

PROPOSED RACE DISCRIMINATION (JERSEY) LAW

**Lodged au Greffe on 5th March 2002
by the Legislation Committee**



STATES OF JERSEY

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PROPOSITION

THE STATES are asked to decide whether they are of opinion -

- (a) to approve, in principle, the proposals to render unlawful racial discrimination as defined by law, as set out in Parts A to F of the report of the Legislation Committee dated 5th March 2002, namely -
 - (i) racial discrimination to which the Law would apply (Part A);
 - (ii) discrimination in employment (Part B);
 - (iii) discrimination in other areas (Part C);
 - (iv) other unlawful acts (Part D);
 - (v) general exceptions (Part E);
 - (vi) incitement to racial hatred (Part F)together with the enforcement proposals as set out in Part G of the report;
- (b) to request that the necessary funding be included in the prioritisation process for 2003 and beyond; and,
- (c) to charge the Legislation Committee to prepare the necessary draft legislation for approval by the States.

LEGISLATION COMMITTEE

- Notes:
- 1. The Policy and Resources Committee's comments are to follow.
 - 2. The Finance and Economics Committee's comments are to follow.
 - 3. The Human Resources Committee's comments are to follow.

REPORT

In October 1996, the Policy and Resources Committee produced a report into the extent of racism and racial discrimination in Jersey. From the comments and detailed analysis in the October 1996 report, the conclusion drawn was that racist attitudes do exist in Jersey. In fact, in its findings, the report concluded that -

“Although the Island does not have a problem of the magnitude experienced by some other jurisdictions, it is clear from the available evidence that racial discrimination is not entirely absent from Jersey.” (October 1996 Report, page 7.)

As a result of the 1996 report, a proposition went to the States charging the Policy and Resources Committee with two responsibilities -

- (a) to take necessary steps to implement appropriate legislation;
- (b) to encourage more enlightened attitudes through education and a promotional campaign.

The States accepted the proposition, and in accordance with paragraph (a) an officer was seconded with the specific task of drawing up a brief for the Law Draftsman. The primary tenets of the legislation are -

- (a) to render racial discrimination unlawful;
- (b) to prevent the dissemination of ideas and propaganda based on racial superiority;
- (c) to prevent activities inciting racial discrimination or hatred which falls short of constituting a breach of the peace or other contravention of existing Jersey Law;
- (d) to proscribe organisations and propaganda activities promoting or inciting racial discrimination, and of participation in the membership of such groups.

The elimination of racial discrimination and racism ought to be one of the primary functions of any decent government and, whilst one cannot legislate racist beliefs and attitudes out of existence, a legal framework which outlaws racism and racial discrimination is considered to be one of the starting points in any democratic and civilised community.

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) was adopted by the General Assembly of the United Nations on 7th March 1969 and brought into force on 16th April 1969. Jersey was included in H.M. Government's ratification of this convention. The CERD is the oldest and most widely ratified United Nations Human Rights Convention. Under the Convention, state parties, including Jersey, are pledged, amongst other particulars, to “engage in no act or practice of racial discrimination against individuals, groups or persons or institutions” and “to review government, national and local policies and to amend or repeal laws and regulations which create or perpetuate racial discrimination”.

Article 9.1 of the convention provides for parties to the convention to submit regular reports regarding -

“...the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provision of [the] convention....”

State parties are expected to include in their reports information regarding dependent territories for which they are responsible. The first report was approved by the Policy and Resources Committee on 3rd May 1994 for inclusion in H.M. Government's report to the United Nations. This report was presented to the States as R.C. 14/94. Further reports were submitted in August 1996, published as an Appendix to the Report and Proposition of the Policy and Resources Committee, P.213/96, and most recently updated as part of the United Kingdom Report examined in 2000 in Geneva and presented to the States in R.C. 2/2001. Among the concluding observations of the Human Rights Committee was the recommendation that-

“The authorities complete the current process of enacting legislation outlawing all racial discrimination”.

Other international conventions, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), seek to guarantee that all human beings enjoy economic and cultural freedoms irrespective of nationality, place of origin, race or ethnicity. The United Nations Declaration of Human Rights says in Article 1 that “all human beings are born free and equal in dignity and rights” and, in Article 2 says that “everyone is entitled to all the rights and freedoms set forth in this declaration, without discrimination of any kind.”

