

CAYMAN ISLANDS



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**A BILL FOR A LAW TO PROMOTE, PROTECT AND ADVANCE THE
WELL-BEING OF OLDER PERSONS; TO ESTABLISH THE COUNCIL
OF OLDER PERSONS; AND FOR INCIDENTAL AND CONNECTED
PURPOSES**

THE OLDER PERSONS BILL, 2017

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to promote, protect and advance the well-being of older persons and to establish the Council of Older Persons, an entity that would act as a ‘watch dog’ over the rights of older persons.

The Bill aims to ensure that older persons are able to freely access and participate in all aspects of society within the Cayman Islands as provided for by the Bill of Rights, Freedoms and Responsibilities enshrined in the Cayman Islands Constitution Order, 2009 and to advance equal opportunity for older persons to achieve independence, participation, care, self-fulfilment and dignity as advocated for by the United Nations Principles on the Rights of Older Persons.

The Bill contains five Parts. Part 1 sets out preliminary provisions and is comprised of two clauses. Clause 1 provides the short title and commencement of the legislation. Clause 2 defines various words for the purposes of the legislation, including words such as: “access to services” and “social inclusion”.

Part 2 (which contains clauses 3 to 9) makes provision in respect of the Council of Older Persons. Clause 3 seeks to establish the Council and, together with the Schedule to the Bill, sets out the Council’s constitution and procedure.

The Council would consist of the following members, each of whom would be appointed by the Cabinet -

- (a) members who are older persons of varying ages and representative of each district in the Cayman Islands;
- (b) not less than two members who are from the private sector or who are affiliated with a non-Governmental advocacy or service organization that works for the rights of older persons -
 - (i) one of whom should be a doctor specialising in Geriatrics or familiar with medical issues relevant to older persons; and
 - (ii) one of whom should be an attorney-at-law experienced in advising on legal issues relevant to older persons in the Cayman Islands and who possesses a current annual practising certificate entitling the attorney-at-law to practice in the Cayman Islands;
- (c) not less than five ex-officio members who are public servants comprised of the following -

- (i) one representative, preferably a social worker, with a minimum experience of 5 years in managing socio-economic aspects of older persons in the Cayman Islands);
 - (ii) one representative from the Ministry responsible for community affairs;
 - (iii) one representative from the Ministry responsible for health;
 - (iv) one representative from the Ministry responsible for each or all of the following: education, employment and gender affairs; and
 - (v) one public servant to act as Executive Secretary; and
- (d) a designate for each of the members who are able to attend meetings on behalf of the members when necessary.

Council members would hold office for a period of four years and would be eligible for re-appointment, by Cabinet, for one further four-year term. Provision is also made in respect of Council meetings and other procedural matters.

Clause 4 of the Bill prescribes the functions and powers of the Council and these would include -

- (a) to serve as a referral facility to provide information on services and resources for older persons;
- (b) to promote participation, involvement and social inclusion of older persons;
- (c) to promote a skills bank of older persons;
- (d) to advocate and monitor the level of public education on the changing needs of older persons within the community; and
- (e) to take steps towards ensuring the promotion, implementation, monitoring and evaluation of the Cayman Islands Older Persons' Policy, including the protection of the rights of older persons.

Clauses 5 and 6 set out the duties of the Chairperson, Deputy Chairperson and Executive Secretary while clauses 7, 8 and 9 deal with the remuneration of members of the Council and make provision in respect of their immunity and indemnity.

Part 3 of the Bill is comprised of clauses 10 and 11 and deals with the Older Persons Register, which is voluntary. Clause 10 provides for the Council to maintain a confidential register with the particulars of older persons who choose to have their names added to the Register, to be known as the Older Persons Register. The Register would be kept in a form to be prescribed by regulations.

Part 4 of the Bill contains clauses 12 to 17. This Part makes general provision for the rights of older persons to be protected by the progressive realization of their economic, social and cultural rights (clause 12), but the Part also makes provision in respect of specific benefits to which an older person is entitled on an equal basis with other persons. These benefits include -

- (a) personal liberty (clause 13);
- (b) the right to privacy (clause 14);
- (c) the right to access the justice system (clause 15); and
- (d) the right to participate in political life and public life (clauses 16 and 17).

