

## The Malta Chamber's reactions and proposed amendments to:

- **The Equality Act (page 2)**
- **The Human Rights and Equality Commission Act (page 5)**

The Malta Chamber of Commerce, Enterprise and Industry commends the ongoing efforts to strengthen the legal instruments protecting and safeguarding equality and non-discrimination of persons in Malta and is eager to continue to contribute to increasing awareness and practice of equality and non-discrimination of persons in Malta, especially amongst the local business community.

The Chamber fully supports the fair and equal treatment of all persons and has continuously sought to propagate the values of equality and non-discrimination in employment amongst its members, civil society stakeholders and society at large.

Following the conclusion of an analysis of the impact that *The Equality Act* and *The Human Rights and Equality Commission Act* may have on employers, the Chamber hereunder lays out its concerns as well as its proposed amendments to particular articles. The Chamber seeks to further discussions with policy makers and relevant authorities regarding the below reactions and proposed amendments.

## The Equality Act

| Article | Current Text                                                                                                                                          | Matter                                                                                                                                                                                                                                                                                                                                                                                           | Proposed Amendment                                                                                                                                                                                                                                                                                                 |
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| 2       | <b>Direct Discrimination/Indirect Discrimination</b>                                                                                                  | Notwithstanding that the law defines direct and indirect discrimination; the text of the law does not include the term indirect or direct discrimination. In this respect the text of the Bill only refers to discrimination.                                                                                                                                                                    | The Bill should either define the term “Discrimination”, which includes both “Direct Discrimination” and “Indirect Discrimination”. Thereby retaining both definitions. Alternatively, the scope of the law as established in Article 5 should include the terms Direct Discrimination or Indirect Discrimination. |
| 2       | <b>Definition of Ordinary Discrimination</b>                                                                                                          | A person may be discriminated directly or indirectly, whether this is due to one protected characteristic or several.                                                                                                                                                                                                                                                                            | The Malta Chamber suggests deletion of this clause. This concept is already covered by the terms “Direct Discrimination” and “Indirect Discrimination”.                                                                                                                                                            |
| 2       | <b>Definition of race, colour, or ethnic origin- shall include colour, nationality, language, cultural background and ethnic and national origins</b> |                                                                                                                                                                                                                                                                                                                                                                                                  | The Malta Chamber suggests deletion of the concept of cultural background.                                                                                                                                                                                                                                         |
| 4       | In all actions the <b>best interest of the child</b> shall be a primary consideration.                                                                | We are of the view that this is out of place and that children’s rights should be dealt with holistically under a separate act, which would also reflect the principles of the United Nations Convention on the Rights of the Child. Moreover, this provision may entitle employee to rights which at present remain at the discretion of the employer example: Teleworking, reduced hours, etc. | The Malta Chamber suggests deletion of this clause.                                                                                                                                                                                                                                                                |
| 5       | <b>The Scope: Banks and Financial Services and Insurance.</b>                                                                                         | Banks and Insurance Products form part of financial services sector.                                                                                                                                                                                                                                                                                                                             | The European Union Guidelines on the application of Council Directive 2004/113/EC to Insurance, outline that insurance products need to be offered unisex to all consumers. The Guidelines are specific to the insurance sector. These provisions should be dealt with under the                                   |

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|    |                                         |                                                                                                                | <p>respective law dealing with insurances. The term financial services include also insurance and banking products.</p> <p>The <i>Test-Achats</i> ruling only addresses the use of the gender factor in a context where the respective situations of men and women were found comparable by the legislature. It does not affect the use of other risk-rating factors, such as age and disability, which is currently not regulated at EU level. This needs be carefully addressed in the proposed Bill.</p> |
| 9  | <b>Discrimination in Employment</b>     | This is already dealt with in Chapter 452 and separate Subsidiary Legislation.                                 | The provisions dealing with equality and non-discrimination in employment should be amalgamated into one act instead of having the same provisions in both EIRA and the new act.                                                                                                                                                                                                                                                                                                                            |
| 10 | <b>Equal Pay</b>                        | This suggested provision reflects the existing provisions Equal Pay found in Article 26 and 27 of Chapter 452. | The provisions dealing with equality and non-discrimination in employment should be amalgamated into one act instead of having the same provisions in both EIRA and the new act.                                                                                                                                                                                                                                                                                                                            |
| 14 | <b>Spouses of Self Employed Persons</b> |                                                                                                                | The Malta Chamber suggests deletion of this clause. Directive 2006/54 stipulates that discrimination on the ground of sex is prohibited in occupational social schemes and the calculation of benefits, including supplementary benefits due in respect of a spouse or dependents, and the conditions governing the duration and retention of entitlement to benefits. This provision goes beyond what is expressed in Directive 2010/41                                                                    |

