

THE MAURITIUS FAMILY PLANNING AND WELFARE ASSOCIATION BILL
(No. XIX of 2018)

Explanatory Memorandum

The main object of this Bill is to repeal the Mauritius Family Planning and Welfare Association Act 2005 and replace it by a more appropriate and modern legislative framework that makes provision for sexual and reproductive health and rights in accordance with international standards.

2. The Bill, accordingly, makes provision for the establishment of a new Mauritius Family Planning and Welfare Association which shall, inter alia –

- (a) promote awareness on planned parenthood with a view to maintaining the fertility rate at a reasonable level;
- (b) promote family welfare, healthy ageing, good health and social integration through effective family planning services by addressing the need for sexual and reproductive health and rights in the community through information, education and advocacy; and
- (c) work for the advancement of the rights of women, men and young persons with a view to enabling them to make free and informed choices regarding their sexual and reproductive health and rights.

DR. M. A. HUSNOO

Minister of Health and Quality of Life

16 November 2018

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(No. XIX of 2018)

ARRANGEMENT OF CLAUSES

Clause

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A BILL

To repeal and re-enact the law that makes provision for sexual and reproductive health and rights in accordance with international standards

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Mauritius Family Planning and Welfare Association Act 2018.

2. Interpretation

In this Act –

“Association” means the Mauritius Family Planning and Welfare Association established under section 3;

“auditor” means a person who has the qualifications specified in section 198 of the Companies Act and is appointed at a General Meeting;

“Committee” means the National Executive Committee referred to in section 13;

“employee” –

(a) means a person employed as such under section 17; and

(b) includes the Executive Director;

“Executive Director” means the person appointed as such under section 16;

“financial year” has the same meaning as in section 2A of the Finance and Audit Act;

“General Meeting” –

(a) means an Annual General Meeting of the Association; and

(b) includes a Special General Meeting;

“IPPF” means the International Planned Parenthood Federation which is based in London, England, and which promotes sexual and reproductive health and advocates the rights of individuals to make their own choices in family planning;

“Minister” means the Minister to whom responsibility for the subject of health is assigned;

“Ministry” means the Ministry responsible for the subject of health;

“volunteer” means a person registered as such under section 12;

“youth representative” means a person who is between the ages of 18 and 24.

PART II – MAURITIUS FAMILY PLANNING AND WELFARE ASSOCIATION

Sub-Part A – Association

3. Establishment of Association

(1) There is established for the purposes of this Act the Mauritius Family Planning and Welfare Association which shall be a body corporate.

(2) The Association shall be a non-profit-making body and shall be a member of IPPF.

(3) The Association shall have a seal which shall remain in the custody of the Executive Director.

4. Objects of Association

The objects of the Association shall be to –

(a) promote awareness on planned parenthood with a view to maintaining the fertility rate at a reasonable level;

(b) promote family welfare, healthy ageing, good health and social integration through effective family planning services by addressing the need for sexual and reproductive health and rights in the community through information, education and advocacy; and

- (c) work for the advancement of the rights of women, men and young persons with a view to enabling them to make free and informed choices regarding their sexual and reproductive health and rights.

5. Functions of Association

(1) The Association shall have such functions as may be necessary to attain its objects most effectively and shall, in particular –

- (a) provide sexual and reproductive health and rights information and services, including sex education and marriage counselling, specially to the youth and to vulnerable groups;
- (b) set up a network of youth friendly services with particular emphasis on addressing issues related to unwanted teenage pregnancy;
- (c) provide counselling and psychological assistance as well as services to childless couples desiring to establish a family;
- (d) collect and disseminate information and statistics relating to family welfare and sexual and reproductive health and rights;
- (e) collaborate with any organisation engaged in similar activities in Mauritius and abroad;
- (f) advocate on issues falling under its ambit;
- (g) carry out any charitable work related to its objects; and
- (h) carry out such activities or social enterprise projects which, in the opinion of the Committee, may be beneficial to the Association in the realisation of its mission and vision.

(2) The Association shall, in the discharge of its functions, comply with the standards set by IPPF on youth representation, gender balance, transparency and good governance.

6. Powers of Association

The Association shall have such powers as may be necessary to discharge its functions most effectively and shall –

- (a) review and approve the mission, role and objects of the Association;
- (b) determine eligibility for membership of the Association;
- (c) determine the rate of, and levy, membership subscription fees and annual contributions;
- (d) consider appeals of its members and review decisions made at various levels of the Association;
- (e) establish branches within Mauritius as and when the need arises; and
- (f) do such acts and things as may be necessary for the purposes of this Act.