Also of significance in the discrimination field is the Human Rights (Jersey) Law 2000 adopted by the States on 8th February 2000 under project number P.197/2000. This Law, which incorporates many of the provisions of the European Convention on Human Rights into Jersey law and which will be fully implemented in October 2002, provides, in Schedule 1-

“Article 14

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The Article 14 right to freedom from discrimination is not, however, free-standing, regulating as it does only discrimination in the “enjoyment of the rights and freedoms set forth in the Convention”. A violation of the Convention must be established under Article 14 and another Article where the subject matter of the discriminatory treatment “relates to” or “falls within the scope of” or is “covered by” a right or freedom elsewhere guaranteed by the Convention. Furthermore, the utility of the Human Rights (Jersey) Law 2000 as a weapon against discrimination is limited by the concept of discrimination adopted by the convention organs. Violations of Article 14 are not generally found unless the discrimination at issue is direct and overt. In addition, the Human Rights (Jersey) Law 2000 is binding in the fuller sense only on public authorities. The protections afforded by the Human Rights (Jersey) Law 2000 are inferior, therefore, because of the parasitic nature of Article 14 and the under-developed nature of indirect discrimination under the Convention.

Rights and freedoms do not have any meaning unless they are deliverable. That is, they must be capable of being enforced, or in other words, rights and freedoms exist only if we have the means and capacity to take positive steps not only to ameliorate an individual’s experience of discrimination and racism but to reduce the likelihood of its recurrence.

A comparative analysis of measures to combat racial discrimination in the member states of the European Union shows that few have anything approaching the conceptual sophistication and detailed enforcement apparatus of the British legislation. Thus, in December 1991, the European Council asked ministers of the member states and the Commission to increase their efforts to combat discrimination and xenophobia and to strengthen the legal protection for third country nationals in the territories of the member states. Article 39 (formerly Article 48) of the treaty establishing the European Community provides -

- (a) Freedom of movement for workers shall be secured in the community.
- (b) Such freedom of movement shall entail the abolition of any discrimination between workers of member states as regards employment, remuneration and other conditions of work and employment.

Under Protocol Three to the Treaty of Accession, the insular authorities must apply the same treatment to all natural and legal persons of the community.

During the post-war period Jersey, in common with many other societies, looked for immigrant labour in order to fuel expansion in the tourism and agricultural industries. The push/pull factors of lack of job opportunities at home and the promise of employment and improved living standards in Jersey attracted a significant number of migrants. This immigration process continues to the present day and includes the importation of labour to fill jobs where local skills are not to be found in sufficient numbers, for example in the retail, finance and public sectors as well as the more traditional industries. Diversity is one of our strengths as a community, and all Jersey citizens should be encouraged to play a full part in society and have their inalienable rights protected.

The purpose of this report and proposition is to seek the agreement of the States to draft legislation which would implement the recommendations of the Race Relations Working Party Report (R.C. 46/99) together with the enforcement procedures. While anti-discrimination law is not the only element in policy to promote equal opportunity, it is nevertheless a prerequisite. The specific objectives of the Committee have been to develop an accessible legislative framework, to spur compliance with the Law and to ensure that Jersey complies with its international obligations. The proposals do not treat legislation as a panacea. The recommendations are for an inclusive, non-adversarial approach, which avoids unnecessary bureaucratic requirements, while ensuring that the law is effectively enforced. The intention is that individuals should be free to seek redress for the harm they have suffered as a result of unlawful discrimination, through procedures which are fair, inexpensive and expeditious, and remedies which are effective. The strategies proposed seek to address particular problems, whether in education, housing, employment, services or commerce, based on the simple principles of fair play. They cover both direct and indirect discrimination and the scope of unlawful discrimination extends to both public and private sectors.

The legislative proposals should be interpreted according to the underlying purpose of protecting the dignity, autonomy and worth of every individual and the promotion of good relations between different groups. However, when discriminatory actions are sufficiently serious in their impact on the community or any part of it, there are criminal sanctions. The proposals therefore include a mixture of both civil and criminal law.

RACIAL DISCRIMINATION (JERSEY) LAW

Part A - Racial discrimination to which the Law would apply

A1. It would be unlawful to racially discriminate either directly or indirectly in any way (e.g. positive discrimination would also be unlawful).

A2. Racial discrimination

(a) *Direct discrimination*

Direct discrimination would occur when someone was treated less, or more, favourably on racial grounds than others are, or would be, treated in similar circumstances.

When someone was segregated from others on racial grounds this would also be direct discrimination. Racial abuse and harassment would also be unlawful direct discrimination if it occurred in circumstances covered by the law.

Example

If a black woman is turned down for a job as a shop assistant and told there are no vacancies, then a white woman with equivalent qualifications is offered the job a short while later, the black woman has been directly discriminated against.

