

THE EQUAL OPPORTUNITIES (AMENDMENT) BILL
(No. XXII of 2011)

Explanatory Memorandum

The object of this Bill is to amend the Equal Opportunities Act in order to provide for the establishment of an Equal Opportunities Commission which will be a fully fledged independent body, and for matters connected thereto.

DR. N. RAMGOOLAM, G.C.S.K., F.R.C.P.
*Prime Minister, Minister of Defence,
Home Affairs and External Communications*

14 October 2011

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ARRANGEMENT OF CLAUSES

Clause

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A BILL

To amend the Equal Opportunities Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Equal Opportunities (Amendment) Act 2011.

2. Interpretation

In this Act –

“principal Act” means the Equal Opportunities Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

(a) by deleting the definitions of “Commission”, “Deputy Chairperson”, “Equal Opportunities Division” and “member”;

(b) by inserting, in the appropriate alphabetical order, the following definitions –

“Commission” means the Equal Opportunities Commission established under section 27;

“law practitioner” has the same meaning as in the Law Practitioners Act;

“member” –

(a) means a member of the Commission; and

(b) includes the Chairperson;

4. Principal Act amended

The principal Act is amended by deleting –

(a) the words “Equal Opportunities Division” wherever they appear and replacing them by the word “Commission”;

(b) the word “Division” wherever it appears and replacing it by the word “Commission”, except in section 46.

5. Section 26 of principal Act amended

Section 26 of the principal Act is amended, in subsection (11), by deleting the figure “2” and replacing it by the figure “5”.

6. Part VI of principal Act amended

Part VI of the principal Act is amended, in the heading, by deleting the word “**DIVISION**” and replacing it by the word “**COMMISSION**”.

7. Section 27 of principal Act amended

Section 27 of the principal Act is amended –

- (a) in the heading, by deleting the word “**Division**” and replacing it by the word “**Commission**”;
- (b) by repealing subsection (1) and replacing it by the following subsections –

(1) There is established for the purposes of this Act an Equal Opportunities Commission, which shall be a body corporate.

(1A) The Commission shall consist of a Chairperson and 3 other members.

(1B) (a) The Chairperson shall be a person who has been –

- (i) a Judge;
- (ii) a Magistrate for not less than 10 years;
- (iii) a law practitioner for not less than 10 years; or
- (iv) a Magistrate and a law practitioner for an aggregate period of not less than 10 years.

(b) One of the members shall be a person who has been a law practitioner for not less than 5 years.

(c) The other members shall be persons having knowledge and experience in the field of law, employment, industrial relations, sociology or administration.

(1C) (a) The members shall be appointed by the President of the Republic, acting on the advice of the Prime Minister, on such terms and conditions as the President thinks fit.

(b) Before tendering advice to the President under paragraph (a), the Prime Minister shall consult the Leader of the Opposition.

(1D) Subject to subsection (1F), every member shall hold office for a term of 4 years and shall be eligible for reappointment.

(1E) The President of the Republic may, on the advice of the Prime Minister, remove any member from office for inability to perform the functions of his office, whether arising from infirmity of body or mind, or for misbehaviour.

(1F) Subject to subsection (1H) –

(a) where any vacancy occurs in the office of the Chairperson by reason of death, resignation or any other cause, the President of the Republic shall appoint one of the members to act as Chairperson until the vacancy is filled;

(b) where the Chairperson is absent or on leave, he may appoint one of the members to act as Chairperson until the date on which the Chairperson resumes his office.

(1G) A member shall not enter upon the duties of his office unless he has taken and subscribed, before the President of the Republic, the oath set out in Part A of the Schedule.

(c) in subsection (2) –

(i) by deleting the word “Two” and replacing it by the word “Three”;

(ii) by deleting the words “or Deputy Chairperson”.

8. New section 27A inserted in principal Act

The principal Act is amended by inserting, after section 27, the following new section –

27A. Staff of Commission

(1) The Secretary to the Cabinet shall make available to the Commission an officer of the rank of Principal Assistant Secretary who shall be the Secretary of the Commission, and such other administrative and other staff as the Commission may require.

(2) The Secretary of the Commission shall exercise such powers and discharge such administrative functions as the Commission may delegate to him.

(3) The relevant Service Commission may approve the transfer, promotion or secondment of any officer in the public service to any office within the Commission and any public officer so transferred, promoted or seconded shall, in relation to any gratuity, pension or other allowance, be treated as continuing in the public service.

(4) The Commission may, on such terms and conditions as it thinks fit, engage on contract such suitably qualified person or body as may be necessary for the proper discharge of its functions.

9. Section 34 of principal Act amended

Section 34 of the principal Act is amended, in subsection (2)(c), by inserting, after the words “set out in”, the words “Part B of”.

10. Section 35 of principal Act amended

Section 35 of the principal Act is amended by repealing subsection (5) and replacing it by the following subsection –

(5) (a) The Tribunal shall not hear and determine a complaint under this Act unless the person making the complaint has voluntarily made a sworn statement, in such form as may be prescribed, that he has waived his right to initiate civil proceedings before any Court in Mauritius in respect of the facts that form the subject matter of the complaint.

(b) A waiver referred to in paragraph (a) shall constitute a bar to subsequent civil proceedings being initiated by the complainant before any Court in Mauritius in respect of the subject matter of the complaint.

11. Section 36 of principal Act amended

Section 36 of the principal Act is amended, in subsection (4) –

- (a) in paragraph (a), by inserting, after the word "fails", the words
", without reasonable excuse, ";
- (b) by deleting the figures "50,000" and "2" and replacing them by the
figures "100,000" and "5" respectively.

12. Schedule to principal Act repealed and replaced

The Schedule to the principal Act is repealed and replaced by the Schedule to this Act.

13. Commencement

This Act shall come into operation on a date to be fixed by Proclamation.

SCHEDULE
[Section 12]

SCHEDULE
[Sections 27(1G) and 34(3)]

PART A

OATH OF OFFICE FOR CHAIRPERSON AND MEMBERS OF COMMISSION

I,.....,
having been appointed as Chairperson / member* of the Equal Opportunities Commission under the Equal Opportunities Act, do swear / solemnly affirm* that I shall faithfully, impartially and to the best of my ability discharge the trust and perform the duties devolving upon me by such appointment and that I shall not without reasonable cause disclose any information imparted to me in the performance of such duties.

(s).....

Before me,

(s).....

President of the Republic

Date:

* Delete as appropriate

PART B

OATH OF OFFICE FOR PRESIDENT AND MEMBERS OF TRIBUNAL

I,.....,
having been appointed as President / member* of the Equal Opportunities Tribunal under the Equal Opportunities Act, do swear / solemnly affirm* that I shall, to the best of my knowledge, judgment and ability, discharge the functions of my office and do right to all manner of people after the laws and usages of Mauritius without fear or favour, affection or ill-will.

(s).....

Before me,

(s).....

President of the Republic

Date:

* Delete as appropriate