

ANTIGUA AND BARBUDA



DISABILITIES AND EQUAL OPPORTUNITIES BILL, 2017

2017, No.

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NO. OF 2017

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ANTIGUA AND BARBUDA
DISABILITIES AND EQUAL OPPORTUNITIES BILL 2017
NO. OF 2017

AN ACT to make provision for the protection of the rights of persons with disabilities and for connected matters.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I

PRELIMINARY

1. Short title and commencement

(1) This Act may be cited as the Disabilities and Equal Opportunities Act, 2017.

(2) This Act comes into operation on a date to be fixed by the Minister by notice published in the *Gazette*.

2. Interpretation

In this Act, unless the context otherwise requires—

“communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

“the Council” means the Antigua and Barbuda Council of and for Persons with Disabilities established under section 4 of this Act;

“discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

“language” includes spoken and signed languages and other forms of non-spoken languages;

“Minister” means the Minister with responsibility for social welfare, except as specified in Part V;

“person with a disability” includes a person who has a physical, mental, intellectual or sensory impairment which has a long term adverse effect on the ability of that person to participate fully and effectively in society on an equal basis with other persons but does not include a person who—

- (a) has a tendency to set fires;
- (b) has a tendency to steal;
- (c) has a tendency to physically or sexually abuse others;
- (d) has a tendency to practice exhibitionism;
- (e) engages in voyeurism;
- (f) has an addiction to, or a dependency on, alcohol, nicotine, or any other substance (other than in consequence of the substance being medically prescribed); or
- (g) suffers from seasonal conditions such as allergic rhinitis, commonly referred to as hay fever, except where such condition aggravates the effect of another condition.

“reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

“Register” means the Register of Persons with Disabilities that is required to be kept under section 7;

“Registrar” means the Registrar of the Council;

“the Tribunal” means the Disabilities Rights Tribunal as established under section 9 of this Act;

“UNCRC” means United Nations Convention on the Rights of Person with Disabilities;

“undue burden” means significant difficulty or expense; and

“universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

3. Objectives of the Act

The objectives of this Act are as follows—

- (a) to improve the general standard of living for persons with disabilities;
- (b) to provide a clear and comprehensive national mandate to facilitate the elimination of existing cases of discrimination against persons with disabilities, and to put safeguards in place to prohibit further discrimination against such persons;
- (c) to promote on a national level, the principle that a person with a disability is entitled to the same fundamental rights as a person who does not have a disability; and
- (d) to ensure full and effective participation in all aspects of society for a person with a disability on an equal basis with a person who does not have a disability.

PART II

ANTIGUA AND BARBUDA NATIONAL COUNCIL OF/FOR PERSONS WITH DISABILITIES

4. Establishment of Council

(1) There is established a National Council Of and For Persons with Disabilities (“the Council”).

(2) The Council shall operate as a body corporate with perpetual succession and a common seal, and may—

- (a) sue and be sued in its own name;
- (b) acquire, hold, possess, dispose of or otherwise deal with any property;
- (c) enter into contracts; and
- (d) do all other acts that may be done in law by a body corporate.

(3) The provisions of the First Schedule shall have effect as to the constitution, members, committees, procedure and meetings of the Council and otherwise in relation thereto.

5. Functions of the Council

(1) The functions of the Council are to—

- (a) advise the Minister on all matters relating to persons with disabilities;
- (b) formulate a national policy that ensures that services are provided to all persons with disabilities;
- (c) formulate an action plan for approval by the Cabinet of the provision of rehabilitation and support services to persons with disabilities;