(b) *Indirect discrimination*

Indirect discrimination would occur when a condition or requirement was applied equally to people of all racial groups, but many fewer people of a particular group were able to comply with it. Such indirect discrimination would be unlawful when it cannot be shown to be justifiable other than on racial grounds.

Example

- A rule about clothing or uniforms which disproportionately disadvantages a racial group and cannot be justified.
- An employer who requires higher language standards than are needed for safe and effective performance of the job.

A3. Victimisation

It would also be unlawful under the Law to treat someone less favourably than others, because they have taken a case of racial discrimination, or given evidence relating to a case, or alleged that discrimination has occurred, or where the discriminator knows that the person intends to do any of these things, or suspects that the person victimized has done, or intends to do any of them.

There must, however, be protection from false/malicious allegations not made in good faith.

A4. Racial definitions

- racial grounds* means any of the following grounds, namely colour, race, nationality or ethnic or national origins;
- racial group* means a group of persons defined by reference to colour, race, nationality or ethnic or national origins, and references to a person's racial group refer to any racial group into which he falls.
- racial hatred* means hatred against a group of persons in Jersey defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

Part B - Discrimination in employment

It is suggested that the definitions of employer, employee/worker should mirror those used in the Employment and Social Security Committee Minimum Wage/Employment Laws. Such definitions should be as broad as possible and include agency workers, casual labourers, temporary contracts, and home-workers.

There is no intention to require any monitoring of ethnic contents of the Jersey Workforce by either nationality or race.

B1. It would be unlawful for all employers, no matter how small or large their number of employees, and for all employees, to discriminate on racial grounds in any aspect of employment, including -

- (a) recruitment;
- (b) selection;
- (c) training;
- (d) promotion;
- (e) transfer;
- (f) pay and benefits;
- (g) hours of work;
- (h) conditions of employment e.g. employers would also be responsible for ensuring that racial harassment did not take place in the workplace;
- (i) redundancy;
- (j) dismissal.

B2. Exceptions

However, there would be a number of exceptions to the Law -

- (a) for a person working in a private household, or applying to work in a private household. But the legislation should distinguish between domestic work which is focused on members of the household, e.g. Nanny, au-pair, live-in carer (normally a contract of service); and work which is performed in private households by a tradesperson (normally a contract for service) or an employee of a person who carries out his/her business from home which would be treated under normal employment law;
- (b) for a person working all or most of the time outside Jersey. This exception should not be interpreted to cover seasonal labour employed in tourism, retail and agriculture, etc.

e.g. A resident who is employed for services in a country abroad such as Saudi Arabia.
- (c) for a person who lives outside Jersey but is employed by a company based inside Jersey which trains them to work overseas;
- (d) for a person applying for a job where race is a 'genuine occupational qualification' for part or all of the job, such as acting in plays or films, or providing personal welfare services to people of a particular racial group;
- (e) discrimination will not be unlawful if it is done to comply with any piece of statutory legislation.

B3. Partnerships

It would be unlawful for a firm of two or more partners to discriminate in the arrangements they make for the -

- (a) selection of new partners;
- (b) access by partners to benefits, facilities or services; or
- (c) dismissal of partners.

B4. Trade Unions, workers and employers' associations

B4.1 It would be unlawful for any of the following bodies to discriminate in -

- (a) the terms for admission to membership;
- (b) members' access to benefits, facilities or services;
- (c) varying the terms of membership; or
- (d) depriving a person of membership.

B4.2 The bodies concerned would be -

- (a) any organisation of workers e.g. Trade Unions, Bank Staff Associations;
- (b) any organisation of employers, e.g. Institute of Directors; and
- (c) any organisation whose members carry on a particular profession or trade for the purpose of which the organisation exists, e.g. Law Society, BMA.

B5. Qualifying bodies

It would be unlawful for any body or authority which can confer an authorisation or qualification to discriminate if, as a matter of law or practice a person is unable (or would find it difficult) to carry on a particular profession, trade, business or vocation without such an authorisation or qualification.

Discrimination would be unlawful -

- (a) in the terms for conferring, renewing or extending the authorisation or qualification;
- (b) by refusing or deliberately omitting to grant an application; or
- (c) by withdrawing or depriving membership from a person.

B6. Vocational training bodies

It would be unlawful for any vocational training body to discriminate against a person seeking, or undergoing training which would help fit him for any employment as regards -

- (a) terms of access to any training courses or other facilities;
- (b) refusing or deliberately omitting to afford access to them; or
- (c) terminating the training.

