

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

EQUALITY ACT 2021

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WHEREAS it is expedient to enact the Equality Act 2021 to promote and better ensure equality in Bermuda, without regard to any person's race, sex, or other protected ground;

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:

PART I

PRESUMPTION OF EQUALITY

Citation

- 1 This Act may be cited as the Equality Act 2021.

Presumption of achieving the promotion of Equality

- 2 This Act hereby declares that when interpreting the Bermuda Constitution Order 1968, the Human Rights Act 1981, the Employment Act 2000, or any other statutory provision concerning race, sex, or other protected ground, it shall be presumed that any such statutory provision is intended wherever possible to achieve the promotion of equality.

PART II

EXTENDED JURISDICTION FOR DISCRIMINATION CLAIMS IN EMPLOYMENT

Extension of discrimination in employment claims to the Employment Tribunal

- 3 Any allegation of discrimination in employment in breach of sections 6, 6B, or 9 of the Human Rights Act 1981 may also be brought as a claim to the Employment and Labour Relations Tribunal to be determined by that tribunal in accordance with the rules in effect from time to time.
- 4 For the purposes of determining claims at (3) above, the Employment and Labour Relations Tribunal shall also possess the powers of tribunals provided by section 20 of the Human Rights Act 1981.

Amendment of s.2 of the Human Rights Act 1981

- 5 The Human Rights Act 1981 shall be amended by replacing the existing definition of “tribunal” in section 2(1) of that Act and replacing it as follows:

‘tribunal’ means a tribunal established under section 17A of the Act and additionally, for the purposes of any allegation of discrimination in employment in breach of sections 6, 6B, or 9 of the Act, shall also mean tribunal established by s.44B of the Employment Act 2000. In respect of any such claims such tribunal (i) shall have the powers of tribunals provided by section 20 of the Act and (ii) shall be subject to the appeal procedures provided for by section 22 of the Act.

PART III

INCREASED PENALTIES FOR DISCRIMINATION CLAIMS

Remedy and Penalty

- 6 The existing powers of tribunals determining claims of discrimination in employment provided for in section 20 of the Human Rights Act 1981 shall be expanded to allow for additional remedies and civil penalties.

Amendment of s.20 of the Human Rights Act 1981

- 7 The Human Rights Act 1981 shall be amended by inserting after s.20(1)(a) the following:
 - (aa) *make a declaration that there has been a breach of this Act; and/or*
 - (bb) *refer the matter to the Equality Council at the Human Rights Commission; and/or*

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(cc) order the employer to pay to the Human Rights Commission a civil penalty of (i) up to \$25,000 for employers with 25 persons or below,(ii) up to \$50,000 for employers with more than 25 persons and less than 50 persons, and (iii) up to \$100,000 for employers with 50 persons and above.”

Amendment of s.20A of the Human Rights Act 1981

8 The Human Rights Act 1981 shall be amended by inserting after s.20A(2) the following:

“(3) When determining any claim for discrimination under s.20A the Supreme Court shall be entitled to exercise any of the powers of tribunals provided for by s.20 of the Act.”

PART IV

EQUALITY COUNCIL AND PROMOTION OF EQUALITY

Equality Council and Promotion of Equality

9 The Human Rights Commission shall appoint for a three year term an Equality Council responsible for promoting equality, opportunity, and equal pay in the workforce and collecting and publishing data in respect of the same. The Council shall in particular seek to promote:

- (1) equal opportunities for training and advancement in the workforce; and
- (2) equality in attaining managerial and influential positions.

10 The Equality Council shall be comprised of 4 persons, of whom the Chair shall be lawyer of no less than 5 years' qualification, one shall represent the interests of employees, one shall represent the interests of employers, and one shall be independent. In the event of any tie vote, the Chair shall be able to cast a further vote to break such tie.

PART V

EQUALITY IN APPOINTMENTS TO GOVERNMENT BOARDS

Equality of appointments to Government Boards, etc.

11 Appointments to any Government Boards, Committees, Councils, or Quangos, shall, so far as reasonably practicable, promote equal representation of race and sex, which percentage shall then be adjusted pro rata in accordance with the population of Bermuda as stated in the latest Census published prior to any such appointment.

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- 12 Any person responsible for an appointment at section 11, shall, upon a request by the Equality Council, provide a written response to the Equality Council explaining why it was not reasonably practicable to comply with section 11, and the Equality Council shall, in its discretion, be entitled to make public such written response.
- 13 The provisions in section 11 and section 12 shall apply equally to the boards of any enterprises in which the Government of Bermuda is the majority owner.

Interpretation

- 14 In this Act:

“*employee*” shall have the meaning ascribed to it by section 4 of the Employment Act 2000;

“*employer*” shall have the meaning ascribed to it by section 3 of the Employment Act 2000 and, for the purposes of any claim under section 4 of this Act, shall be the actual (rather than any hypothetical) employer;

“*person*” shall have the meaning ascribed to it by section 7 of the Interpretation Act 1951;

“*protected ground*” shall include any matter proscribed by section 2(2)(a) of the Human Rights Act 1981;

“*statutory provision*” shall have the meaning ascribed to it in section 2 of the Interpretation Act 1951; and

“*statutory rate*” shall have the meaning ascribed to it in section 1 of the Interest and Credit Charges (Regulations) Act 1975.

Commencement

- 15 This Act shall come into operation on 1 June 2022 or such later date as the Minister responsible for Legal Affairs and Constitutional Reform may appoint by notice published in the Gazette.

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EXPLANATORY MEMORANDUM

This Bill seeks to promote equality.

This Bill requires all statutory provisions concerning race, sex, or other protected ground to be interpreted wherever possible to achieve the promotion of equality.

This Bill expands the tribunals that can hear claims for discrimination in employment.

This Bill expands the remedies and penalties for discrimination.

This Bill creates an Equality Council at the Human Rights Commission to promote equality, opportunity, and equal pay in the workforce, including the promotion of equal opportunities regarding training and advancement in the workforce and equality in attaining managerial and influential positions.

The Bill requires all appointments to Government Boards, Committees, Councils, and Quangos to be made, so far as reasonably practicable, to promote equal representation of race and sex.

Clause 1 is self-explanatory.

Clause 2 sets out the presumption that all statutory provisions concerning race, sex, or other protected ground shall be interpreted wherever possible to achieve the promotion of equality.

Clauses 3, 4, and 5 extend the jurisdiction for discrimination in employment claims to allow for determination by the Employment and Labour Relations Tribunal in addition to the Human Rights Tribunal and the Supreme Court.

Clauses 6, 7, and 8 extend the remedies and penalties for discrimination claims.

Clauses 9 and 10 create an Equality Council to promote equality, opportunity, and equal pay in the workforce, including the promotion of equal opportunities for training and advancement in the workforce and equality in attaining managerial and influential positions

Clauses 11 to 13 require all appointments to Government Boards, Committees, Councils, and Quangos, and certain other entities to be made, so far as reasonably practicable, to promote equal representation of race and sex.

Clause 14 defines the relevant terms.

Clause 15 provides for commencement.