- (d) periodically review the national policy and national action plan to ensure that the standard of services offered to persons with disabilities are up to date, relevant and in keeping with international requirements;
 - (e) maintain a confidential Register containing the particulars of persons with disabilities;
 - (f) promote research and development of universally designed goods, services, equipment and facilities, which require the minimum adaptation and the least cost to meet the specific needs of a person with disabilities;
 - (g) promote the availability and use of new technologies, mobility aids, devices and assistive technology suitable for persons with disabilities;
 - (h) operate as a forum at which all funding applications for disability projects by non-government organisations can be discussed and recommendations made to the Minister;
 - (i) establish and maintain a register of projects designed to assist persons with disabilities;
 - (j) approve programmes developed for the training of persons involved in the care, training, education and rehabilitation of persons with disabilities;
 - (k) operate as the national focal point for the UNCRPD.
- (2) The Council may, for any purpose connected with the performance of its functions—
- (a) organise conferences, support initiatives and establish informal networks to promote the development of persons with disabilities; and
 - (b) impose charges for the facilities or services made available by it for any purpose.
- (3) Without prejudice to the generality of subsection (1), the Council shall receive and investigate complaints that a person, association or entity is not in compliance with a requirement of this Act from—
- (a) the person with a disability;
 - (b) a caregiver having legal custody of a person with a disability;
 - (c) a medical practitioner of a child born with a disability;
 - (d) a police officer, a probation officer or a social worker; or
 - (e) any other person, who has a material interest in the well-being of a person with a disability.
- (4) The Council shall forward such complaints to the Tribunal established under section 9 where it is necessary for a decision to be rendered regarding that complaint.
- (5) The Council shall not forward a complaint to the Tribunal if—

- (a) the acts or omissions do not contravene this Act or regulations made under this Act; or
- (b) the Council can prove that the complaint was filed in bad faith or for improper motives; or
- (c) the contravention alleged in the complaint occurred more than six months before the complaint was filed, unless the circumstances set out in section 12(3) exist.

(5) In the case of a complaint which is not forwarded to the Tribunal, the Council shall inform the parties in writing of the decision and the reasons for the decision.

6. Ministerial directions

The Minister may, after consultation with the Chairman of the Council, give to the Council directions of a general nature regarding the policy to be followed by the Council in the performance of its functions as appear to the Minister to be necessary to advance the interests of each person with a disability in Antigua and Barbuda.

7. Register of persons with disabilities

- (1) The Council shall maintain a register of persons with disabilities.
- (2) The register shall contain the following—
 - (a) the name and address of the person;
 - (b) the nature of the disability of the person;
 - (c) any medical condition that would impact the treatment of the person; and
 - (d) any other particulars as may be prescribed by the Minister to be recorded on the register.

(3) The Council shall advise the Minister of the particulars of a person who is qualified to be appointed as the Registrar.

(4) A person whose name has been entered into the register shall be issued with a certificate of registration and any other materials considered relevant by the Council.

- (5) The Council shall ensure the confidentiality of the contents of the register.

8. Registration of a person with a disability

- (1) The registration of a person with a disability may be initiated by—
 - (a) the person with a disability;
 - (b) a caregiver having legal custody of a person with a disability;
 - (c) a medical practitioner of a child born with a disability;

- (d) a police officer, a probation officer or a social worker who reasonably believes that registration of a person with a disability is required to prevent neglect or abuse of a person with a disability;
 - (e) any other person, who has a material interest in the well-being of a person with a disability; or
 - (f) an order of a magistrate.
- (2) A person with a disability is registered by submitting the relevant details in the prescribed form.

PART III

DISABILITIES and EQUAL OPPORTUNITIES RIGHTS TRIBUNAL

9. Establishment of the Tribunal

(1) There is established a body to be called the Disabilities and Equal Opportunities Rights Tribunal (“the Tribunal”).

(2) The provisions of the Second Schedule shall have effect as to the constitution, members, committees, procedure and meetings of the Tribunal and otherwise in relation thereto.

10. Functions of the Tribunal

The Tribunal shall—

- (a) review filed complaints regarding the commission of acts prohibited by this Act which allegedly—
 - (i) excluded or restricted a person with a disability in areas such as employment, housing, education, transportation, communication, recreation, healthcare services, voting and access to various public services; or
 - (ii) resulted in an exploitation, violence or abuse against a person with a disability; and
- (b) render a decision on the complaints received.