Part 5 contains miscellaneous provisions set out in clauses 18 to 20. Clause 18 makes it an offence to obstruct an authorized person. Clause 19 would empower the Cabinet to make regulations to give effect to the legislation. By virtue of clause 20, the legislation binds the Crown.

THE OLDER PERSONS BILL, 2017

ARRANGEMENT OF CLAUSES

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2. Interpretation

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CAYMAN ISLANDS

A BILL FOR A LAW TO PROMOTE, PROTECT AND ADVANCE THE WELL-BEING OF OLDER PERSONS; TO ESTABLISH THE COUNCIL FOR OLDER PERSONS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

1. (1) This Law may be cited as the Older Persons Law, 2017.

Short title and commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. (1) In this Law -

Interpretation

“access to services” includes the affordability, physical accessibility and the maintenance of an acceptable standard of services provided to older persons and not merely adequacy of supply;

“accessible” means easy to approach, attain, reach or enter;

“advocacy” means representing older persons toward ensuring their identified needs are appropriately met by the relevant resources;

“care” includes the physical, psychological, social or material assistance to an older person, and services aimed at promoting the quality of life and well-being of an older person;

“confidential” means to keep private or entrusted matters;

“dignity” means the condition of being worthy of respect, esteem and honour;

“discrimination” means the treatment or consideration of, or making a distinction in favour of or against a person, based on the group, class, age, or category, to which that person belongs, rather than on individual merit;

“equal access” means ensuring older persons have the same opportunities as other members of the society to fully participate in and benefit from programmes, activities, goods and services;

“Council of Older Persons” means the entity established under section 3 of the Law which is responsible for monitoring the implementation of the Cayman Islands Older Persons’ Policy and supporting legislation;

“older person” means persons over the age of sixty five years, except where the Law provides for a person who is less than sixty five years to be treated as an “older person” for the purpose of receiving a pension; and.

“social inclusion” means an act practised in socially inclusive societies where all people feel valued, their differences are respected, and their basic needs are met so they can live in dignity.

PART 2 - THE COUNCIL OF OLDER PERSONS

The Council of Older
Persons

3. (1) There is established a body to be called the Council of Older Persons, having the functions, responsibilities, powers and duties conferred or imposed upon it by this and any other Law.

Schedule

(2) The Schedule has effect with respect to the constitution and procedure of the Council.

Functions of the Council

4. (1) The Council shall perform such functions as may be necessary for the purpose of -

- (a) serving as a referral facility to provide information on services and resources for older persons;

- (b) advocating and monitoring the level of public education on the changing needs of older persons within the community;
- (c) aiming to ensure the promotion, implementation, monitoring and evaluation of the policy in relation to older persons;
- (d) promoting participation, involvement and social inclusion of older persons; and
- (e) promoting a skills bank of older persons.

(2) The Council shall, in carrying out its functions, adopt a consultative approach in relation to the community of older persons and other critical stakeholders.

5. (1) The Chairperson of the Council and the Deputy Chairperson of the Council shall be appointed by the Cabinet, from among the members of the Council who are not public servants.

Chairperson and Deputy
Chairperson

(2) The duties of the Chairperson include -

- (a) chairing meetings of the Council;
- (b) instructing the Executive Secretary on behalf of the Council;
- (c) signing Minutes of meetings of the Council;
- (d) apprising the Council of matters raised by stakeholders;
- (e) making best efforts to guide the Council in accordance with relevant legislation and policy;
- (f) participating in public relations or education campaigns on behalf of the Council and acting as the Council's spokesperson; and
- (g) appointing committees comprised of no fewer than three members for specific purposes, in consultation with the other members of the Council.

(3) In the case of the absence or inability of the Chairperson to act, the Deputy Chairperson shall perform the duties of the Chairperson.

6. (1) The Cabinet shall appoint an individual who is a public servant to be the Executive Secretary of the Council but the Executive Secretary shall not be a member of the Council and shall have no right to vote at meetings of the Council.

Executive Secretary

(2) The Executive Secretary shall manage the affairs of the Council in accordance with applicable legislation, Council directives and Council policies.

7. Each of the members of the Council (if they are not public servants) may receive such remuneration in respect of each meeting attended, and the

Remuneration of
members

Chairperson and Deputy Chairperson may receive such additional remuneration, as may be determined by the Cabinet.