B7. Employment agencies

B7.1 It would be unlawful for an employment agency to discriminate against a person -

- (a) in the terms on which it offers to provide its services;
- (b) by refusing or deliberately omitting to provide them; or
- (c) in the way it provides them.

B7.2 It would not be unlawful for an employment agency to discriminate if the employer assures the Agency that the Genuine Occupational Qualification Exception (see section B2(d)) applies to that vacancy. The onus should be on the employer to provide the correct statement.

“Employment agencies” would include -

- (a) commercial agencies;
- (b) Employment and Social Security Job Centre; and
- (c) schools and Education Committee Careers Service;
- (d) Farmers' Union

Part C - Discrimination in other areas

C1 - Education

The Law would apply to any schools and colleges maintained by the Education Committee, independent (fee-paying) schools and colleges and special schools. It also includes the governors of a school or college and the Education Committee.

It would be unlawful for the Education Committee or the governors of an independent school or college to discriminate in the way that duties are carried out in relation to -

- (a) terms of admission to any establishment;
- (b) refusing or deliberately omitting to accept an application for admission;
- (c) access to benefits, facilities or services for any particular pupil; or
- (d) excluding or treating unfavourably any pupil/student.

C2. Housing

C2.1 It would be unlawful for anyone selling, letting or managing property (including business premises) to discriminate in any of the following ways -

- (a) in the terms on which persons are offered the premises;
- (b) by refusing to let persons buy the premises;
- (c) by treating persons differently from other people who want to buy or rent;
- (d) by refusing to transfer a lease to a particular person;
- (e) by refusing access to any benefits or facilities at the premises;
- (f) by evicting individuals or subjecting them to other disadvantages.

C2.2 There would be some exceptions -

- (a) owner-occupiers selling or letting their property are excluded if they do not advertise or use an estate agent;
- (b) small residential premises are excluded (defined as “not more than 5 persons in addition to the members of the household, or in the case of premises comprising residential accommodation for one or more households under separate letting agreements in addition to the accommodation occupied by the relevant occupier there is not normally accommodation for more than two such households and only the relevant occupier and members of his household reside in the accommodation occupied by him.”);

e.g. An occupier of a house who takes in up to five lodgers.

e.g. A single house divided into two self-contained flats, one of which is occupied by the owner and members of his family while the second flat is to let to another household.

- (c) someone who takes children, elderly people or anyone else who needs special care or attention into their home and treats them as if they were members of his or her own family.

C3. Goods, facilities and services

The Law would cover any goods, facilities or services offered to the public. For example, it would apply to hotels and catering, banking, insurance and other financial services, cinemas, theatres, bars, restaurants, pubs and other places of entertainment or refreshment, transport and travel services, and services provided by any public utility or public authority, e.g. States department, States committee, sub-committee, other States agency or parochial authority, and any profession or trade.

It would be unlawful for any such organisation to discriminate by either refusing a person their services, or giving a person their services on less favourable terms or conditions than offered to people of other racial groups.

C3.2 There are some exceptions, namely -

- (a) someone taking in foster children or elderly people;
- (b) financial facilities for a purpose to be carried out outside Jersey, e.g. loans for development outside the Island;
- (c) goods, facilities and services provided outside Jersey, e.g. in the case of an organisation with corporate headquarters in Jersey with worldwide interests; and
- (d) providing education or training for people not intending to remain in Jersey after it is over, e.g. a language school.

C4. Clubs and associations

C4.1 Discrimination by clubs and associations against members or persons seeking to become members may be unlawful -

- (a) if it is an organisation covered by paragraph B4.2 (any organisation of workers, employers or professional association);
- (b) if it is an organisation covered by paragraph C3 (goods, facilities and services open to the public or section of the public, e.g. British Airways Executive Club);
- (c) if it is an organisation with 25 or more members which is not covered by (a) or (b) which has a constitution regulating admission to membership which is so conducted that members do not constitute a section of the public, e.g. golf club.

C4.2 There is an exception to this, namely -

If the main object of the club or association is to enable the benefits of membership (whatever they may be) to be enjoyed by persons of a particular racial group defined other than on grounds of colour.

C5. Proscribed organisations

C5.1 There would need to be a general provision to proscribe any organisation whose purpose or practical activity is likely to promote or incite racial discrimination, and of any individual's participation in such organisations (see Part F).

Note: If required to list the organisations, this could be done in a Schedule attached to the Law, amended by Regulations.

