

BELIZE EQUAL OPPORTUNITIES BILL

The Government of Belize is seeking to establish *Equal Opportunities Legislation (EOL)*, which would provide protections from discrimination in public life, to promote equal opportunities and address inequality. It provides avenues for people to resolve discrimination disputes. It also proposes the establishment of a Commission to address, and investigate individual complaints, and to facilitate the government, business and the community in identifying and eliminating discrimination including structural discrimination—that is, long term inequalities. A specific *Equal Opportunities Tribunal* is proposed to address claims that have not been settled before the Commission and to allow the Tribunal to provide broad-ranging remedies.

Why do we need this legislation?

EOL helps to improve public services, protects against discrimination and can improve business performance, while addressing inequality. It ensures that persons living in Belize, have an equal chance to work, access services and to generally be treated fairly. Beyond prohibiting discriminatory treatment, the *EOL* is necessary to ensure that where discrimination does occur, victims of discrimination have access to effective remedies and support.

Features of the EOL

The proposed *EOL* has a number of very important features which will permit all Belizeans to be protected against discrimination, to have equal opportunities to live and to thrive in Belize, and to permit the State and non-State actors to take steps to eliminate structural inequality.

The proposed **Protected Characteristics** include any, or any combination of the following (in alphabetical order):

- Age
- Breastfeeding
- Disability
- Family responsibilities
- Gender identity
- HIV positive status
- Intersex status
- Lawful sexual activity
- Marital status
- Maternity
- Political opinion
- Pregnancy
- Race
- Lawful religious belief or activity or lack thereof
- Sex
- Sexual orientation
- Status as a person who is experiencing or has experienced domestic violence
- Status as an orphan
- Any other status

Personal association with someone who has, or is assumed to have, any of these personal characteristics (Discrimination by association) is included. This also includes where one is wrongly perceived as falling within one of these descriptions (Discrimination by perception).

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It makes discrimination unlawful in various areas of public life. Specifically, the law would apply to the following areas of public life:

- employment (full-time, part-time and casual) and all work-related matters
- provision of goods and services (whether paid for or free)
- education (pre-school, primary and secondary school, post-secondary, technical and university)
- accommodation (including rental and hotel accommodation)
- sport
- clubs and club membership
- transfers of land
- administration of laws and programming

The proposed *Equal Opportunities Legislation* details the following forms of discrimination:

- **Direct discrimination**
- **Indirect discrimination**
- **Unreasonable refusal to provide adjustments for persons with disabilities**
- **Unreasonable refusal to accommodate persons on account of a request arising from a protected characteristic**
- **Harassment**
- **Victimisation**
- **Breach of a binding standard**

The law covers situations when a person is treated less favourable than another person would be on the basis of a characteristic protected under the legislation such as on the basis of race, or disability (**direct discrimination**); and also situations when a practice or condition might appear neutral, but has the effect of disadvantaging people with a protected personal characteristic (**indirect discrimination**). It only applies to areas covered under the legislation.

It provides a duty to provide reasonable adjustments for people with disabilities in employment, education and when providing goods and services, to help the person with a disability to perform the job or access education and goods and services. The *Proposed Equal Opportunities Legislation* includes a limited exception to the duty to make reasonable adjustments, which allows duty holders to discriminate where adjustments are not reasonable or where the person with the impairment could not participate in the employment, education or service provision even if the adjustments were made.

A similar duty is included for accommodation of a reasonable request arising from a protected characteristic in employment. This may include a request to accommodate a religious requirement such as not working on Saturday, unless refusing to do so would be reasonable. Similarly, If a business has a limited number of staff, and a worker wishes to work longer hours on some days so that they could

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take care of a sick parent, the employer may consider whether they are able to accommodate that request. If staffing arrangements could permit it without undue hardship, the employer may be required to accommodate the request.

The law addresses **harassment** which is unwanted behaviour which has the effect of violating a person's dignity or is offensive or creates an intimidating, hostile degrading, humiliating or offensive environment for that other person. It can happen on its own or alongside other forms of discrimination. Harassment does not include acts done reasonably and in good faith in a public place for academic, artistic, scientific, research or religious discussion or instruction purposes.

Victimisation is treating someone unfavourably because they have taken (or might be taking) action under the proposed legislation or supporting somebody who is doing so.

Breach of a binding standard occurs where regulations are passed which set certain minimum standards, for example, such as accessibility requirements, and a person or entity does not comply with the standard.

The EOL does not apply to religious bodies in the training or selection of ministers of religion or the conduct or participation in religious observances and provides other protections for persons of faith consistent with Belize's Constitution.

Hate crimes are being addressed as part of this process in the form of a proposed. The Criminal Code Amendment addresses hate crimes where a crime is aggravated by prejudice towards a person or group on the basis of (certain) protected grounds. The proposals on which we are consulting would not create any new criminal offences. Instead, they recognise that acts which are already criminal – such as assault, threats or criminal damage to property – may be motivated by prejudice. This includes, for example, prejudice against the victim's religion, nationality, or sexuality. Such crimes harm not only the individual victim but the communities to which they belong. The proposals would recognise these harms in law and allow courts to formally record the prejudice accompanying the offence and take it into account in sentencing.

No "hate speech" offences would be created. Currently, there are only very limited circumstances under the Belizean Criminal Code where speech can be criminal, such as provoking a riot (s 230) or making threats of death or grievous harm (ss 238-239). Nothing in the proposed legislation would change that or in any way hinder the right to freedom of expression, which is guaranteed by the Constitution.

The legislation provides a framework for the management of HIV/AIDS by designating treatment centres, establishing standards, and providing sanctions for breaches of confidentiality. The legislation provides for a prohibition on screening for HIV in employment, subject to very narrow exceptions. The legislation provides that persons who are legally capable of consenting to sex at the age of 16 should be able to access medical care so that they can be as safe as possible.

Establishing the Commission

A specialist agency, the Equal Opportunities Commission, is proposed to address discrimination and promote equal opportunities. The Equal Opportunities Commission would be empowered to investigate complaints and is capable of providing various forms of assistance to resolve claims of discrimination brought to the Commission.

It provides powers for the Equal Opportunities Commission to investigate systemic issues without waiting for an individual complaint.

Functions of the Commission

- Effective Investigation of Complaints including acting of its own-motion.
- Initiation of complaints which satisfy a minimum threshold before the Tribunal
- Providing litigation support for select cases where the EOC does not have primary responsibility for litigating complaints
- Providing access to legal support through legal aid
- Enforcement of judgments from the Tribunal
- Ensure Access to Justice
- Monitoring compliance with the legislation

Establishing the Equal Opportunities Tribunal

A specialist EOT is proposed to be presided over by a Judge of the Supreme Court. The Tribunal will have broad powers to:

- Compel the attendance of persons to attend the Tribunal to give evidence and produce documents
- Order persons affected by an order or award, or where just to be joined as party to the proceedings
- Conciliation
- Grant interim relief pursuant to an application (or of its own motion) Make such declaration, orders, and monetary awards as it thinks fit, awards may have due regard to the need to accomplish systemic change and shall include a power to order remedies broader than the individual complainant (where there is an individual complainant)
- Do all that is necessary and expedient for hearing and determining matters before it.