

## **BILL**

### **Entitled**

*An ACT to provide for the establishment of a Human Rights and Equality Commission responsible for the promotion and protection of human rights including the right to equal treatment in Malta, and to make provision with respect to matters ancillary thereto or connected therewith.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives in this present Parliament assembled, and by the authority of the same as follows: -

### Arrangement of Act

#### Articles

PART I	Preliminary
PART II	Establishment and Conduct of Affairs of the Commission
PART III	Functions and Powers of the Commission
PART IV	Employment of staff and resources
PART V	Financial Provisions
PART VI	Miscellaneous

### SCHEDULES

#### FIRST SCHEDULE

## **PART I**

### **PRELIMINARY**

#### **Short title.**

1. The short title of this Act is the The Human Rights and Equality Commission Act.

#### **Interpretation.**

2. In this Act, unless the context otherwise requires -

"Convention" means the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on the 4<sup>th</sup> November, 1950 and the First, Second, Third, Fourth, Fifth, Sixth and Seventh Protocols thereto signed in Paris on the 20th March 1952, and in Strasbourg on the 6th May 1963, 6th May 1963, 16<sup>th</sup> September 1963, 20th January 1966, 18th April 1983 and 22<sup>nd</sup> November 1984, respectively;

"Commissioner" means the Commissioner for Human Rights and Equality appointed in accordance with article 4 of this Act and includes, in the circumstances mentioned in article 4(3), the Deputy Chairperson;

"Commission" means the Human Rights and Equality Commission established by article 3 of this Act;

"discrimination" has the same meaning assigned to it in the Equality Act;

"employee" means a person employed by the Commission;

"entity" means any entity, regardless of its legal status, to which the provisions of the Equality Act apply;

"Executive Director" means the person appointed under article \_\_\_\_ when such an appointment is made by the Commission;

"financial year" means any period of twelve months ending on the 31st December of each year;

"human rights" means the fundamental rights and freedoms enshrined in articles 33 - 45 (inclusive) of the Constitution of Malta and those fundamental rights and freedoms as set out in articles 2 to 18 (inclusive) of the Convention and articles 1 to 3 (inclusive) of the First Protocol, articles 1 to 4 (inclusive) of the Fourth Protocol, articles 1 and 2 of the Sixth Protocol and articles 1 to 5 (inclusive) of the Seventh Protocol to the Convention, which articles are reproduced in the First Schedule to the European Convention Act, and those fundamental rights and freedoms enshrined in other international human rights treaties

ratified by Malta in so far as they enforceable by any person according to, and as part of, the Law of Malta;

“Minister” means the Minister responsible for civil liberties;

"person" includes any physical person, non-governmental organization or group of individuals; and

“right to equal treatment and non-discrimination” means the rights conferred by the Equality Act.

## **PART II**

### **ESTABLISHMENT AND CONDUCT OF AFFAIRS OF THE COMMISSION**

#### **Establishment**

3. (1) There shall be established a commission, to be known as the Human Rights and Equality Commission, to promote and protect human rights including the right to equal treatment and non-discrimination in Malta in accordance with the functions and powers assigned to it by this Act and the Equality Act.

(2) The Commission shall be responsible to Parliament, and shall perform its functions with impartiality and independence.

(3) In the exercise of their functions under this Act, the members of the Commission shall not be subject to the direction or control of any other person or authority.

(4) The Commission shall be a body corporate having a distinct legal personality and capable of entering into contracts, of acquiring and disposing of property of any kind for the purposes of its functions under this Act or any other law, of suing and of being sued, and of doing all such things and entering into all transactions as are incidental to or conducive to the exercise or performance of its functions as herein contained.

#### **Appointment and Composition**

4. (1) The Commission shall be composed of a chairperson who shall be called the Commissioner for Human Rights and Equality and not less than six but not more than twelve other members who are suited to deal with issues of human rights and equality, and, or legal and administrative issues connected therewith. One of the members of the Commission shall be the chairperson of the National Commission Persons with Disability. The Commissioner

and the other members of the Commission shall, in the performance of their functions under this Act, be officers of Parliament.

(2) The members of the Commission shall be appointed by the President acting in accordance with a resolution of the House of Representatives: Provided that the nomination of the person to act as Commissioner shall be supported by a resolution of the House of Representatives supported by the votes of not less than two-thirds of all the members of the House. The House of Representatives shall ensure that there is a balanced representation of men and women, and, as far as possible, a wide and pluralist representation of civil society.