C5.2 The definition of "organisation" will have to include informal groups not formally constituted or incorporated.

C6. Elected posts for public office

C6.1 It will be an offence to discriminate on racial grounds in any aspect of the election process including nomination, electoral procedure, ratification of result, induction or appointment.

- C6.2 However, there is at present a statutory exception in so far as candidates for Senator and Deputy must be a British subject. This provision is under review.
- C6.3 Furthermore, the parochial officials including Connétables, Honorary Police and Roads Inspectors at present may have dual nationality. This provision is under review.

C7. Charities

Charities are not specifically exempt because in Jersey “charitable status” is not clearly defined and there is no regulatory body such as the Charities Commission. An automatic exception under the Law could provide the potential for abuse. It is preferable that when a complaint is made involving an organisation described as charitable it should be referred to the Race Discrimination Officer, who should refer the matter through the appropriate enforcement route if necessary.

It should be noted that under Part E2(d) there is a general exception under special needs.

Part D - Other unlawful acts

D1 - Advertisements

D1.1 Any advert which indicated an intent to discriminate on racial grounds would be unlawful, e.g. it would be unlawful for an employer to state in a job advert that only white people should apply. It would also be unlawful to publish or cause to be published whether through the press, media or by any other means any advertisement that indicates or might be reasonably understood as indicating, an intention to discriminate.

D1.2 However, it would not be unlawful for adverts to be placed or published where there is an indication of an act of discrimination if any of the following exemptions apply -

- (a) genuine occupational qualification;
- (b) certain clubs and associations (see section C4);
- (c) special needs (see section E2(d));
- (d) sports and competition (see section E2(b));
- (e) compliance with statutory legislation (see section E2(c)).

D2. Pressure or instructions to discriminate

It would be unlawful to instruct, induce or attempt to induce any person or organisation to discriminate, e.g. it would be unlawful for an employer to tell the job centre that they should NOT send any “coloured” or “foreign” persons for interview.

Part E - General exceptions

E1. Exceptions in Parts B, C and D

Note: A number of specific exceptions have been made to the provisions contained in Part B (Employment), Part C (Housing), Part C (Goods, facilities and services) and D1 (Adverts). The following exceptions are general and will apply in relation to all the discrimination and associated conduct provisions which would otherwise be unlawful.

E2. General exceptions

- (a) *Non-residents’ training* - It shall not be unlawful to discriminate when affording access to education or training and any ancillary benefits where the discrimination is against a person who is not normally resident in Jersey and it appears that the person in question does not intend to remain in Jersey after his period of education or training.
- (b) *Sport* - It shall not be unlawful to discriminate on the basis of nationality, place of birth or length of residence

in any place or area if the discrimination is for the purpose of selecting a person or team to represent a particular place or area or is in pursuance of specific competition rules relating to eligibility.

- (c) *Statutory authority* - It shall not be unlawful to discriminate in order to comply with either any provision of Jersey Law or in pursuance of arrangements approved by a Committee of the States where the power to make such arrangements is vested in statutory law, including subordinate legislation.
- (d) (Regard would have to be had by the Crown Officers as to whether any existing statutory legislation would be in contravention of the Race Relations Law.)
- (e) *Special needs* - If a particular racial group has special needs as regards education, training, welfare or ancillary benefits, it shall not be unlawful to discriminate in favour of members of that group if it can be clearly demonstrated that their need can only be met by a restriction or preferential allocation.

Note: There will be no exemption to permit overt positive discrimination, e.g. it would be unlawful to discriminate in favour of a person on the grounds that he has been disadvantaged in the past and should therefore be helped to “catch up”.

Time constraints - There will be a time limit for complaints of 12 months but the law will not be retrospective in any respect.

Part F - Incitement to racial hatred

F1. Introduction

As Jersey does not have the equivalent of Part III of the Public Order Act 1986 which covers all aspects of incitement to racial hatred there will need to be an article making it a criminal offence to use threatening, insulting, abusive words or behaviour with the intention of stirring up racial hatred as well as when in all the circumstances racial hatred is likely to be stirred up. It should also cover the publication and broadcasting of such material through any media.

F2. Acts intended or likely to stir up racial hatred will include -

- (a) use of words or behaviour or display of material, written or otherwise;
- (b) publishing or distributing written material;
- (c) public performance of play;
- (d) distributing, showing or playing a recording;
- (e) broadcasting or including programme in cable programme service;
- (f) possession of racially inflammatory material with a view to displaying, publishing, distributing, showing or playing;
- (g) computer websites, etc.

