is absent from Bermuda or who is for any reason incapacitated, but shall not appoint a person to act as panel Chairman or panel Deputy Chairman unless that person is himself qualified under paragraph 3.

7 The panel Chairman, panel Deputy Chairman or any other panel member may at any time, except during the course of proceedings before them under this Act, resign his appointment by notice in writing addressed to the Selection and Appointment Committee.

8 The panel Chairman, panel Deputy Chairman and other members of the Tribunal constituted under paragraph 10 shall be entitled to receive out of the funds appropriated by the Legislature for the purpose, such fees and allowances as the Executive Officer may determine.

CONSTITUTION OF TRIBUNAL

9 For the purpose of determining any complaint, the Tribunal shall be constituted in accordance with paragraph 10.

10 (1) The panel Chairman shall, subject to paragraph 11, select three members from the panel as members of the Tribunal, and he shall select one of the members of the Tribunal to act as the Chairman of the Tribunal.

(2) The panel Chairman and the panel Deputy Chairman may themselves be selected as members of the Tribunal, including as the Chairman of the Tribunal.

(3) Where the panel Chairman has been selected as a member of the Tribunal and has recused himself under paragraph 12(2), the selection of a replacement member of the Tribunal shall be made under this paragraph by the panel Deputy Chairman.

11 No person shall be qualified to be the Chairman of the Tribunal unless he is a barrister and attorney of at least five years' standing.

CONFLICT OF INTEREST

12 (1) Where a member of the Tribunal, constituted under paragraph 10, has any direct or indirect interest in any matter before it, he shall—

- (a) prior to the hearing of the matter, or otherwise at the earliest opportunity, disclose his interest to the Tribunal and, subject to subparagraph (3), to the panel Chairman (or in his absence the panel Deputy Chairman);
- (b) not take part in any, or any further, discussion of the matter, and have no vote in relation to the matter, unless the Tribunal and subject to subparagraph (3) and the panel Chairman (or in his absence the panel Deputy Chairman) has resolved that the interest does not give rise to a conflict of interest.

(2) Where subparagraph (1) applies, the member (including a member who is the Chairman) may recuse himself and where so recused shall be replaced by another member (or by another Chairman) selected in accordance with paragraph 10.

(3) Where the member of the Tribunal referred to in subparagraph (1) is the panel Chairman, he shall disclose his interest to the panel Deputy Chairman and any decision on whether the interest gives rise to a conflict of interest shall be made by the panel Deputy Chairman.

VACANCIES

13 Where, during any proceedings, a vacancy occurs in the membership of the Tribunal it may, with the consent of all parties, continue to act notwithstanding the vacancy; and no act, proceeding or determination of the Tribunal shall be called into question or invalidated by reason of the vacancy.

14 If in the opinion of the Selection and Appointment Committee, a Chairman or member of the Tribunal is for any reason unable or unfit to discharge his duties, the Selection and Appointment Committee may appoint another person to the Tribunal in his stead.

ASSESSORS

15 In any proceedings the Chairman of the Tribunal may, if he thinks fit, summon to the assistance of the Tribunal any person of skill and experience in the matter to which the proceedings relate who is willing to assist the Tribunal as an assessor.

TRIBUNAL AUTONOMOUS

16 In the exercise of the powers conferred on it by this Act, the Tribunal shall not be subject to the direction or control of any other person or authority.

PROCEEDINGS

17 As soon as practicable after a matter is referred to the Tribunal, it shall hold a hearing and give all parties, or their representatives, full opportunity to present evidence on oath or otherwise and make submissions.

18 Notwithstanding section 19C, the Tribunal may impose reporting restrictions where it considers it necessary or desirable to protect the privacy of parties to a hearing.

19 The Arbitration Act 1986 shall not apply to any proceedings of the Tribunal or to any award made by it.

20 The Commission is not required to participate in the Tribunal's hearings but may do so to represent the public interest, and give evidence or make arguments before the Tribunal.

21 An interested party may, with leave of the Tribunal, intervene in a hearing on any terms and conditions that the Tribunal considers appropriate.

22 In determining any matter before the Tribunal, the decision of the majority of the members shall prevail.

23 After a hearing has been completed, the Tribunal shall submit a decision containing the Tribunal's findings to the parties and to the Executive Officer within 30 days of the conclusion of the hearing.