7. Non-discrimination

The Association shall, in the discharge of its functions and exercise of its powers, not discriminate on grounds of race, creed, place of origin, political opinion, gender, disability or sexual orientation.

8. General Meetings of Association

Any General Meeting of the Association shall be held and conducted in the manner provided for in the First Schedule.

Sub-Part B – Members of Association

9. Membership

(1) (a) Subject to paragraph (b), an individual aged not less than 18 or an institution may apply to the Association for registration as an individual member or an institutional member, as the case may be.

(b) No employee of the Association shall apply for membership of the Association.

(c) Any application made under paragraph (a) shall be submitted to the Committee for its review and approval.

(d) The Committee may approve or reject an application made under paragraph (a).

(2) A member of the Association may resign at any time by giving notice in writing to the Executive Director.

(3) A person shall cease to be a member of the Association on resignation or where he is removed as a member pursuant to section 10.

10. Suspension or removal of membership

The Committee may suspend or remove a member of the Association where he –

- (a) fails to pay his annual contribution at least 3 months before the Annual General Meeting of the Association;
- (b) suffers from such mental or physical impairment as, in the opinion of the Committee, renders him unfit to be a member;
- (c) fails to disclose any pecuniary or other material interest which he has in relation to any matter before the Association;
- (d) is judged bankrupt by a Court;
- (e) is convicted for an offence involving fraud or dishonesty; or
- (f) is convicted for an offence for which he is sentenced to a term of imprisonment.

11. Register

(1) The Association shall, in such form and manner as it may determine, keep a register of the members of the Association.

(2) The register shall be produced on request for the purpose of inspection.

Sub-Part C – Volunteer

12. Registration as volunteer

(1) Any person who wishes to offer his services to the Association free of charge may register as a volunteer with the Association.

(2) A volunteer shall –

- (a) not receive any allowance for the performance of any work of the Association; but
- (b) be entitled to reimbursement of any expense authorised by and for the Association.

PART III – ADMINISTRATION OF ASSOCIATION

Sub-Part A – National Executive Committee

13. National Executive Committee

(1) The Association shall be administered by a Committee to be known as the National Executive Committee which shall consist of the following members –

- (a)
 - (i) a Chairperson;
 - (ii) a Treasurer;
 - (iii) 2 youth representatives; and
 - (iv) 5 other persons,
to be elected in the manner provided for in the Second Schedule, while ensuring at least 50 per cent women and 20 per cent youth representation;
- (b) a representative of the Ministry;
- (c) not more than 3 other persons co-opted by the Committee; and

(d) the Executive Director, who shall act as the Secretary to the Committee.

(2) (a) Subject to paragraph (b), the Committee may, other than in respect of the representative of the Ministry, appoint any person to fill a vacancy arising on the Committee.

(b) Where, as a result of vacancies, the membership of the Committee has been reduced to less than 6, the vacancies shall be filled at an election at a Special General Meeting.

(3) (a) An elected member shall hold office for a period of 3 years commencing on the date of his election and may be eligible for re-election for one further term.

(b) An elected member shall be eligible to serve on the Committee for a maximum total cumulative period of 12 years provided he is re-elected and there is a break of at least one term after 2 consecutive terms in office.

(c) Any period served as an elected member of the Management Committee under the repealed Mauritius Family Planning and Welfare Association Act 2005 shall be reckoned for the purpose of paragraph (b).

(4) Any member of the Committee may resign at any time by giving written notice to the Executive Director.

(5) A member of the Committee shall be disqualified from office where he –

(a) assumes an office for profit or gain in any other association or body;

(b) has failed, without any good reason, to attend 2 consecutive meetings of the Committee; or

(c) ceases to be a member of the Association on resignation or where he is removed as a member pursuant to section 10.

14. Functions and powers of Committee

The functions and powers of the Committee shall be to –

- (a) provide leadership in policy formulation for the Association and monitor the implementation of the strategic and annual plans and budget of the Association;
- (b) review and approve any application for membership made under section 9(1);
- (c) receive, review and approve special projects proposals recommended by the Executive Director;
- (d) recommend to the General Meeting the appointment of the auditor and review the annual audited accounts which shall be submitted for review and approval by the General Meeting;
- (e) set up subcommittees, with or without members of the Committee, with specific assignments and with clearly defined terms of reference and scope of work;
- (f) accept donations and grants in cash and in kind, and undertake and perform, in line with the objects of the Association, the services or conditions attached to their acceptance;
- (g) borrow money and raise funds; and
- (h) advertise and conduct such other lawful activities as may be appropriate so as to make known its existence, purposes or work.