Immunity 8. Neither the Council, nor any member of the Council, nor the Executive Secretary of the Council, shall be liable in damages for anything done or omitted to be done in the discharge or purported discharge of their respective functions, responsibilities, powers and duties under this Law unless it is shown that the act or omission was negligent or in bad faith.

Indemnity 9. The Government shall indemnify a member of the Council and the Executive Secretary against all claims, damages, costs, charges or expenses incurred by that member or the Executive Secretary in the discharge or purported discharge of that member's or Executive Secretary's functions, responsibilities, powers and duties under this Law, except claims, damages, costs, charges or expenses caused by the negligence or bad faith of that member.

PART 3 - THE OLDER PERSONS REGISTER

Older Persons Register 10. (1) The Council shall maintain a confidential register (to be known as the Older Persons Register) containing the particulars of any older person who requests to be registered.

(2) The Register shall be kept in such form, and all entries, alterations and removals of entries shall be made in such manner, as may be prescribed.

(3) A person whose name is in the Register shall be issued, in the prescribed manner, with a certificate of registration.

Registration or de-registration of an older person 11. Where -
(a) an older person chooses to have their name; or
(b) a person who is legally authorised to act on behalf of the older person, chooses to have the name of the older person,

entered in the Register or removed from the Register, that older person or the person legally authorised to act on behalf of the older person, shall make an application to the Council in the prescribed manner and such request shall be granted.

PART 4 - ACCESS TO RIGHTS OF OLDER PERSONS

12. (1) An older person shall be entitled to the enjoyment of rights, privileges, interests, benefits and treatment as provided in this Law, whether directly, or through contractual, licensing, or other arrangements. Access to privileges, interests, benefits and treatment
- (2) The rights of an older person shall be protected from discrimination.
13. No person shall be deprived of personal liberty or security of the person only on the ground of being an older person. Personal liberty
14. (1) An older person has a right to private life and family life on an equal basis with persons who are not older persons. Right to privacy
- (2) An older person shall not be a subject of any research or medical or scientific experimentation without that person's free and informed consent.
15. An older person shall, in their individual or representative capacity, as the case may be, have the right to - Access to justice
- (a) move or appear before any court, tribunal, authority, commission, or any other body having judicial, quasi-judicial or investigative powers, on an equal basis with a person who is not an older person; and
 - (b) receive reasonable accommodations and other support in order to facilitate their effective role as a direct or indirect participant, including as a witness, in all legal proceedings, including at the investigative and other preliminary stages.
16. An older person shall not, by reason of being an older person, be denied the opportunity to participate in programmes, work or activities that relate to political office, including - Political office
- (a) the opportunity to vote using procedures, facilities, material and support that are appropriate, accessible and easy to understand and use; and
 - (b) the opportunity to be elected to public office and perform public functions at all levels of government.
17. An older person shall not, by reason of being an older person, be denied the opportunity to effectively and fully participate in the conduct of public affairs, Public life

including forming and joining any organizations at the local, regional, and international levels.

PART 5 - MISCELLANEOUS PROVISIONS

Obstruction of
authorized persons

18. (1) A person who -
- (a) assaults or obstructs an authorized person acting in the performance of the authorized person's lawful functions under this Law; or
 - (b) knowingly gives false or misleading information to the Council or to an authorized person acting in the performance of the authorized person's functions pursuant to this Law,

commits an offence and is liable on summary conviction to a fine of five thousand dollars.

(2) In this section "authorized person", in relation to any act, means a person duly authorized by the Council.

Regulations

19. (1) The Cabinet may make regulations for the better carrying out of this Law and for giving effect thereto and in particular -

- (a) for prescribing the form of any document authorized or required by this Law to be served, made, issued or done;
- (b) for any purpose for which regulations are authorized or required to be made under this Law and for prescribing anything that by this Law is required or authorized to be prescribed by regulations;
- (c) for empowering such persons as may be specified in the regulations to administer or execute the regulations and to make orders, impose requirements or give directions for the purposes of the regulations;
- (d) for empowering such persons as may be specified in the regulations to take measures, including the entry and inspection of any land or building, to secure compliance with the regulations or any order, requirement or direction made, imposed or given thereunder; and for enabling such persons to recover expenses incurred by them in the exercise of any such power; and
- (e) for the review of decisions given under the Regulations.