24 Save as otherwise provided by any provision of this Act, the Tribunal shall regulate its own proceedings as it thinks fit."

Transitional

12 Upon the coming into operation of this Act, any complaints which commenced before the Tribunal, but have not concluded, shall be continued before the Tribunal under the principal Act as amended by this Act.

Commencement

13 This Act shall come into operation on such day as the Minister responsible for the Human Rights Commission may by notice in the Gazette appoint.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Human Rights Act 1981 (the “principal Act”) to make provision for the Human Rights Tribunal (the “Tribunal”) and other associated matters.

Clause 1 is the citation.

Clause 2 amends section 2 of the principal Act to replace the definition of “Tribunal” to refer to the Tribunal established under section 17A.

Clause 3 amends the Part III heading to refer to the “Human Rights Commission and Human Rights Tribunal”.

Clause 4 amends section 13B of the principal Act to add, as a function of the Selection and Appointment Committee, the responsibility for inviting applications to serve on the panel as a member of the Tribunal.

Clause 5 amends section 14D to delete the words “board of inquiry” and insert the words “the Tribunal” in subsection (8), to allow a code of practice issued by the Commission under this section to be admissible in evidence in any proceedings before the Tribunal.

Clause 6 repeals and replaces section 17A of the principal Act to provide for the Tribunal to be responsible for hearing complaints. Subsection (2) gives effect to Schedule 3 with respect to the appointment and constitution of the panel of members who will serve on the Tribunal and provides for the proceedings before the Tribunal.

Clause 7 repeals and replaces section 19 of the principal Act to apply sections 9, 10 and 13 of the Commissions of Inquiry Act 1935 to proceedings held before the Tribunal.

Clause 8 inserts new sections 19A to 19E into the principal Act.

- Section 19A provides the power for the Tribunal to (a) give all such directions as are necessary for the hearing and determination of a matter before the Tribunal; and (b) hear and determine any matter in the absence of any party summoned to appear.
- Section 19B provides the power for the Tribunal to obtain particulars as the Tribunal may specify or require a person to attend before the Tribunal to give evidence and provide documents. Subsection (2) makes it an offence to fail to furnish particulars, to fail to attend before the Tribunal in compliance with a requirement, to refuse to take an oath, and to refuse to produce a document or to fail to give evidence in compliance with any such requirement of the Tribunal under subsection (1). Subsection (3) provides that a person will not be liable under subsection (2) for refusing to answer a question or produce a document where he could not be required to answer or produce before a court of law in Bermuda or failing or refusing to answer any question that is not relevant to the matters in issue. Subsection (4) makes it an offence to threaten, use violence, cause or procure violence, cause or procure the loss of employment, penalize or otherwise discriminate against another person on account of appearing or being about to appear before the Tribunal.

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- Section 19C makes provision for the Tribunal to determine whether to exclude the public where necessary or desirable to protect the privacy of parties to a hearing. Subsection (2) requires that whenever representatives of the press are present at a hearing, a fair and accurate report or summary of the proceedings may be published. Subsection (3) prohibits a person to publish a report on any proceedings before the Tribunal as authorized by this section.
- Section 19D requires the panel Chairman to submit a report on decisions and awards made by the Tribunal from time to time and at least once in each calendar year.
- Section 19E establishes that the members of the Tribunal shall be granted such immunity as is enjoyed by magistrates in the exercise of their jurisdiction.

Clause 9 amends section 21 of the principal Act to provide for the lodging of an appeal to act as a stay of any order of the Tribunal.

Clause 10 amends section 22 of the principal Act to remove the reference to “a board of inquiry” and substitute “ the Tribunal” in subsection (3) in order to make it an offence for any person to contravene any provision of an order made upon him by the Tribunal under Part III of the Act. The punishment on summary conviction of an offence under subsection (3) is a fine of \$5,000 for an individual or \$25,000 for an corporation, trade union, employers’ organization or employment agency.

Clause 11 inserts Schedule 3 entitled Human Rights Tribunal, which is given effect to by clause 6(2).

Clause 12 makes transitional provisions.

Clause 13 provides for commencement.