11. Filing of complaints

- (1) A complaint shall be made to the council in writing.
- (2) A complaint may be filed on behalf of—
 - (a) another person; or

- (b) a group or class of persons whether or not the person filing the complaint is a member of that group or class.

(3) A complaint which has been filed and investigated by the Council shall be submitted to the Tribunal for consideration.

(4) The Tribunal shall consider complaints which have been submitted for its consideration in the order in which the complaints were filed and shall issue a notice to the parties giving details of the time and place of the hearing.

(5) Notwithstanding subsection (4), the Tribunal may, if it considers it expedient so to do, consider a complaint in priority to other complaints filed before it.

12. Time limit for filing a complaint

(1) A complaint shall be filed within 6 months from the time when the matter of the complaint arose.

(2) If the matter is continuing, the complaint shall be filed within 6 months of the last occurrence.

(3) Notwithstanding the provisions of subsections (1) and (2), the Council may submit a matter to the Tribunal that is filed after the expiration of 6 months if the Council is satisfied that the matter warrants consideration by the Tribunal.

13. Decision of Tribunal

(1) The decision of the Tribunal shall be a majority decision.

(2) The decision of the Tribunal is binding on the parties to the proceedings and may be enforced in the High Court.

PART IV

PROTECTION FROM DISCRIMINATION, EXPLOITATION, ABUSE AND VIOLENCE

14. Protection from discrimination

(1) A person with a disability shall not be subject to any form of discrimination on the basis of disability.

(2) A person with a disability is entitled to equal protection and equal benefit of the rights and freedoms under Chapter II of the Antigua and Barbuda Constitution Order, Cap. 23.

15. Protection from exploitation, violence and abuse

(1) In this section—

“economic abuse” includes—

- (a) the deprivation or threatened deprivation of any or all economic or financial resources to which the person with a disability is entitled under the law or requires out of necessity, including household necessities and mortgage bond repayments of the shared household; or
- (b) the disposal or threatened disposal of household effects or other property in which the person with a disability has an interest;

“emotional, verbal and psychological abuse” means degrading or humiliating conduct by a person to a person with a disability and includes—

- (a) repeated insults, ridicule or name calling;
- (b) repeated threats to cause emotional pain;

“physical abuse” means any act of assault to a person with a disability;

“sexual abuse” means any sexual conduct that violates the sexual integrity of the person with a disability.

(2) A person with a disability shall not be subject to any form of—

- (a) exploitation;
- (b) violence;
- (c) neglect; and
- (c) abuse including—
 - (i) economic abuse;
 - (ii) emotional, verbal and psychological abuse;
 - (iii) physical abuse;

(iv) sexual abuse.

(3) A person with a disability who is a victim of any form of exploitation, violence neglect or abuse shall have the right—

- (a) to protective services; and
- (b) to have the exploitation, violence or abuse investigated by the appropriate authority and where necessary, prosecuted.

PART V

ACCESS TO EDUCATION AND TRAINING

16. Interpretation

In this Part—

“auxiliary aids and services” include—

- (a) qualified interpreters or other effective methods of making aurally delivered materials available to a person with a hearing impairment;
- (b) qualified readers, taped texts or other effective methods of making visually delivered materials available to a person with a visual impairment; and
- (c) modification of equipment or devices.

“Minister” means the Minister with responsibility for education.

17. Right to education and training for a person with a disability

(1) A person with a disability shall have the right to an education without discrimination and on the basis of equal opportunity.

(2) Subject to section 18, a person with a disability who is suffering from a condition which impairs the intellectual ability of that person shall have the right to an education by the facilitation of special arrangements by the Minister responsible for education to aid that person.

(3) An educational or training institution shall not discriminate on the basis of disability against a person who wishes to attend that educational or training institution.

(4) An educational or training institution shall, in relation to that institution—

- (a) provide reasonable access to the institution for every person with a disability;
- (b) ensure that a person with a disability is not placed at a disadvantage in relation to the student services provided; and

- (c) facilitate a person with a disability to have access to the facilities of the institution in the least restrictive environment.