(2) Any regulation made under this Law may provide for the imposition of a fine of five thousand dollars and imprisonment for six months or both, for any contravention of, or failure to comply with, such regulation.

20. This Law binds the Crown.

Law binding on Crown

SCHEDULE

(Section 3)

THE COUNCIL OF OLDER PERSONS

1. (1) The Council shall consist of the following members, each of whom shall be appointed by the Cabinet -

Composition of Council

- (a) members who are older persons of varying ages and representative of each district in the Cayman Islands;
- (b) not less than two members who are from the private sector or who are affiliated with a non-Governmental advocacy or service organization that works for the rights of older persons;
 - (i) one of whom should be a doctor specialising in Geriatrics or familiar with medical issues relevant to older persons; and
 - (ii) one of whom should be an attorney-at-law qualified to practise in the Cayman Islands and experienced in advising on legal issues relevant to older persons in the Cayman Islands.
- (c) not less than five ex-officio members who are public servants, comprised of the following -
 - (i) one representative, preferably a social worker, with a minimum experience of five years in managing socio-economic aspects of older persons in the Cayman Islands;
 - (ii) one representative from the Ministry responsible for Community Affairs;
 - (iii) one representative from the Ministry responsible for Health;
 - (iv) one representative from the Ministry responsible for each or all of the following: education, employment and gender affairs; and
 - (v) one Executive Secretary.

(2) The Cabinet may appoint a designate for each of the members and when necessary that designate shall attend meetings on behalf of the member for whom that designate is appointed.

2. (1) The members of the Council shall hold and vacate office in accordance with the provisions of this Schedule and the terms of their appointment.

Tenure of office

(2) Each member of the Council shall be appointed by Cabinet for a term of not less than four years and shall be eligible for re-appointment for one further

four-year term and the Cabinet shall cause notice of such appointment or re-appointment to be published in the Gazette.

Resignation

3. (1) A member of the Council may resign office by instrument in writing addressed to the Chairperson via the Executive Secretary and Cabinet shall be informed of the resignation.

(2) A resignation shall take effect as from the date of the receipt of the instrument by the Cabinet Secretary.

(3) Where any member of the Council resigns, the Cabinet in accordance with this Law, may appoint another person to hold that office until the time that the member's office would have expired.

Revocation of appointments

4. (1) The Cabinet may revoke a person's appointment as a member of the Council, if the member -

- (a) has been seriously incapacitated by reason of physical or mental illness;
- (b) has been absent from three consecutive meetings of the Council without the consent of the Chairperson of the Council;
- (c) is otherwise unable or unfit to discharge the duties of a member of the Council;
- (d) is unsuitable to continue as a member of the Council; or
- (e) a conflict of interest arises in which that member's membership would bring the Council into disrepute.

(2) Where any member of the Council ceases to be a member before the normal expiration of the member's office, the Cabinet in accordance with this Law, may appoint another person to hold that office until the time that the member's office would have expired.

Procedure and meetings

5. (1) The Council shall meet a minimum of twelve times per year, but may meet as often as necessary and practical and the Council may decide its own procedures, except so far as its procedures are prescribed by this Law.

(2) Members of the Council who are appointed under paragraph 1(a) or (b) shall each have one vote; and decisions of the Council shall be adopted by a simple majority of the votes of the members present and voting except that in the case of an equality of votes the Chairperson shall, in addition to his regular vote, have a casting vote.

(3) At every meeting of the Council, a quorum shall consist of a simple majority of eight members.

(4) The Council may act notwithstanding that a vacancy exists among the members and in the absence of the Chairperson or Deputy Chairperson, the members present shall elect one of their members to preside as Chairperson at that meeting.

(5) The deliberations of the Council shall be confidential but the Council shall cause any decision which affects the members of the public to be published in the Gazette, on a website or in a newspaper of the Islands.

(6) If a member of the Council has any personal or pecuniary interest, direct or indirect, in any matter which is to be determined by the Council, the member shall, if present at the meeting of the Council at which such matter is to be determined, as soon as practicable after the commencement thereof, disclose the fact and leave the meeting, and shall not take part in the consideration or discussion of such matter or vote on any question with respect thereto.

Passed by the Legislative Assembly the day of , 2017.

Speaker.

Clerk of the Legislative Assembly.