(3) The members of the Commission shall designate any one of its members as Deputy Chairperson and the member so designated shall have all the powers and perform all the functions of the Commissioner during his temporary absence or inability, or while the Commissioner is on vacation, or during any vacancy in the office of Commissioner. The name of the person designated as Deputy Chairperson shall be published in the Government Gazette.

### **Disqualification**

5. (1) A person shall not be qualified to hold office as a member of the Commission if that person -

- (a) is a member of the House of Representatives or of the European Parliament,
- (b) is a practicing Judge or Magistrate;
- (c) is legally interdicted or incapacitated;
- (d) has been convicted of an offence liable to a term of imprisonment for a term not less than six months;
- (e) is subject to disqualification under article 320 of the Companies Act; or
- (f) is involved or has interest in any enterprise or activity which is likely to affect the proper discharge of his functions as a member of the Commission.

(2) The members of the Commission shall not hold any position which is incompatible with the correct performance of their official duties under this Act or with their impartiality and independence or with public confidence therein.

### **Term of office**

5. (1) Every member of the Commission shall hold office for a term of five years and may be re-appointed at the end of his term of office. No member shall hold office for more than two successive terms.

(2) The President, acting in accordance with his own discretion, may terminate the appointment of any member of the Commission if such member:

- (a) has failed to attend the meetings of the Commission for a continuous period of six months without just cause;
- (b) is an undischarged bankrupt, or has made an arrangement with his creditors, or is insolvent or has been found guilty of any voluntary crime against the person;
- (c) is unfit to continue in office or has become incapable of properly performing his duties as a member; or
- (d) holds any position which is incompatible with the correct performance of his official duties or with his impartiality and independence or with public confidence therein.

(3) Any member of the Commission may, at any time, resign his office by notice in writing to the President.

(5) If a member resigns or if the office of a member of the Commission is otherwise vacant, it shall be filled by the appointment of another member by the President acting on the recommendation of the House of Representatives in accordance with Article 4(2). The term of appointment of such member shall be for the remaining period of the five year term of the member whose post has become vacant.

(6) If no recommendation is made to the President within two months from when the post becomes vacant, the President may appoint a person who is qualified to be appointed to be a temporary member of the Commission until the House of Representatives resolves to nominate another member; and any person so appointed on a temporary basis shall cease to be such a member when a person has been appointed to fill the vacancy.

### **Conflict of interest**

6. Any member of the Commission who has any direct or indirect interest in any matter or situation being considered or investigated by the Commission, not being an interest which disqualifies such member from remaining a member, shall disclose the nature of his interest at the first meeting of the Commission after the relevant facts have come to his knowledge. Such disclosure shall then be recorded in the minutes of the meeting, and the member having an interest as aforesaid shall withdraw from any meetings at which such matter or situation is discussed. Any such disclosure shall be communicated to the President without delay. Where in the opinion of the President, the interest of the member is such as to disqualify him from remaining a member, the President may terminate his appointment as a member of the Commission.

### **Provisions with respect to proceedings of the Commission**

7. (1) The meetings of the Commission shall be called by the Commissioner as often as may be necessary but at least once every two months either on his own initiative or at the request of any two of the other members.

(2) The quorum for meetings of the Commission shall be half the number of its members, one of whom shall be the Commissioner or the Deputy Chairman.

(3) Decisions of the Commission shall be taken by a majority of the votes of the members present. The Commissioner shall also have a casting vote.

(4) Subject to the provisions of this Act, the Commission shall, in general, regulate its own proceedings.

(5) The Commission may appoint sub-committees or working groups from among its members as it deems appropriate in order to better discharge its functions.

(6) The validity of any proceedings of the Commission shall not be affected by any vacancy among the members of the Commission or by any defect in the appointment of any member.

(7) The Commission may appoint any of its officers or employees to act as Secretary and to assist with taking of minutes of its meetings.

(8) The Commission may from time to time invite any person to attend one or more of its meetings, in particular to provide expert advice on specific issues.

### **Legal and judicial representation**

8. The legal and judicial representation of the Commission shall vest in the Commissioner, provided that the Commission may appoint any one or more of its members or any one or more of its officers or employees, to appear in its name and on its behalf in any judicial proceedings and on any act, contract, agreement or other document whatsoever.