F3. The offence of incitement to racial hatred would be a criminal matter to be dealt with by the police.

F4. The penalty for incitement to racial hatred shall be a fine or a term of imprisonment not exceeding two years or both.

F5. Further consideration should be given to powers of entry, search (with or without a warrant) and forfeiture in cases involving racially inflammatory material.

F6. As the courts have flexibility over powers of sentencing which would take into account matters such as a racially motivated attack, it is not proposed to create a separate offence of aggravated racial assault, or interfere with the existing basis of the burden of proof.

Part G - Enforcement

G1. Introduction

G1.1 The proposals for enforcement are ones that are appropriate to Jersey in both resource demands and its administrative “tone”.

Enforcement structures and procedures are not intended to be overly bureaucratic.

G1.2 There will be no equivalent of the Commission for Racial Equality, which is far too bureaucratic, expensive and cumbersome for Jersey.

G1.3 The enforcement structure will consist of the Race Discrimination Officer, members of the Race Discrimination Panel sitting as single adjudicators and an Appeal function performed by the Royal Court. In addition, race relations employment issues will be referred to the Jersey Advisory and Conciliation Service (JACS) for conciliation and where such issues are not amenable to conciliation to an employment tribunal (*see Appendix A*).

G1.4 Where an adjudicator acts as a sole adjudicator he/she must be legally qualified.

G1.5. Decisions of the sole adjudicator will be binding.

G2. Race Discrimination Officer

G2.1 There will be a Race Discrimination Officer selected by an independent assessment process.

G2.2 The Race Discrimination Officer will be a person with relevant professional qualifications or experience and will act as a filter. All non-criminal complaints will be addressed to the officer in the first instance before being processed further. Any potential criminal cases will be referred to the police (*see Appendix A*).

G2.3 The Race Discrimination Officer will be empowered and required to -

- (a) obtain information relevant to complaints with the caveat that if provision of this information is refused then the adjudicator may draw an adverse inference;
- (b) refer employment and related discrimination to the Jersey Advisory and Conciliation Service (JACS);
- (c) refer unresolved complaints (other than employment-related matters) to an Adjudicator via the Chairman of the Race Discrimination Panel;
- (d) reject a complaint on the basis of vexatiousness, triviality or lack of merit.

G2.4 The Race Discrimination Officer will be required to -

- (a) receive all complaints under the relevant law;
- (b) notify respondents of the complaint;
- (c) advise complainants of any relevant time limits for filing a complaint;
- (d) advise respondents of any relevant time limits for filing a response;
- (e) refer prima facie employment complaints to the Jersey Advisory and Conciliation Service (JACS);
- (f) refer incitement of racial hatred cases to the police;
- (g) conduct investigations into matters of discrimination other than those involving employment and racial hatred;
- (h) advise and conciliate if possible, to resolve complaints;
- (i) refer unresolved complaints to the Chairman of the Race Discrimination Panel;

- (j) compile and maintain a register of complaints and their final outcome;
- (k) produce an annual report for the Policy and Resources Committee to be laid before the States;
- (l) produce codes of practice agreed by the Policy and Resources Committee after appropriate consultation. Such codes of practice will not be part of the law but failure to abide by them may be taken into account during investigations into a complaint to establish discrimination or a discriminating practice;
- (m) work with other relevant individuals and organisations to promote good race relations in the community.

G3. Race Discrimination Panel

G3.1(a) The Panel will consist of a Chairman and 11 other persons appointed for an indeterminate period by the States on the recommendation of the Legislation Committee. Panel Members will be required to retire on attaining 72 years.

(b) The Chairman of the Panel of Adjudicators should be legally qualified.

(c) The allocation of cases will be run on the basis of a rota system.

(d) The process of appointment to the adjudicators' panel should be initiated by public advertisement inviting those wishing to serve to express their interest. A similar notice should be sent to the Law Society.

(e) A member may resign from office by written notice.

(f) If a panel member is guilty of any malpractice or, in the opinion of the Legislation Committee, is incapable of the proper performance of his functions as a panel member or is otherwise unsuitable to continue in office, the Committee shall report the facts to the States and the States, after deliberating thereon in camera, may remove the panel member from office.

(g) Although it is envisaged that membership of the panel would be on a voluntary basis, the legislation should provide for the payment of nominal attendance allowances to panel members and a similar but increased payment to the Chairman in recognition of his/her additional duties.

(h) A vacancy in the number of adjudicators constituting the panel does not affect a determination made on behalf of the panel.

