Towards the Establishment of the Human Rights and Equality Commission – White Paper

Submissions Report

February 2015
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Executive Summary

Introduction and overview

1. A brief introduction about the subject

Following the first phase of consultation that closed on the 28 March 2014, the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties (MSDC) received 12 submissions.

The first phase of the consultation process sought views by asking the following questions:
- Do you think that human rights and equality are sufficiently protected and promoted in Malta?
- If not:
  - Which human rights do you believe need further protection and promotion?
  - How can Malta better protect and promote human rights and equality overall?
  - Are there any models that you would propose that government should consider looking at in terms of legislation, institutional frameworks or both? If yes, what is especially good about such models?

A common recommendation in most of the submissions referred to the need to set up an independent National Human Rights Institution (NHRI) in accordance with the Paris Principles, which has the mandate, resources and authority to act as Malta’s focal point on human rights and equality issues.

2. Date, Objective and Purpose of Public Consultation

On 10th December 2014, Human Rights Day, the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties launched a White Paper proposing a new Equality Act and the setting up of a Human Rights and Equality Commission based on the Paris Principles that establish the highest standards for a human rights institution. The consultation aimed to collect input from the general public, civil society organisations, trade unions, business organisations, political parties, governmental institutions and all others that would like to contribute towards this process.

3. This consultation sought views on the White Paper that will launch two legislative initiatives:
- An Equality Act that will aim to meet the highest anti-discrimination and equality standards; and
- A Human Rights and Equality Commission Act that will set up the Commission.

4. This document is the Government Response to this consultation and sets out the Government’s decisions on these matters.
Responses to the consultation and process used to seek stakeholder views

5. Closing date of the public consultation; Methods used to receive feedback; Responses and details about individuals/organisations submitting feedback

The consultation closed on 10th February 2015. The consultation document and the reply form were available online and responses were accepted electronically and on paper. In total, the MSDC received 10 submissions from individuals, civil society organisations, national and international organisations.

A list of respondents can be found at Annex A.

6. Meetings with stakeholders and list who the stakeholders were.

As part of the consultation process, meetings were held with the National Commission for the Promotion of Equality (NCPE).

7. The following is a summary of the consultation responses received. We would like to thank all those who took the time to respond to the consultation and participate in stakeholder meetings around the consultation exercise.
8. Summary of Responses

All submissions welcome the proposals presented in the White Paper that is the recasting of existing equality legislation into a comprehensive Equality Act, and the establishment of a Human Rights and Equality Commission in accordance with the Paris Principles. A few submissions make a few proposals to be considered when drafting the new legislations. The respondents identify four areas in their submissions regarding the obligations, duties and responsibilities falling under the HREC and within the Equality Act.

In summary, these areas are:

i. Collaboration and engagement with existing entities as well as those individuals/groups that such laws and structures seek to protect;

ii. Non-exhaustive list of grounds of discrimination;

iii. Further functions of the HREC; and

iv. Other general measures that should be taken into consideration when drafting the two Acts.

9. The Government’s decision

Having reviewed the submissions on the White Paper, the Government has decided to proceed to the next step to drafting the proposed legislative initiatives, that is:

- An Equality Act; and
- A Human Rights and Equality Commission Act

Implementation

10. Implementation of decisions

MSDC will proceed with the drafting of the two Acts that will be subject to a public consultation process respectively.

Following the closing of the public consultation processes, the Minister will table both legislations for Parliamentary approval.

Subject to Parliamentary approval, the Government intends to implement its decision on both legislations, with the aim of the both laws being passed by Parliament by June 2015.

Contact Details

If you have any questions regarding this response, please contact: humanrights.msdc@gov.mt
Detailed overview of responses and the Government’s response

The following section provides a brief summary of the initial proposals and the responses received, before setting out the final decision that has been made.

**Overview and Main Outcomes from the Consultation Submissions**

All submissions welcome the proposals presented in the White Paper that is the recasting of existing equality legislation into a comprehensive Equality Act, and the establishment of a Human Rights and Equality Commission in accordance with the Paris Principles. A few submissions make a few proposals to be considered when drafting the new legislations. The respondents identify four areas in their submissions regarding the obligations, duties and responsibilities falling under the HREC and within the Equality Act. These areas are:

i. **Collaboration and engagement** with existing entities, such as the Commissioner for Children; as well as those individuals/groups that such laws and structures seek to protect;

ii. **Non-exhaustive list of grounds of discrimination**, like the South African Law that should be taken as a model when developing the *Equality Act*;

iii. **Functions of the HREC** should include:
   - Provision of training to professionals and its personnel;
   - The possibility to ask the Government to redress the consequences of its actions or lack of actions;
   - The ability to institute legal proceedings in cases where the HREC has identified a breach of human rights and/or fundamental freedoms; and similarly
   - Provisions about opinions where the HREC should also have “the competence to take cases to court on behalf of individuals/groups once discrimination is found”.

iv. **Other general measures** that should be taken into consideration when drafting the two Acts, such as:
   - In relation to the Human Rights and Equality Commission, it was suggested that this should:
     - Have the ability to keep the complaints and investigative mechanism separate from the other functions;
     - Cover all human rights provisions found in domestic law and in the ratified international human rights treaties and conventions
     - Hold regular meetings with other national human rights institutions and equality bodies
   - In relation to the Equality Act, it was suggested that this legislation should:
     - Include certain obligations to ensure equality in different areas
     - Have a non-exhaustive list of grounds of discrimination and
     - Include reference to harassment, positive action, and multiple discrimination.
Conclusion and way forward

In this section include the way forward.

The outcomes of this consultation will feed into the following actions:

- Drafting of the *Equality Act*, which will be presented for public consultation;
- Drafting of the *Human Rights and Equality Commission Act*, which will be presented for public consultation;
- Report on consultation submissions;
- Parliamentary approval of legislative proposals.
## Annex A: List of respondents

<table>
<thead>
<tr>
<th>Type of Submission</th>
<th>No. of Submissions</th>
<th>Name</th>
</tr>
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</table>
| **Individuals**                 | 4                  | 1. Gervais M. Cishahayo  
                                 |                    | 2. Lara Boffa          |
|                                  |                    | 3. Claude Marsh         |
|                                  |                    | 4. Henry Galea          |
| **Civil society organisations** | 4                  | 1. Il-Kunsill Nazzjonali tal-Ilsien Malti  
                                 |                    | 2. Malta Girl Guides   |
|                                  |                    | 3. Platform Human Rights Organisations Malta (PHROM)                 |
|                                  |                    | 4. The People for Change Foundation                                  |
| **National institutions**       | 2                  | 1. National Commission for the Promotion of Equality (NCPE)         |
|                                  |                    | 2. Office of the Commissioner for Children                           |
| **International institutions**  | 2                  | 1. United Nations High Commissioner for Refugees (UNHCR)            |
|                                  |                    | 2. International Organization for Migration (IOM)                   |