## **PART III**

### **FUNCTIONS AND POWERS OF THE COMMISSION**

## Functions of the Commission

The functions of the Commission shall be the following :

- (i) to submit to Government, Parliament and public bodies, on an advisory basis, either at the request of the authorities concerned or on its own initiative, opinions, recommendations, proposals and reports on any matter concerning the promotion and protection of human rights and the right to equal treatment and non-discrimination;
- (ii) to examine legislative or administrative provisions in force, as well as bills and legislative proposals, and to make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights and the right to equal treatment and non-discrimination, and if necessary, to recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
- (iii) to receive complaints from the public, whether from one or more petitioners, or from any person, whether corporate or unincorporate, on any matter concerning the promotion and protection of human rights and the right to equal treatment and non-discrimination, and to set up a complaints mechanism for such purpose;
- (iv) to investigate violations or potential violations of human rights or the right to equal treatment and non-discrimination which it decides to take up, either on a complaint being lodged or on its own initiative;
- (v) to ensure the prevention or cessation of infringements of human rights and the right to equal treatment and non-discrimination in accordance with the provisions of this Act;
- (vi) to provide independent assistance, where and as appropriate, to persons who are victims of human rights violations or persons who are suffering from discrimination in breach of the Equality Act.
- (vii) to prepare reports on the national situation with regards to human rights or the right to equal treatment and non-discrimination in general, or one any one or more specific matter or sector;
- (viii) to promote and ensure the harmonisation of national legislation, regulations and practices with international human rights instruments to which Malta is a party, and their effective implementation;
- (ix) to maintain consultation and, where it considers it so appropriate to better fulfil its functions, to co-operate with governmental organisations responsible for the protection of particularly vulnerable groups such as children, migrants, refugees and persons with disability.
- (x) to maintain consultation, develop relations and, where it considers it so appropriate to better fulfil its functions, to co-operate with non-

- governmental organisations responsible for the promotion and protection of human rights or the elimination of discrimination or which are devoted to protecting particularly vulnerable groups;
- (xi) to prepare or contribute to the reports which are to be submitted to international and regional institutions that are competent in the areas of the protection and promotion of human rights pursuant to the obligations assumed by Malta by treaty;
  - (xii) to contribute in the formulation of programmes for the teaching of, and research into, human rights, equal treatment and non-discrimination, and to take part in their execution in schools, universities and other educational establishments;
  - (xiii) to enhance public knowledge on human rights and efforts to combat all forms of unjust discrimination, by increasing public awareness, especially through the dissemination of information and education;
  - (xiv) to co-operate with other organisations such as trade unions, non-governmental organisations and social and professional organisations in order to promote and protect human rights, and the right to equal treatment and non-discrimination;
  - (xv) to contribute to global and regional human rights developments;
  - (xvi) to perform any such other function as may be assigned to it by this Act or any other law.

### **Powers of the Commission**

For the performance of its functions, the powers of the Commission shall include the following:

- (i) to freely consider and report upon questions falling within its competence, whether on its own initiative or following a complaint or upon a request by Government, Parliament or other public body;
- (ii) to conduct investigations, acting on its own initiative or on a complaint, concerning infringements of human rights and/or of the right to equal treatment and non-discrimination, and to collect evidence, hear any person and obtain any information and any documents which may be necessary for such purpose in accordance with the provisions of this Act;
- (iii) to take decisions requiring the cessation or prevention of any infringement of human rights or of the right to equal treatment and non-discrimination in accordance with the provisions of this Act;
- (iv) to order interim measures in the circumstances referred to in article \_\_\_ of this Act;

- (v) to accept commitments in the circumstances referred to in article \_\_\_\_ of this Act;
- (vi) to publish its findings in accordance with article \_\_\_\_;
- (vii) to impose fines, periodic penalty payments or any other penalty in accordance with the provisions of this Act; and
- (viii) all such other powers as are conferred to it under any provision of this Act.

## **Complaints**

(1) Without prejudice to any other remedy available at law, a person who believes that he is a victim of a human rights infringement or discrimination may submit a complaint to the Commission.

(2) Every complaint to the Commission shall be made in writing or orally. A complaint made orally shall be put in writing as soon as practical.

(3) Notwithstanding any provision in any enactment, where any letter appearing to be written by a person in custody or on a charge or after conviction of any offence, or by any patient of any hospital within the meaning of the [Mental Health Act](#), is addressed to the Commission, it shall be immediately forwarded, unopened, to the Commissioner by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is a patient. Any letter written by the Commission to a person or patient so described shall be immediately forwarded, unopened, to such person or patient by the person for the time being in charge of the place or institution.