G3.2 The Chairman of the Panel will be required to -

- (a) appoint a single member of the Panel (the Adjudicator) to hear each complaint. The Chairman must ensure that in making these appointments there is a fair distribution of work amongst the members of the panel;
- (b) provide advice to an adjudicator, if requested;
- (c) advise the States periodically on the workings of the Law.

G3.3. Adjudication procedures

- (a) Both parties will be invited to put their case in writing or otherwise and will be advised of any relevant time limits.
- (b) An adjudicator appointed to determine a complaint may do so by holding a hearing. Under Human Rights Legislation all hearings should be held in public unless there is a qualifying exemption. It is anticipated, however, that the convention right to privacy could be relied upon by the complainant for the hearing by the adjudicator to be held in private. Nevertheless, all judgements will be made public. The publication of judgements will need to be a sensitive mechanism because, in a small community, the identification of complainants could be counter-productive. N.B. An adjudicator may determine a complaint solely by considering written submissions unless an interested person objects. An interested person is defined as a complainant, respondent or witness.
- (c) The burden of proof will lie with the complainant and decisions will be based upon the balance of probability having taken a practical view of matters of what was reasonable in the circumstances as opposed to taking a

purely legalistic view.

- (d) Where the adjudicator upholds a complaint, he/she may issue a non-discrimination notice to remedy situations that are in breach of the law. The decision to issue a non-discrimination notice will be taken only after careful consideration of any representations made by respondents.
- (e) Both parties will be informed of the result and the grounds for the decision shall be given.
- (f) The enforcement system is designed to be non-legalistic, less expensive and less time-consuming than the court process. Complainants and respondents would not be required to appoint professional representatives.
- (g) No legal costs will be awarded.
- (h) Records of all proceedings will be kept by the adjudicator and copies will be lodged at the Judicial Greffe.

G3.4 The Adjudicator will have the power to -

- (a) refer the claim back for conciliation (once only);
- (b) require witnesses, complainants and respondents to attend;
- (c) question witnesses, complainants and respondents;
- (d) require the production of documents or further information and an adverse inference may be drawn if information is withheld;
- (e) receive oral and written evidence;
- (f) obtain expert or legal advice;
- (g) award compensation for hurt or distress up to a cap of £2000 to complainants who have been discriminated against;
- (h) issue a non-discrimination notice where discrimination is identified;
- (i) refer if appropriate a failure to comply with a non-discrimination notice to the Magistrates Court where the failure will be dealt with as a criminal offence with a Scale 3 maximum fine.

NB: Any breach of statutory duty under the Law could form the basis for a civil action for damages in the Royal Court.

G4. The Race Discrimination Officer will be the person to whom all non-criminal complainants will first go and where the facts of any complaint will be recorded and verified, after which one of the following courses of action will occur -

- (a) The complaint relates to racial discrimination in employment and will be referred to the Jersey Advisory and Conciliation Service (JACS) for advice and conciliation. If this is not sufficient then the complaint will be referred by JACS to the process officer for the Employment Tribunal.
- (b) The complaint relates to a matter of racial discrimination (other than employment) which can be satisfactorily resolved by the Race Discrimination Officer with words of advice or explanation - in writing where appropriate.
- (c) The complaint relates to a matter of racial discrimination (other than employment) which cannot be satisfactorily resolved by the race discrimination officer and therefore must be considered by an adjudicator, who will have the power to issue non-discrimination notices. A failure by any party to comply with a non-discrimination notice will be a criminal offence dealt with by the Magistrates Court with a maximum penalty of £2000 (Scale 3 fine).
- (d) The adjudicator may award an amount of compensation for hurt and distress not exceeding £10,000 - failure to abide by which will be a tort enforceable as a civil debt at the Petty Debts Court.

- (e) Compensation for losses will be dealt with by the Petty Debts or Royal Court depending upon the level of losses.
- (f) Any claims for damages due to a breach of statutory duty will be heard in the Royal Court as a civil tort.

G5. Incitement and racially motivated crime

G5.1 Where a complaint is one of a criminal nature or an incitement to racial hatred the case will be referred to the police, who would thereafter take over all aspects of the investigation and preparation for the prosecution in the usual way.

G6. Right of Appeal

G6.1 There will be a right of appeal against any action or inaction of -

- (a) The Race Discrimination Officer to an Adjudicator
- (b) The Race Relations Adjudicator on a point of Law to the Inferior Number of the Royal Court (This is designed to operate swiftly along the lines of a streamlined Judicial Review using Affidavits rather than personal appearances wherever possible.)