15. Meetings of Committee

(1) The Committee shall meet as often as is necessary and at least 4 times a year.

(2) At any meeting of the Committee, 5 elected members shall constitute a quorum.

(3) In the absence of the Chairperson, the Committee shall elect an elected member to chair a meeting of the Committee.

(4) A member referred to in section 13(1)(b), (c) and (d) shall have no voting rights.

(5) The Secretary to the Committee shall give at least 7 clear days' notice of every meeting of the Committee to its members.

(6) (a) The Committee shall regulate its meetings and proceedings in such manner as it may determine.

(b) The Secretary to the Committee shall keep minutes of all the proceedings of the Committee.

Sub-Part B – Executive Director and Staff of Association

16. Executive Director

(1) There shall be an Executive Director who shall be appointed by the Committee on such terms and conditions as it may determine.

(2) The Executive Director shall, subject to this Act, be responsible for the implementation of the decisions of the Committee and for carrying out the day to day activities of the Association.

(3) The Executive Director shall act in accordance with such directives as he may receive from the Committee.

(4) Where the Executive Director is temporarily absent from Mauritius or temporarily incapacitated by reason of illness or for any other reason, an employee of the Association shall be appointed by the Committee to act in the place of the Executive Director during his absence.

17. Staff of Association

(1) The Committee may, on such terms and conditions as it may determine, employ such employees as it considers necessary for the discharge of the functions of the Association.

(2) Every employee shall be under the administrative control of the Executive Director.

(3) The Committee may, subject to any enactment, make provision for policies and procedures relating to –

(a) the appointment, dismissal and discipline of the employees;

(b) appeals by employees against dismissal and other disciplinary measures; and

- (c) the establishment and maintenance of a superannuation scheme and the contributions and the benefits payable to, and from, the scheme.

18. Delegation of powers

(1) The Committee may, subject to such conditions as it may determine, delegate to the Executive Director –

- (a) such of its powers under this Act as may be necessary to assist in the effective management of the Association; and
- (b) the power to enter into any financial transaction for such sum as may be prescribed.

(2) The Executive Director may, with the approval of the Committee, delegate any of his functions to such employee as he may determine.

PART IV – MISCELLANEOUS

19. Conflict of interest and prohibitions for members and employees

(1) No member of the Committee or of the Association shall derive any personal material gain or incentive by virtue of his status as a member.

(2) (a) Every member of the Committee and every member of the Association shall disclose any interest that he has which could give rise to a conflict of interest in the performance of his duties as a member of the Committee or Association, as the case may be.

(b) A disclosure of interest made under paragraph (a) shall be recorded in writing.

(3) A person who is a close relative of a volunteer, or an employee, shall not be appointed to any position in the Association or to undertake any consultancy with the Association.

20. General Fund

(1) The Association shall set up a General Fund –

- (a) into which shall be paid –

- (i) any grant, donation and contribution received by it;
 - (ii) any membership subscription fee and annual contribution;
 - (iii) any fee, rental or interest; and
 - (iv) any other sum which may lawfully accrue to it; and
- (b) out of which all payments required to be made for the purposes of this Act by it shall be effected.

(2) No monies from the General Fund shall be distributed or transferred by way of dividends or bonus.

21. Execution of documents

No deed, cheque, contract or other document shall be executed or signed by or on behalf of the Association, unless it is signed by –

- (a) the Chairperson or, in his absence, any other member of the Committee designated by the Committee; and
- (b) the Executive Director or, in his absence, any employee designated by the Committee.

22. Accounts and audit

(1) The accounts and records of the Association in respect of all its financial transactions shall be audited annually by the auditor.

(2) The auditor shall, on receipt of the financial statements of the Association, prepare a report and state whether –

- (a) the statements fairly state the financial transactions taken by it;
- (b) proper accounting has been done and records of all assets and liabilities of the Association have been kept; and
- (c) the statements deal with such other matters arising from the audit as he considers relevant.

23. Legal proceedings

(1) The Association shall act, sue and be sued in its name.

(2) Service of process by or on the Association shall be sufficient if made on behalf of or on the Executive Director.

24. Donations

Article 910 of the Code Civil Mauricien shall not apply to the Association.

25. Exemption from duties and fees

Notwithstanding any other enactment, no stamp duty or registration duty shall be payable in respect of any document signed or executed by the Association or pursuant to which the Association is a beneficiary.