(4) Any association, organization or any legal entity which has an interest in the protection of human rights may lodge a complaint on behalf or in support of a person, with his or her approval.

(5) Any such association, organization or any legal entity may also lodge a complaint despite that it is not individually and directly concerned, provided that the complaint is of general concern or concerns a particular sector, minority or group of society. Without prejudice to the other instances where the Commission may refuse to investigate a complaint, the Commission may in its discretion decide not to investigate such a complaint on the basis that it is not of general concern or does not concern a particular sector, minority or group of society.

## **Withdrawal of complaint**

(1) An investigation commenced upon receipt of a complaint, shall be discontinued upon the withdrawal of the complaint:

Provided that this shall not prohibit the Commission from initiating a general investigation on the basis of any information already collected during that investigation initiated on a complaint if it considers that the investigation is in the general interest, or relating to a particularly vulnerable group or minority.

### **Refusal to Investigate**

If upon a complaint, or in the course of an investigation of a complaint it appears to the Commission that, having regard to all the circumstances of the case, any investigation, or further investigation is unnecessary, it may refuse to investigate, or investigate further any such complaint. Without limiting the generality of the powers conferred on the Commission by this Act, the Commission may in its discretion decide not to investigate, or, as the case may require, not to investigate further a complaint if in its opinion -

- (1) the subject-matter of the complaint is trivial; or
- (2) the complaint is frivolous or vexatious or is not made in good faith;
- (3) subject to the provisions of subarticle 5 of article \_\_\_\_, the complainant has not a sufficient personal interest in the subject-matter of the complaint; or
- (4) other adequate means of redress is or are available to the complainant under any other law.

In any case where the Commission decides not to investigate or make further investigation of a complaint it shall inform the complainant of that decision, and shall state its reasons therefor.

The decision of the Commission not to investigate or make further investigation of a complaint shall not be subject to judicial review.

The Commission shall not proceed to investigate any complaint on the subject-matter of which proceedings are pending in a court or other tribunal, and shall suspend the investigation if any interested person shall file a demand before any court or other tribunal on the subject-matter of the investigation; provided that an investigation may be proceeded with in respect of problems of general interest contained in the complaint.

The Commission shall not proceed to investigate any complaint on the subject-matter of which an investigation is pending by the Ombudsman in terms of the Ombudsman Act, and shall suspend the investigation if any interested person shall file a complaint with the Ombudsman on the subject-matter of the investigation.

The Commission shall not proceed to investigate any complaint concerning any act which is the subject of an investigation by the National Commission Persons with Disability under the Equal Opportunities (Persons with Disabilities) Act.

The Commission shall not conduct an investigation under this Act in respect of such action or matter as is described in the Schedule to this Act.

A complaint shall not be entertained under this Act unless it is made not later than one year from the day on which the complainant first had knowledge of the matters complained about; but the Commission may conduct an investigation pursuant to a complaint not made within that period if it considers that there are special circumstances which make it proper to do so or if it considers that the investigation of the complaint is in the general interest, or relating to a particularly vulnerable group or minority.

### **Investigations**

The Commission may, in response to a complaint or on its own initiative, decide to carry out an investigation to determine whether a human rights infringement or discrimination has taken place or is taking place.

### **Evidence**

(1) Subject to the provisions of this article, the Commissioner may from time to time require any person who in his opinion is able to give any information relating to any matter that is being investigated by the Commission to furnish to him any such information, and to produce any documents or papers or things which in the Commissioner's opinion relate to any such matter as aforesaid and which may be in the possession or under the control of that person. When sending a request for information, the Commissioner shall state the legal basis of the request, specify what information is required and the penalty provided for in subarticle 3 for failing to provide the information requested.

(2) The Commissioner shall have power to summon witnesses and to administer an oath to any witness and to any person, and require them to give evidence or produce documents.

(3) Any person summoned as aforesaid who refuses, or without sufficient cause fails, to attend at the time and place mentioned in the summons, or refuses, without sufficient cause to answer or to answer fully and satisfactorily, to the best of his knowledge and belief all questions put to him by the Commissioner, or refuses or fails, without sufficient cause, to produce any document he was required to produce by the Commissioner shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding one thousand

five hundred euro (1,500) or to imprisonment not exceeding three months, or to both such fine and imprisonment:

Provided that, without prejudice to the generality of the provisions of subarticle (2), no person giving evidence before the Commissioner may be compelled to answer any question which tends to expose him to any criminal prosecution, and every such person shall, in respect of any evidence given by him before the Commissioner, be entitled to the same privileges to which a witness giving evidence before a court of law is entitled.