18. Accessibility of examinations to a person with a disability

(1) An institution which conducts examinations, whether for licensing or certification purposes, shall ensure that examinations are conducted in a manner and in a place with facilities which are accessible to a person with a disability.

(2) An institution shall employ various forms of reasonable accommodation and universal design to assist a person with a disability to sit examinations, including but not limited to—

- (a) allowing the person with a disability extra time to complete an examination which contains a substantial written component;
- (b) identifying scripts with a coloured sticker to ensure that a dyslexic person or a person with other learning difficulties is not penalized for spelling and syntax errors;
- (c) assigning a reader to the person with a disability;
- (d) assigning a scribe to the person with a disability;
- (e) preparing examination papers in alternative communication formats;
- (f) using a recorder to produce spoken responses by the person with a disability which can later be transcribed into text by a typist for marking;
- (g) placing the person with a disability in a room with less persons;
- (h) assigning a sign language interpreter to a person with a disability;
- (i) approving a request from the person with a disability to sit an examination at home in the presence of a member of staff who will verify that the examination was conducted under conditions which are as close as possible to the conditions at the examination centre.

19. Minister to make necessary adjustments for a person with a disability

The Minister shall as far as possible assist the education of a person with a disability, and assist a person with a condition which impairs the intellectual ability of that person by facilitating arrangements which include, but are not limited to—

- (a) recruiting additional teachers;
- (b) training teachers in the field of special education;
- (c) permitting a system of differentiation instruction, including different languages;
- (d) providing schools with various forms of auxiliary aids and services to assist in instruction and assessment of a person with a disability.

PART VI

EMPLOYMENT

20. Employer not to discriminate against a person with a disability

(1) An employer shall not discriminate against a person with a disability who is qualified in any of the following areas—

- (a) recruitment;
- (b) promotion;
- (c) equal opportunities and equal remuneration for work of equal value;
- (d) continuance of employment; and
- (e) union rights.

(2) An employer shall, where possible, prevent the person with a disability from being at a disadvantage while on the job site by making reasonable adjustments including but not limited to—

- (a) making physical changes to the job site such as installing ramps where necessary;
- (b) permitting a person with a disability to work from a different location such as at home or on a ground floor;
- (c) providing the person with a disability with special equipment to execute daily duties.

(3) An employer shall not cause a person with a disability to carry out forced or compulsory labour.

21. Redeployment of a person with a disability

(1) An employer may take any of the following actions in relation to a person with a disability who is no longer capable of performing the duties stipulated by the contract of employment provided that there will not be a disproportionate or undue burden to the employer—

- (a) redeploy the person with a disability to a position or an existing vacancy that—
 - (i) is commensurate with the current skills and abilities of the person with a disability; and
 - (ii) does not result in loss in remuneration and benefits to the person with a disability;

- (b) create a new position in which the person with a disability can function effectively without suffering a significant change in employment status and remuneration;
 - (c) adjusting the working hours of the person with a disability.
- (2) In redeploying a person with a disability, the following factors shall be considered—
- (a) the training, qualifications and previous performance of the person with a disability;
 - (b) the type of position previously held by the person with a disability; and
 - (c) possible drop in income which the person with a disability may suffer.
- (3) A person with a disability shall, where possible, be redeployed to a post which is closest to the graded post previously held by that person.

PART VII

HEALTHCARE

22. Right of a person with a disability to equal standard of health care

(1) A person with a disability shall obtain a standard of health care which is equal to the standard of health care which is available to a person who does not have a disability.

(2) Every institution which offers health care to the public shall provide a person with a disability with health care service which is specific to the special needs of that person, including services which are designed to minimize and prevent any further disability.

23. Right of a person with a disability to obtain insurance

(1) A person with a disability shall not be prohibited from obtaining health insurance and life insurance on the basis of disability.

(2) An insurance provider shall not offer insurance services to a person with a disability at a cost which is significantly higher than the cost offered for the same coverage to a person who does not have a disability unless any increase in cost is reasonable, based on the cost of providing such insurance or the cost of reinsurance.

