

Response to The Fifteenth Report of the Joint Select Committee on Human Rights, Equity and Diversity on the Current Provisions for the Education of Children who require Special Education Programmes and Services in Public Primary and Secondary Schools

Introduction

The Ministry of the Attorney General and Legal Affairs has reviewed the recommendations in Appendix X made by various stakeholders and has formulated its responses specifically in relation to legislative recommendations.

Appendix X – Legislative Recommendations

CODO

• **Recommendation 1**

The Ministry of the Attorney General and Legal Affairs supports this recommendation subject to a feasibility report by the Ministry of Education.

Down Syndrome Family Network

• **Recommendation 1**

Currently, the Equal Opportunity Act (EOA) provides at **section 4** that the Act applies to discrimination in education on the ground of status. “Status” is defined by **section 3(g)** of the EOA as including “*any disability of that person*”. Further, **Section 15** of the EOA, specifically prohibits an educational institution from refusing to accept any student, denying or limiting the students’ access to any benefit, facilities or services or expelling the student on the ground of status which as aforementioned includes whether said student has a disability. Moreover, the language of section 15 is mandatory as “shall” is used.

The relevant provisions of the EOA are quoted below:

“4. *This Act applies to—*

(a) discrimination in relation to employment, education, the provision of goods and services and the provision of accommodation, if the discrimination is—

- (i) discrimination on the ground of status as defined in section 5; or*
- (ii) discrimination by victimisation as defined in section 6;”*

5. *For the purposes of this Act, a person (“the discriminator”) discriminates against another person (“the aggrieved person”) on the grounds of status if, by reason of—*

- (a) the status of the aggrieved person;*

- (b) a characteristic that appertains generally to persons of the status of the aggrieved person; or*
- (c) a characteristic that is generally imputed to persons of the status of the aggrieved person,*

The discriminator treats the aggrieved person, in circumstances that are the same or are not materially different, less favourably than the discriminator treats another person of a different status."

"3. "status", in relation to a person, means—

- (a) the sex;*
- (b) the race;*
- (c) the ethnicity;*
- (d) the origin, including geographical origin;*
- (e) the religion;*
- (f) the marital status; or*
- (g) any disability of that person;"*

*"15.(1) Subject to any agreement or practice between the State and any educational establishment, Board or other institution, an educational establishment **shall** not discriminate against a person—*

- (a) by refusing or failing to accept that person's application for admission as a student; or*
- (b) in the terms and conditions on which it admits him as a student.*

(2) An educational establishment shall not discriminate against a student—

- (a) by denying or limiting the student's access to any benefits, facilities or services provided by the educational establishment; or*
- (b) by expelling the student or subjecting the student to any other detriment."*

As such, for this recommendation to be fully supported the relevant stakeholder should identify where the current provision falls short.

TTWBA

- **Recommendation 1**

The Ministry of the Attorney General and Legal Affairs supports this recommendation.

EOC

- **Recommendation 2**

Further elaboration of this recommendation is required before the Ministry of the Attorney General and Legal Affairs can comment.

- **Recommendation 4**

The Ministry of the Attorney General and Legal Affairs supports the long term recommendation of the EOC. However, the short term recommendation made by the EOC needs to be examined by the Law Revision Commission.

TUTTA

- **Recommendation 1**

The Ministry of the Attorney General and Legal Affairs supports the recommendation of the TUTTA.

Prepared By:

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