(4) Without prejudice to subarticle 3, where a person so requested, in accordance with the provisions of this Article, fails to abide by the request of the Commissioner within the stipulated time, the Commissioner may request, by means of an application, the Civil Court, First Hall, to order such person to comply with the notice issued to him in terms of this Article; the court may also be requested to give any other order which it may consider appropriate and required according to the specific circumstances of the case.

### **Exemptions from disclosure**

(1) Where the Prime Minister certifies that the giving of any information or the answering of any question or the production of any thing, paper or other document -

(a) affects the security or defence of Malta or relations or dealings between the Government of Malta and any other Government or any international organisation of States or Governments; or

(b) is likely to damage seriously the national economy; or

(c) involves the disclosure of the deliberations or proceedings of Cabinet or any committee of Cabinet;

or

(d) prejudices the investigation or detection of offences,

the Commissioner shall not require the information or answer to be given or, as the case may be, the thing, paper or other document to be produced.

(2) Subject to the provisions of subarticle (1), the rule of law which authorises or requires the withholding of any document, thing, or paper, or the refusal to answer any question, on the ground that the disclosure of the document, thing or paper or the answering of the question would be injurious to the public interest shall not apply in respect of any investigation by or proceedings before the Commission.

### **Secrecy of information**

(1) Information obtained by the Commission and every person holding any office, appointment or designation under the Commission, in the course of or for the purpose of an

investigation under this Act, shall not be disclosed except for the purposes of the investigation and of any report to be made thereon under this Act, or for the purpose of any proceedings relating to an offence or infringement under this Act, and the members of the Commission and its staff shall not be called upon to give evidence in any proceedings, other than such as aforesaid, of matters coming to their knowledge in the course of an investigation under this Act.

(2) Article 133 of the Criminal Code shall apply to and in relation to the Commission and every person holding any office, appointment or designation under the Commission as they apply to or in relation to a public officer or servant referred to in article 133 of the Criminal Code.

### **Power to enter premises**

(1) For the purpose of performing its functions under this Act, the Commissioner may at any time enter any premises occupied by any government department or public authority, and inspect the premises and carry out therein any investigation falling within the scope of this Act. Before entering any such premises the Commissioner shall notify the permanent head of the department or, as the case may require, the principal administrative officer of the organisation by which the premises are occupied.

(2) For the purposes of performing its functions under this Act, and in so far as considered necessary for the performance of its duties, the Commissioner may also carry out on site investigations, and for this purpose he may require access to all places other than a dwelling house without the consent of the occupant.

### **Delegation of functions**

(1) The Commissioner may delegate in writing to any person holding any office under him any of his powers under this Act, except this power of delegation.

(2) A delegation of functions under this Act shall be without prejudice to the exercise of those functions by the Commissioner, and shall be revocable by the Commissioner at will.

### **Finding and termination of a human rights infringement**

(1) Where, after making any investigation under this Act, acting on a complaint or on its own initiative, the Commission is of opinion that there has been, or that there is going to be, a breach of human rights by a government ministry, department, public authority or local council, the Commission shall by decision in writing, after giving its reasons therefor,

make such recommendations as it considers fit and appropriate in the circumstances to ensure the prevention or cessation of the infringement, as the case may be.

(2) Before taking a decision as provided for in subarticle 1, the Commission shall give the government ministry, department, public authority or local council concerned the opportunity of making submissions on the matters to which the Commission has taken objection and which have been notified to it. The Commission shall base its decision only on objections on which the entity concerned has been given an opportunity to comment upon. Except in urgent cases, the entity concerned shall be given a period of at least ten working days to respond to the allegations made in its regard.

(3) A decision issued in accordance with subarticle 1, may request the government ministry, department, public authority or local council to notify the Commission, within a specified time, of the steps (if any) that it proposes to take to give effect to its recommendations. The Commission shall also send a copy of its decision to the Minister concerned and to the mayor in the case relating to a local council.

(4) If within the time fixed by the Commission, no action is taken which appears to the Commission to be adequate and appropriate, the Commission, in its discretion, after considering the comments (if any) made by or on behalf of the government ministry, department, organisation or local council concerned, may send a copy of its decision to the Prime Minister, and may thereafter make such report to the House of Representatives on the matter as it thinks fit.

(5) The Commission shall attach to every decision sent under subarticle 3 a copy of any comments made by or on behalf of the government ministry, department, organisation or local council concerned.