24. Duty of healthcare providers

(1) Healthcare providers shall report to the police cases of suspected abuse or neglect of a person with a disability.

(2) A healthcare provider who fails or refuses to report suspected cases of abuse and neglect commits an offence.

25. Duty of care givers

(1) A person who is responsible for the care of a person with a disability, shall ensure that the person with a disability receives adequate food, clothing, medical attention and other necessities.

(2) A person who is responsible for the care of a person with a disability, shall not assault, ill-treat, neglect or otherwise harm that person.

(3) A person who contravenes this section commits an offence and is liable on conviction to a fine of \$5000 and imprisonment for 2 years.

PART VIII

ACCESSIBILITY

26. Access to public buildings, public transport and premises

(1) Subject to subsection (3), a person with a disability shall have the right to reasonable access to all indoor and outdoor places where services are offered to the public and to public transport.

(2) Existing public premises shall be altered within six (6) months of this Act coming into effect in order to facilitate accessibility by a person with a disability.

(3) The owner of an existing commercial premises may alter the existing premises if doing so will not constitute an undue burden on the owner in order to facilitate accessibility by a person with a disability.

(4) The owner or occupier of any commercial premises constructed after the 31st day December 2017 shall provide reasonable access to persons with a disability.

(5) A person with a disability shall have the right to use public transport and therefore shall not be denied the opportunity to use public transport on the basis of a disability.

(6) A person with a disability shall not be charged a higher sum for using any form of transportation.

PART IX

MISCELLANEOUS

27. Penalty for offence with no express penalty

A person guilty of an offence under this Act where no express penalty is stipulated is liable on conviction to a fine of \$5000 or to imprisonment for 2 years.

28. Confidentiality

A member of the Council, the Tribunal, the Registrar or any person acting under the authority of any of them shall not communicate any information to any other person with respect to all matters that come to the knowledge of that person in the course of performing duties, employment, inquiry or investigation under this Act except—

- (a) as required for the administration of this Act; or
- (b) with the consent of the person to whom the information relates.

29. Exemption from Liability

Nothing done by any member of the Council, the Tribunal, the Registrar or any person acting under the authority of any of them shall subject that person, in a personal capacity, to any action, liability, claim or demand where such thing was done *bona fide* for the purpose of giving effect to this Act.

30. Regulations

The Minister may make regulations for the purpose of carrying this Act into effect and for the better carrying out of the objects and purposes of this Act and without prejudice to the generality of the foregoing, for or with respect to any matter that may be prescribed under this Act by regulations.

FIRST SCHEDULE

The Council

(Section 4)

1. Constitution of the Council

(1) The Council shall consist of the following persons to be appointed by the Minister—

- (a) the Permanent Secretary of the Ministry of Health or a nominee;

- (b) the Permanent Secretary of the Ministry of Social Transformation or a nominee;
- (c) a medical practitioner;
- (d) an Attorney-at-Law; and
- (e) one representative from the various associations concerned with the welfare of persons with disabilities.

(2) The Minister shall appoint a chairman and a deputy chairman from among the members of the Council.

(3) In the case of the absence or inability of the chairman to act, the deputy chairman shall exercise the functions of the chairman.

(4) In the case of the absence or inability of both the chairman and the deputy chairman to act at any meeting, the remaining members shall elect one of the members to act as chairman of that meeting.

2. Term of appointment of a member of the Council

A member of the Council shall hold office for a period not exceeding three years and each member shall be eligible for re-appointment.

3. Acting members

The Minister may appoint a person to act in the place of any member of the Council who is temporarily unable to perform the functions as a member of the Council.

4. Resignation of a member of the Council

(1) A member of the Council, other than the chairman, may resign at any time by instrument in writing addressed to the Minister and transmitted through the chairman; and from the date of receipt by the Minister of such instrument such member shall cease to be a member of the Council.

(2) The chairman may resign at any time by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt by the Minister of such instrument.