26. Regulations

(1) The Association may, with the approval of the Minister, make such regulations as it thinks fit for the purposes of this Act.

(2) Any regulations made under subsection (1) may provide for –

- (a) the levying of fees for anything done or services rendered by the Association under this Act;
- (b) the criteria for eligibility to stand as candidate for election as a member of the Committee; and
- (c) the amendment of the Schedules.

27. Repeal

The following enactments are repealed –

- (a) the Mauritius Family Planning and Welfare Association Act 2005; and
- (b) the Mauritius Family Planning and Welfare Association (Temporary Provisions) Act 2012.

28. Consequential amendment

The Statutory Bodies Pension Funds Act is amended, in the First Schedule –

- (a) in the first column, by deleting the item “Mauritius Family Planning and Welfare Association” and replacing it by the following item –

Mauritius Family Planning and Welfare Association
- (b) in the second column, by deleting the words “1 December 2005”.

29. Transitional provisions and savings

- (1) In this section –

“MFPWA” means the Mauritius Family Planning and Welfare Association established under section 3 of the Mauritius Family Planning and Welfare Association Act 2005.
- (2) Every person who, on the commencement of this Act, is employed by MFPWA shall continue in employment with the Association and his period of service shall be taken to be an unbroken period of service with the Association.
- (3) Any disciplinary inquiry, investigation or proceeding, pending or in process on the commencement of this Act, against any person employed by MFPWA, shall be taken up, continued or completed by the Association and any resulting order or decision shall have the same force and effect as if made by the Association.
- (4) All assets and funds of MFPWA shall, on the commencement of this Act, vest in the Association.
- (5) All rights, obligations and liabilities subsisting in favour of or against MFPWA shall, on the commencement of this Act, continue to exist under the same terms and conditions in favour of or against the Association.
- (6) Any act or thing done, or any contract or agreement entered into, by MFPWA shall, on the commencement of this Act, be deemed to have been done or entered into by the Association.

(7) All proceedings, judicial or otherwise, initiated before and pending on the commencement of this Act, by or against MFPWA, shall be deemed to have been initiated, and may be continued, by or against the Association.

(8) Any person, except a life member under the repealed Mauritius Family Planning and Welfare Association Act 2005, who is a member of MFPWA shall, on the commencement of this Act, be entitled to remain a member of the Association provided he complies with the necessary requirements under this Act.

(9) Notwithstanding the repeal of the Mauritius Family Planning and Welfare Association (Temporary Provisions) Act 2012, the Interim Management Committee set up under section 3(1) of that Act shall, until the National Executive Committee is constituted under section 13(1), have, discharge and exercise, all the functions and powers vested by this Act in the Committee.

(10) Where this Act does not make provision for any transition or saving, the Minister may make such regulations as may be necessary for such transition or saving.

30. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

FIRST SCHEDULE

[Section 8]

GENERAL MEETING

PART I – HOLDING OF GENERAL MEETING

1. Subject to paragraph 2, a General Meeting of the Association shall be held once every year not later than 3 months after the end of the financial year.

2. A Special General Meeting shall be held on a request of the Committee or on a request of not less than one third of the members of the Association.

3. (1) Notice for General Meeting shall, at least 3 weeks before the date of the meeting, be –

(a) given by post; or

(b) published in at least 3 daily newspapers,

stating the business to be transacted at the meeting.

(2) The non-receipt of the notice by a member shall not in any way invalidate the General Meeting or otherwise affect the decisions taken at the meeting.

4. (1) The Executive Director shall act as Secretary to a General Meeting and keep minutes of proceedings which shall be signed by the Chairperson and the Executive Director.

(2) Extracts of the minutes signed by the Chairperson and the Executive Director shall be prima facie evidence of all matters contained therein.

5. (1) Every question to be decided at a General Meeting shall be decided by a show of hands.

(2) A declaration by the Chairperson that a resolution has been taken shall be conclusive of that fact unless a poll is demanded by at least 10 members of the Association present.

(3) Each member shall have one vote and, in the event of equality of votes, the Chairperson shall have a casting vote.

6. (1) Subject to subparagraph (2), at any General Meeting, not less than 50 per cent of the members shall constitute a quorum.

(2) Where there is no quorum, the Chairperson shall adjourn the General Meeting to a date not earlier than one week nor later than 3 weeks from the date of the original meeting with the same agenda and the meeting shall take place, irrespective of the number of members present.