(5) Notwithstanding anything in this article, the Commission shall not, in any decision made under this Act, make any comment that is adverse to any person unless the person has been given an opportunity to be heard.

### **Finding and termination of an infringement of the right to equal treatment and non-discrimination**

(1) Where, after making any investigation under this Act, acting on a complaint or on its own initiative, the Commission is of opinion that there is, or that there is going to be an infringement of the right to equal treatment or non-discrimination, it shall by decision in writing, after giving its reasons therefor, require the entity concerned to take such measures which are adequate and appropriate to prevent the infringement or to bring it effectively to an

end, as the case may be. The decision shall indicate the time within which such measures are to be taken.

(2) Without prejudice to subarticle 1, where after making any investigation under this Act, acting on a complaint or on its own initiative, the Commission is of opinion that there has been an infringement by an entity of the right to equal treatment or non-discrimination, it shall by decision in writing, after giving its reasons therefor, declare that the entity concerned has committed an infringement and shall specify the provision or provision of the Equality Act which has or have been breached.

(3) Before taking decisions as provided for in subarticles 1 and 2, the Commission shall give the entity which is the subject of an investigation the opportunity of being heard on the matters to which the Commission has taken objection and which have been notified personally or by registered letter to the entity concerned. The Commission shall base its decision only on objections on which the entity concerned has been given an opportunity to comment upon. The entity concerned shall be given a period of at least ten working days to respond to the allegations made in its regard.

## **Penalties**

(1) Where no action is taken by the entity concerned within the time fixed by the Commission in a decision issued in accordance with subarticle 1 of article \_\_\_\_, the Commission may, after giving the entity concerned the opportunity of being heard, by decision in writing, impose a penalty of not more than five thousand Euro (5,000) on the entity concerned for its failure to adopt the required measures. The Commission may, by decision in writing, impose an additional periodic penalty payment of not more than five hundred Euro (500) per day for such time until the infringement is effectively brought to an end.

(2) Where the Commission finds that there has been an infringement by an entity of the right to equal treatment or non-discrimination in accordance with subarticle 2 of article \_\_\_\_, the Commission may impose a penalty of not more than five thousand Euro (5,000) on the entity concerned.

## **Interim measures**

(1) In cases of urgency due to the risk of serious and irreparable harm to any person or group of persons, the Commission may, in its own discretion, by decision in writing, on the basis of a prima facie finding of an infringement, order interim measures which are adequate and appropriate to prevent such harm.

(2) A decision under subarticle 1 shall apply for a specified period of time and may be renewed in so far as this is necessary and appropriate. It shall be notified on the entities required to adopt interim measures.

(3) The Commission may impose a penalty of not more than five thousand Euro (5,000) on any entity who fails adopt interim measures as required in subarticle 1 after giving it the opportunity of being heard.

### **Commitments**

Where the Commission intends to adopt a decision to prevent an infringement or requiring that an infringement be brought to an end in accordance with article \_\_\_\_ and the entity concerned offers commitments to meet the concerns brought to its attention by the Commission, the Commission may by decision make those commitments binding on the entity concerned. Such a decision shall conclude that there are no longer grounds for action by the Commission.

The Commission may, upon a complaint or on its own initiative, reopen the proceedings:

- (a) where there has been a material change in any of the facts on which the decision was based;
- (b) where the entity concerned acts contrary to their commitments; or
- (c) where the decision was based on incomplete, incorrect or misleading information provided by the entity concerned.

(3) Where an entity concerned acts in breach of a decision making a commitment binding in terms of subarticle 1, the Commission may impose a penalty of not more than five thousand Euro (5,000) on the entity concerned after giving it the opportunity of being heard.

### **Right of appeal**

Any person who is aggrieved by a decision of the Commission in terms of subarticle 1 of article \_\_\_\_, subarticles 1 and 2 of article \_\_\_\_\_, subarticle 3 of article \_\_ and subarticle 3 of article \_\_\_\_, may appeal to the Court of Appeal (Superior Jurisdiction) as constituted in accordance with article 41(1) of the Code of Organization and Civil Procedure by means of an application filed in the registry of that court within twenty calendar days from the date on which that decision has been notified to him.

(b) A copy of the appeal application shall be served on the Commissioner who may file a written reply within twenty days from the date of service.