G6.2 There will, of course, be the normal right of appeal in criminal cases to the Royal Court against decisions of a lower court.

G7. Resources

G7.1 It is intended that the setting up of a race relations office and panel of adjudicators will provide an effective and user-friendly process for dealing with complaints of racial discrimination. It will provide a quick and less expensive route than the Royal Court.

G7.2 Initially accommodation will consist of an office space and other shared resources with the Employment Tribunal arrangements provided by the Employment and Social Security Committee. The sharing of resources between the race relations and employment tribunal functions is in keeping with the States' commitment to operating in a way that reflects both joined-up thinking and joined-up government. In addition it will lead to savings in costs and other resources.

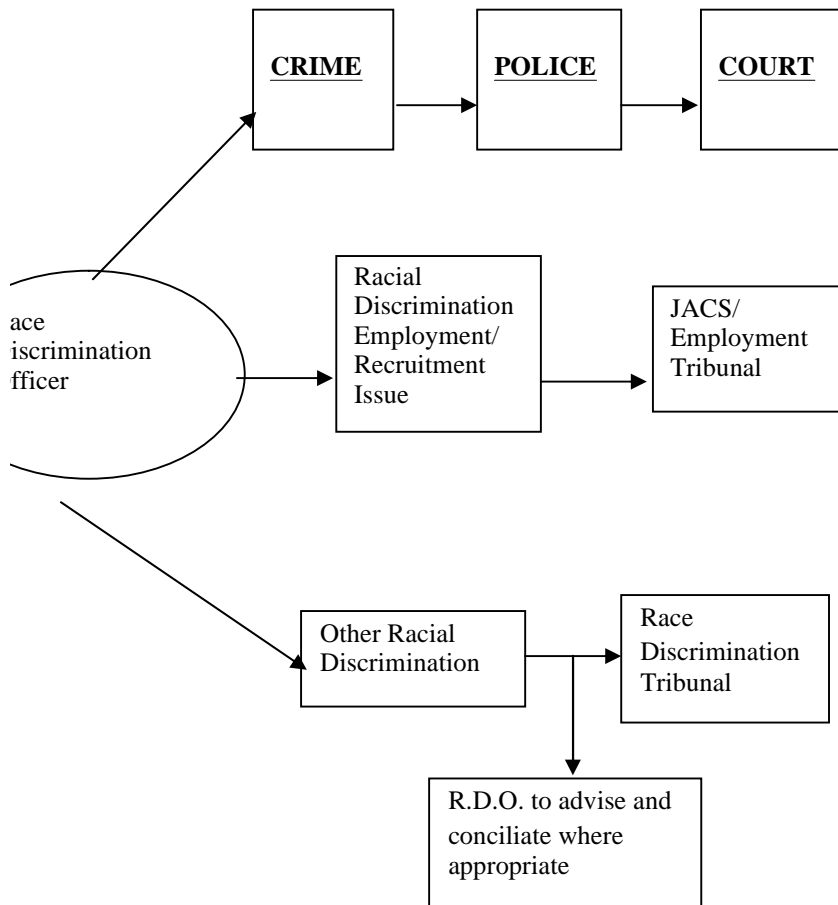
There will be a requirement for a part-time contract post of race discrimination officer. The part-time secretarial and process officer posts will be a shared resource with Employment and Social Security.

In total it is estimated that costs will be in the region of £150,000 for the first year of operation and £116,000 in subsequent years, which will include staffing and the operation and accommodation of the Race Discrimination Panel, subject to the approval of the States (*see Appendix B*).

To ensure independence and human rights compliance it is proposed that the costs are defrayed out of the general revenue of the States.

5th March 2002.

RACE DISCRIMINATION LAW: COMPLAINT PROCEDURE



RACE DISCRIMINATION LAW: BUDGET

<i>Details</i>	<i>£</i>
<i>Start-up costs</i>	
Rent and other costs of £21,600 to be shared with Employment and Social Security	10,800
Conversion and refurbishment costs of £12,480 to be shared with Employment and Social Security	6,240
Furniture, carpets, etc.	12,960
Information Technology, telephones, etc.	4,000
<u>Total</u>	<u>34,000</u>

<i>On-going costs</i>	
Administration costs	10,000
Publications	15,000
P/T Race Discrimination Officer	20,000
P/T Process Officer	15,000
P/T Secretary/receptionist	11,000
Legal advice, insurance, attendance allowances, etc.	45,000
<u>Total</u>	<u>116,000</u>

Budget required during first year of operation: £150,000.

Budget required for subsequent years: £116,000.