5. Revocation of appointments to the Council

The Minister may at any time revoke the appointment of any member of the Council if it is expedient so to do as a result of the member's—

- (a) inability to discharge the functions of his office, whether arising from infirmity of body or mind or any other cause;

- (b) failure to discharge the functions of his office in a competent manner;
- (c) misbehaviour; or
- (d) absence without leave.

6. Gazetting of appointments

The names of all members of the Council as first constituted and every change in membership thereof shall be published in the *Gazette*.

7. Leave of absence

(1) The Minister may, on the application of any member of the Council, grant leave of absence to that member.

(2) The appointment of a member shall be terminated if, without the grant of leave of absence, that member is absent from three consecutive meetings of Council.

8. Authentication of seal and signature of documents

(1) The seal of the Council shall be authenticated by the chairman or the deputy chairman and may be affixed to instruments pursuant to a resolution of the Council.

(2) All documents other than those required by law to be under seal, made by, and all decisions of the Council may be signified under the hand of the chairman or the deputy chairman authorised to act in that behalf.

9. Procedure and meetings of the Council

(1) The Council shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such days as the Council shall determine.

(2) The chairman shall, at any time, call a special meeting Council to be held within seven days of a written request for the purpose addressed to him by any three members of the Council.

(3) The quorum of the Council shall be five persons.

(4) The decisions of the Council shall be by a majority of votes and, in addition to an original vote, the chairman, deputy chairman or other member acting as chairman at the meeting shall have a casting vote in any case in which the voting is equal.

(5) Minutes in proper form for each meeting shall be kept and shall be confirmed by the chairman or deputy Chairman as soon as practicable thereafter at a subsequent meeting. Certified copies of such minutes when so confirmed shall be forwarded to the Minister.

(6) The validity of the proceedings of the Council shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

(7) Subject to the provisions of this Schedule, the Council may regulate its own proceedings.

10. Disclosure of interest

A member of the Board who is directly or indirectly interested in any matter which is being dealt with by the Council shall—

- (a) disclose the nature of the interest of that member at a meeting of the Council; and
- (b) not participate in any deliberation or decision of the Council with respect to that matter.

11. Powers of the Council to appoint committees

(1) The Council may appoint a committee of the Council to examine and report to it on any matter arising out of or connected with any of its functions under this Act.

(2) Any such committee shall consist of at least one member of the Council and such other persons, whether members of the Council or not, whose assistance or advice the Council may desire.

(3) The remuneration and allowance of a person who has been appointed to a committee but who is not a member of the Council shall be payable out of the funds and resources of the Council after the Council, with the approval of the Minister, makes a declaration by resolution to that effect.

(4) The Council may by resolution reject the report of any such committee or adopt it either wholly or with such modifications as the Council may think fit.

SECOND SCHEDULE **Disabilities and Equal Opportunities Rights Tribunal**

(Section 9)

1. Constitution of the Tribunal

(1) The Tribunal shall consist of the following members to be appointed by the Minister after consultation with the Antigua and Barbuda Association of Persons with Disabilities—

- (a) a chairman who is a lawyer trained in disability and/or equal protection fields;
- (b) a deputy chairman; and
- (c) five other members.

(2) If the chairman of the Tribunal is absent or unable to act, the deputy chairman shall exercise the functions of the chairman.

2. Term of appointment of a member of the Tribunal

A member of the Tribunal shall hold office for a period not exceeding three years and each member shall be eligible for re-appointment.

3. Acting members

The Minister may appoint a person to act in the place of any member of the Tribunal who is temporarily unable to perform the functions as a member of the Tribunal.

4. Resignation of a member of the Tribunal

(1) A member of the Tribunal, other than the chairman, may resign at any time by instrument in writing addressed to the Minister and transmitted through the chairman; and from the date of receipt by the Minister of such instrument such member shall cease to be a member of the Tribunal.

(2) The chairman may resign at any time by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt by the Minister of such instrument.

5. Revocation of appointments to the Tribunal

The Minister may at any time revoke the appointment of any member of the Tribunal if it is expedient so to do as a result of the member's—

- (a) inability to discharge the functions of the office, whether arising from infirmity of body or mind or any other reasonable cause;
- (b) failure to discharge the functions of the office in a competent manner;
- (c) misbehaviour; or
- (d) absence without leave.