(c) The Court of Appeal shall set down the cause for hearing at an early date, in no case later than two months from the date on which the appeal is brought before it and shall cause notice of such date to be given to the parties who, on their part, shall assume the responsibility to visit the court registry and be aware of the latest information regarding the appointment for the hearing of the case.

(d) After appointing the application for hearing, the Court shall decide the application on its merits after hearing the submissions of all parties, within the shortest time possible but not any later than four months from the day when the appeal had been filed and the parties have been duly notified. Pending the decision of the Court, the recovery of the penalties imposed by the Commission shall be suspended.

### **Recovery of Penalties**

Penalties imposed by the Commission in accordance with article \_\_\_\_\_ may be recovered by the Commission as a civil debt.

### **Annual Report**

(1) As soon as practicable after the end of every calendar year, but in any case not later than the the 30<sup>th</sup> day of June of the following year, the Commission shall prepare a report of its activities during the year (such report shall hereinafter in this section be referred to as the “annual report”).

(2) The annual report shall include a general report of developments during the period to which it relates in respect of matters falling within the functions of the Commission and shall also include a report on the activities, recommendations, investigations, advice and other initiatives carried out by the Commission in furtherance of its functions to promote and protect human rights and to suppress discrimination during the period to which the report relates.

(3) The annual report shall be submitted to the House of Representatives and laid on the Table of the House. A copy of the annual report shall also be submitted to the President and the Minister, and to such other bodies or organisations as the President may direct from time to time.

### **Publication**

The Commission may from time to time in the public interest, or in the interest of any person, or department, or organisation publish reports relating generally to the exercise of its functions under this Act, or reports relating to any particular case or cases investigated. Such reports may be published whether or not the matters dealt with in the report have been the subject of a report to the House of Representatives under this Act.

## **PART IV**

### **EMPLOYMENT OF STAFF AND RESOURCES**

#### **Executive Director**

(1) The Commission may appoint an Executive Director who shall act in accordance with such policies established by the Commission and such instructions as may be given to him by the Commissioner.

(2) The Executive Director shall hold office under such terms and conditions as the Commission may establish. Where the Executive Director is a public officer seconded from the government, he shall have the right, on the termination of his secondment, to revert to his former post without loss of rank or seniority.

#### **Officers of the Commission**

The Commission may also appoint such officers and employees as necessary in order to perform its functions and duties under this Act. The power to appoint includes approval to the number of persons that may be appointed under this article whether generally or in respect of any specific duties or classes of duties, their salaries and conditions of appointment.

#### **Detailing of public officers for duty with the Commission**

(1) The Prime Minister may, at the request of the Commission, from time to time direct that any public officer shall be detailed for duty with the Commission in such capacity and with effect from such date as may be specified in the direction.

(2) The period during which a direction as aforesaid shall apply to any officer specified therein shall, unless the officer retires from the public service, or otherwise ceases to hold

office at an earlier date, or a different date is specified in the direction, end on the happening of any of the following events, that is to say –

(a) the acceptance by such officer of an offer of transfer to the service of, and permanent employment with the Commission made in pursuance of sub-article (8) of this article; or

(b) the revocation by the Prime Minister of any direction made by him under this article in relation to such officers.

(3) Where a direction as aforesaid is revoked by the Prime Minister in relation to any officer, the Prime Minister may, by further direction, detail such officer for duty with the Commission in such capacity and with effect from such date as may be specified in the further direction, and the provisions of sub-article (2) of this article shall thereupon apply to the period of duration of such further direction in relation to such officer.

(4) When a public officer is detailed for duty with the Commission under any of the provisions of this article, such officer shall, during the time the direction has effect in relation to him, be under the administrative authority and control of the Commission, but he shall for other intents and purposes remain, and be considered and treated as, a public officer.

(5) Without prejudice to the generality of the foregoing, a public officer detailed for duty as aforesaid -

(a) shall not during the time while such officer is so detailed -

(i) be precluded from applying for a transfer to a department of the Government in accordance with the terms and conditions of service attached to the appointment under the Government held by him at the date on which he was detailed for duty; or

(ii) be so employed that his remuneration and conditions of service are less favourable than those which are attached to the appointment under the Government held by him at the date he was detailed for duty as aforesaid or which would have become attached to such appointment, during the said period, had such officer not been detailed for duty with the Commission; and

(b) shall be entitled to have his service with the Commission considered as service with the Government for the purpose of any pension, gratuity or benefit under the Pensions Ordinance and the Widows' and Orphans' Pension Act, and of any other right or privilege to which he would be entitled, and shall be liable to any liability to which he would be liable, but for the fact that he is detailed for duty with the Commission.