7. The ruling given by the Chairperson on all questions of procedure shall be final.

PART II – BUSINESS OF ANNUAL GENERAL MEETING

The business of an Annual General Meeting, other than a Special General Meeting, shall be –

- (a) the consideration and adoption of the annual report and the approval of the audited accounts for the preceding financial year;
 - (b) the election of the members of the Committee, to be held every 3 years;
 - (c) the appointment of an auditor;
 - (d) the consideration of any resolution put by the Committee; and
 - (e) the consideration of any other business, which a member of the Association may wish to raise and of which notice has been given to the Executive Director at least 14 days before the date of the meeting.
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SECOND SCHEDULE

[Section 13]

PROCEDURE FOR ELECTION

1. Calling for nominations and appointment of nomination day

The Executive Director shall, within 6 months of the commencement of this Act and, thereafter, not less than one month before the expiry of the term of office of the members of the Committee specified in section 13(1)(a), publish, in the Gazette and such newspaper as he may determine, a notice –

- (a) inviting the submission of nominations for election as members of the Committee; and
- (b) appointing a day, time and place for the nominations to be submitted.

2. Eligibility to stand as candidate

No person shall be eligible to stand as candidate for election as a member of the Committee unless –

- (a) on nomination day, he is a member of the Association and has paid the annual contribution at least 3 months before the Annual General Meeting of the Association; and
- (b) he meets such criteria as the Association may, with the approval of the Minister, prescribe.

3. Nomination of candidates

(1) Every candidate for election shall be nominated by not less than 4 members of the Association.

(2) The nomination paper of a candidate shall be in such form as the Executive Director may approve.

4. Unopposed candidates

(1) Where the number of persons nominated is equal to the number of persons to be elected, those persons nominated shall be elected as members of the Committee.

(2) Where the number of persons nominated is less than the number of persons to be elected, those persons nominated shall be elected as members of the Committee and the Executive Director shall appoint another day, time and place for the purpose of filling any seat that is unfilled.

(3) Where no person is nominated, the Executive Director shall appoint another day, time and place for the purpose of filling the seats that are unfilled.

5. Procedure after nomination

Where the number of persons duly nominated exceeds the number of persons to be elected, the Executive Director shall publish, in the Gazette and such newspaper as he may determine, a notice –

- (a) specifying the names of the persons duly nominated; and
- (b) appointing a day, time and place, being not less than 15 days after the publication of the notice, for the holding of an election.

6. Death of candidate

Where one of the candidates nominated for election dies before the election has started and –

- (a) irrespective of the death of that candidate, the number of persons duly nominated still exceeds the number of persons to be elected, the election of the members of the Committee shall proceed in accordance with this Schedule;
- (b) the number of persons nominated is reduced to equal the number of persons to be elected, those persons nominated shall be elected as members of the Committee; or
- (c) the number of persons nominated is reduced to less than the number of persons to be elected, those persons nominated shall be elected as members of the Committee and the Executive Director shall appoint another day, time and place for the purpose of filling any seat that is unfilled.

7. Persons entitled to vote

(1) Every person who, on nomination day, is a member of the Association and has paid the annual contribution at least 3 months before the Annual General Meeting of the Association, shall be entitled to vote at an election of the members of the Committee.

(2) Every person who is entitled to vote pursuant to subparagraph (1) shall vote for such number of candidates as there are vacancies available in the membership of the Committee.

8. Vote by ballot

(1) The votes shall, in the case of a poll at an election, be cast by secret ballot.

(2) The ballot paper shall be in such form as the Executive Director may approve.

9. Vote by proxy

(1) Any member of the Association may, not less than 7 days before the date of election, apply to the Executive Director for the issue of a proxy paper appointing another person to vote as proxy for him at that election.

(2) A member of the Association shall not be entitled to have more than one proxy at a time appointed to vote for him at an election, nor shall a member of the Association be entitled to vote in person at an election where that member's application for proxy has been allowed.

(3) No employee of the Association shall be entitled to vote by proxy for any member of the Association.

10. Election of members of Committee

(1) The election of members of the Committee shall be conducted by the Electoral Commissioner's Office.

(2) The election of members shall be held in the following order –

(a) election of Chairperson by all members of the Association;

(b) election of Treasurer by all members of the Association;

- (c) election of 2 youth representatives by members of the Association who are between the ages of 18 and 24; and
- (d) election of 5 other members by all members of the Association.

(3) The members of the Committee shall be elected a majority of the votes cast.

(4) Where there is an equality of votes in respect of the election of members of the Committee, another election shall be held for those members.