6. Gazetting of appointments

The names of all members of the Tribunal as first constituted and every change in membership thereof shall be published in the *Gazette*.

7. Member shall recuse himself

A member of the Tribunal shall recuse himself from any proceeding where his participation may be reasonably considered a conflict of interest.

8. Employees of the Tribunal

The Minister shall make such arrangements in relation to the provision and remuneration of employees of the Tribunal.

9. Remuneration of members of the Tribunal

There shall be paid to the members of the Tribunal such remuneration (whether by way of honorarium, salary or fees) and such other allowances as the Minister may determine.

10. Tribunal may regulate its procedure and proceedings

Subject to the provisions of this Act, the Tribunal may regulate its own procedure and proceedings as it thinks fit.

11. Appearance before the Tribunal

A party to a complaint referred to the Tribunal may either appear in person before the Tribunal or be represented by—

- (a) an attorney-at-law;
- (b) an officer of the corporation if the party is a corporation; or
- (c) any other person whom the party wishes to represent him, with the permission of the Tribunal.

12. Admissibility of evidence

(1) During any proceedings of the Tribunal, the Tribunal shall not be bound to follow the rules of evidence stipulated in the Evidence Act, Cap. 155 but may inform itself on any matter in such manner as it thinks just and may take into account opinion evidence and such facts as it considers relevant.

(2) Notwithstanding the generality of sub-paragraph (1), the parties to the proceedings shall be given the opportunity to give evidence.

(3) The chairman of the Tribunal may summons a witness to attend a hearing at a specified place and time stipulated therein, and such a person shall be bound to obey the summons which is served upon him.

(4) A summons issued—

- (a) shall be in the form prescribed in the Third Schedule;
- (b) may be served either personally or by registered post.

(5) The Tribunal may allow a witness to present evidence *in camera*.

(6) The Tribunal may request a person to produce relevant documents which the Tribunal has reasonable grounds to believe can assist in determining the validity of a complaint before it.

(7) A person commits an offence and is liable on conviction to a fine of \$5000 or imprisonment for a term of 12 months if that person—

- (a) fails without reasonable cause to comply with the directive of a summons;
- (b) destroys or alters, or causes to be destroyed or altered, any document required to be produced under sub-paragraph (4); or
- (c) provides any information or makes a statement to the Tribunal which is false or misleading.

13. Decisions of the Tribunal

(1) The Tribunal shall make a decision within 30 days after considering a complaint referred to it.

(2) If it is impracticable to make a decision within the period referred to in sub-paragraph (1), the period of 30 days may be extended to a further period.

(3) The Tribunal shall issue its decision in writing, and shall state reasons for its decision.

(4) The Tribunal shall furnish each party to the complaint with a copy of the decision.

(5) The Tribunal may make any of the following decisions after considering a complaint—

- (a) dismiss the complaint; or
- (b) find in favour of the complainant and—
 - (i) issue an order for the respondent to perform a reasonable action within a specified period of time by the party against whom the complaint was made for the benefit of the complainant;
 - (ii) award compensation if appropriate to the complainant;
 - (iii) recommend that the parties settle the matter by an alternative method of dispute resolution;

(iv) impose any further remedy which the Tribunal considers necessary.

(6) Where the Tribunal makes a decision and awards compensation to the complainant, the decision in respect of the award of compensation—

- (a) shall be binding on the parties;
- (b) shall be reasonable and proportionate to the circumstances of the case;
- (c) shall state the period from which the decision shall take effect;
- (d) may be made with retrospective effect from a date as may be determined by the Tribunal, but such a date shall not be earlier than the date on which the complaint was filed;
- (e) may be appealed only for the reason and in the manner described in paragraph 14.

(7) A person who fails to comply with a decision of the Tribunal commits an offence and is liable on conviction to a fine of \$10,000 or imprisonment for 2 years.