(6) Where an application is made as provided in subparagraph (i) of paragraph (a) of sub-article (5) of this article, the same consideration shall be given thereto as if the applicant had not been detailed for duty with the Commission.

(7) The Commission shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for Finance in respect of the cost of pensions

and gratuities earned by an officer detailed for duty with the Commission as aforesaid during the period in which he is so detailed.

(8) The Commission may, with the approval of the Prime Minister, offer to any public officer detailed for duty with the Commission under sub-article (2) of this article permanent employment with the Commission at a remuneration and on terms and conditions specified in the offer.

(9) Every public officer who accepts permanent employment with the Commission offered to him pursuant to this article shall, for all purposes other than those of the Pensions Ordinance and the Widows' and Orphans' Pensions Act, cease to be in the service of the Government and shall enter into service with the Commission with effect from the date of his acceptance of the offer, or such other date agreed between him and the Commission; and for the purposes of the said Ordinance and the said Act, service with the Commission shall be deemed to be service with the Government within the meaning thereof:

Provided that for the purposes of the said Pensions Ordinance, the pensionable emoluments of such officer on retirement shall be deemed to be the pensionable emoluments payable to an officer in Government service in a grade and at an incremental level corresponding to the post and incremental level at which the officer retires from the Commission.

### **Experts**

The Commission may, in the conduct of any one of its activities, reports or investigations under this Act, engage, in a consultative capacity, any person whose particular expertise is essential to the effectiveness of such activity, report or investigation: Provided that if the consultant is a public officer the Prime Minister may, at the request of the Ombudsman, designate the public officer to assist.

### **Remuneration of the Commissioner and other members of the Commission**

The remuneration and allowances payable to the Commissioners and the other members of the Commission shall be set by the House of Representatives. Such remuneration and allowances are not to be diminished during the Commission's term of office.

### **Resources**

The Commission shall be responsible for approving the expenses necessary for adequate premises, salaries, furnishings, materials and administrative activities required for the carrying out of the functions, powers and duties under this Act.

## **PART V**

### **FINANCIAL PROVISIONS**

#### **Finance**

The finance required for the remuneration of the members of the Commission, for the salaries of its officers and employees, and for all its other expenses and resources for the performance of its functions and duties shall not exceed a maximum amount indicated in a financial plan approved by the House of Representatives each year.

The Commission shall present to the House of Representatives by the 15<sup>th</sup> day of September of each year, a financial plan which will indicate the ensuing year's activities and the finance required for the ensuing year.

#### **Commission expenses to be a charge on Consolidated Fund**

The finance approved by the House of Representatives for the expenses mentioned in subarticle (1) shall be a charge on the Consolidated Fund without any further appropriation other than this Act.

#### **Accounts**

The Commission shall keep proper accounts of its income and expenditure and shall prepare and send to the Minister statements of accounts in relation to each of its financial years.

The financial year of the Commission shall commence on the 1st January and shall end on the 31st December of each year: Provided that the first financial year of the Commission shall begin on the coming into force of this Act and end on the 31st December of the next following year

The accounts of the Commission shall be audited by the Auditor General and the Financial Administration and Audit Act shall apply

#### **Exemption from Income Tax**

The Commission shall be exempt from any liability to pay tax, in respect of its income, under the Income Tax Act.

## **PART VI**

### **MISCELLANEOUS**

#### **Rules for Commission's guidance**

The House of Representatives may by resolution from time to time if it thinks fit, make rules for the better implementation of this Act, including but not limited to rules regulating procedures to be followed by the Commission in the exercise of his functions under this Act, and may at any time in like manner revoke or vary any such rules.

All rules made under this article shall be printed and published in the Gazette.

### **SCHEDULE**

**(Article \_\_\_)**

#### **Matters not subject to Investigation**

1. Any matter certified by the Prime Minister to affect the internal or external security of Malta.
2. Action taken in matters certified by the Minister responsible for foreign affairs to affect relations or dealings between the Government of Malta and any other Government or any international organisation of States or Governments.
3. Action taken by the Minister responsible for justice under the Extradition Act.
4. The commencement or conduct of civil or criminal proceedings before any court of law or any tribunal in Malta, or of proceedings in respect of military offences under the Malta Armed Forces Act, or of proceedings before any international court or tribunal.
5. The exercise of the power of the Prime Minister under article 515 of the Criminal Code.
6. Any criminal investigation by the Police.