14. Appeal of decisions of the Tribunal

(1) Subject to sub-paragraph (2), a person who is aggrieved by the decision of the Tribunal may appeal the decision of the Tribunal to the High Court.

(2) The grounds of appeal shall state the following—

- (a) the decision which is being appealed;
- (b) facts found by the Tribunal; and
- (d) the grounds of appeal, identifying any finding of fact and law being challenged.

(3) An appeal shall be made by filing a fixed date claim form with the grounds of appeal annexed to the form within 28 days of the date of notice of the decision of the Tribunal.

(4) The appellant shall serve a copy of the notice of the appeal on—

- (a) each party to the proceedings in which the decision was made; and
- (b) the chairman of the Tribunal.

(5) The chairman of the Tribunal shall, after receiving a copy of the notice of appeal, prepare a report for the High Court which sets out—

- (a) the manner in which the hearing was conducted; and
- (b) the reason or reasons for the decision.

(6) After considering the grounds for the appeal and the report from the chairman the Judge may—

- (a) confirm the decision of the Tribunal and dismiss the appeal;
- (b) set aside the decision of the Tribunal and order a rehearing of the complaint;
or
- (c) overturn the decision of the Tribunal and make a new decision.

Passed by the House of Representatives
on the day of 2017.

Passed by the Senate on the
day of 2017.

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Speaker

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President

Clerk to the House of Representative

Clerk to the Senate

EXPLANATORY MEMORANDUM

It is a fact that persons living with disabilities have historically been ostracized and excluded from schools and from the workplace, thus resulting in their increased dependence upon family and community, particularly for economic support. In that regard, this Bill proposes to expound the principles of equality and non-discrimination in relation to persons with disabilities by highlighting and enforcing the rights of such persons in accordance with those stated in the Constitution of Antigua and Barbuda as well as the United Nations Convention on the Rights of Persons with Disabilities.

The Bill is divided into eight (8) Parts and contains 29 clauses. Part I of the Bill contains the short title and the commencement provisions, the Interpretation clause and the objectives of the bill. Regarding the terms which have been defined, the bill includes several words and phrases as defined in the United Nations Convention on the Rights of Persons with Disabilities. It must be underscored that instead of defining “disability”, the bill instead defines “person with a disability”. There are other terms defined in the bill which assist in providing meaning to the provisions of the bill, including “communication”, “discrimination on the basis of disability”, “universal design” and “reasonable accommodation”. Part I also clearly establishes the objectives of the bill. There are four general objectives enshrined in the bill, chief among them is the aim of improving the overall standard of living for persons with disabilities.

Part II of the Bill contains Clauses 4 to 8 and establishes the Antigua and Barbuda National Council Of/For Persons with Disabilities. The Council is vested with legal personality, and has several critical functions to perform including advising the Minister on all matters relating to persons with disabilities as well as formulating a detailed national policy to ensure that persons with disabilities receive adequate services which cater to their specific needs.

Part III establishes the Disabilities and Equal Opportunities Rights Tribunal which has the responsibility of hearing complaints filed with the Council which allege non-compliance with the provisions of this Act and rendering a decision on such complaints. The Second and Third Schedule outline the constitution, procedure and meetings of the Tribunal.

Part IV emphasizes that a person with a disability should be protected from violence, exploitation, and all forms of abuse.

Parts V, VI and VII outline the fundamental rights of a person with a disability to the right to access education, employment and equal standards of health care. In the areas of education, the bill outlines special arrangements which must be made to assist a person with a disability to obtain an education and the necessary training. In the area of employment, the bill suggests measures that an employer may take to ensure that an employee, who is a person with a disability, remains employed.

Part VIII addresses issues such as access to buildings, public transport and premises. It makes it mandatory that a person with a disability be allowed to access buildings and public transportation like any other person.

Part IX outlines miscellaneous issues such as the protection from liability for members of the Council and the Tribunal, as well as the power of the Minister to make regulations for better carrying out the provisions of this Act.

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Hon. Samantha Marshall
Minister of Social Transformation