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| 15 | <b>Banks and Financial Institutions</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | We are of the view that the wording requires revision and careful re-drafting. The terms referred to in the Article refer to insurance products and not financial services in general. The proposed Article should be regulated by the MFSA, so as to ensure that all individuals have access to the various financial services products. |
| 23 | <p><b>Right of Action-</b> Without Prejudice of the Employment and Industrial Relations Act, the Human Rights and Equality Commission Act and any other relevant law, a person who alleges that any other person has committed in his or her regard an act which under any of the provisions of this Act is unlawful, shall have a right of action before the competent court of civil jurisdiction requesting the court to order the defendant to desist from such unlawful acts and, or to order the payment of compensation for such damages suffered through such unlawful act.</p> <p>In any such action the plaintiff shall over and above and in addition to such damages and costs as may have been actually suffered and be due according to law, be entitled to recover by way of compensation such sum of money as the court in its discretion may consider</p> | <p>Remedies should be clear and streamlined. It is more practical to address all breaches in front of the Industrial Tribunal. The competence of the court should be clear so that individuals have an effective remedy and employers do not have to defend multiple lawsuits as often happens in practice. Multiple remedies mean more costs for all involved.</p> <p>Compensation for moral damages is a concept which is not contemplated in our civil law and the introduction of these concepts, should be well studied and carefully analysed on how such provisions will be applied in practice. In particular, how will the courts quantify these damages and how will such provision applied in the context of other</p> | <p>In case of a discrimination claim by the employee there should be one forum for discussion on these matters. It is the Chamber's preference that the Industrial Tribunal deals with such matters as the specialized forum dealing with employment matters.</p> <p>The Malta Chamber suggests deletion of this clause.</p>              |

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|  | <p>reasonable taking into account all the circumstances of the case, including any moral cause or non-material damages suffered by the plaintiff, and as such on the trial of the cause shall award and assess in order to ensure that such compensation payable is dissuasive and proportionate to the damages suffered by the injured party.</p> <p>Any association, organisation or other legal entity having a legitimate interest ensuring that the provisions of this Act are complied with, may engage in any judicial act or administrative procedure provided for the enforcement of obligations under this Act, even if an individual victim has not been identified but there is nonetheless evidence of discriminatory practices by a particular person falling within the scope of this Act.</p> | <p>remedies.</p> <p>Only individuals who have a juridical interest should be a party to a lawsuit.</p> | <p>The Malta Chamber suggests deletion of this clause.</p> |
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**BILL TO PROVIDE FOR THE ESTABLISHMENT OF A HUMAN RIGHTS AND EQUALITY COMMISSION**

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| 4 | <b>Appointment and Composition</b> |  | <p>The Malta chamber suggests that this clause is amended to include an employer's representative and trade union's representative as part of the Commission. This will ensure a balanced approach when dealing with employment matters and would ensure that both employees and employers are represented.</p> |
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| Part III | <b>Functions of the Commission:</b> to investigate violations or potential violations of human rights or right to equal treatment and non-discrimination which it decides to take up, either on a complaint being lodged or on its own initiative.                                                                | For the Commission to investigate potential violations of human rights the commission should at least have reasonable suspicion for carrying out such investigation. | The Malta Chamber suggests the following re-wording of this clause:<br>Inclusion of reasonable suspicion as a criterion for investigating ex-officio and any potential human rights violation.<br><br>Before conducting an investigation, the Commission must draw up terms of reference and give the person being investigated the opportunity to make representations.<br><br>This comment also applies to the powers of the Commission on investigation. |
| Part III | <b>Powers of the commission to impose fines.</b>                                                                                                                                                                                                                                                                  | Only the Criminal court can impose fines.                                                                                                                            | The Malta Chamber suggests amendments that so that the Commission can impose <b>administrative penalties which are reasonable and proportionate.</b>                                                                                                                                                                                                                                                                                                        |
| Part III | <b>The power of the commission to publish its findings.</b>                                                                                                                                                                                                                                                       | This section requires clarification to avoid undermining the industries.                                                                                             | The Malta Chamber suggests that the Commission may not state or imply in its report that a specified or identifiable person has committed an unlawful act. Nor can the report make reference to a person's activities.                                                                                                                                                                                                                                      |
| Part III | <b>Complaints</b> – Any association, organisations or any legal entity may also lodge a complaint despite that it is not individually or directly concerned, provided that the complaint is of general concern or concerns a particular sector, minority or group society.<br><br>An investigation commenced upon | The association or organisation needs to have interest or represent one of its members. This will avoid complaints being lodged without a legal base or motif.       | The Malta Chamber suggests re-wording of this clause.<br><br>The Malta Chamber suggests deletion of the                                                                                                                                                                                                                                                                                                                                                     |

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|          | 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 the investigation initiated on a complaint if it considers that the investigation is in the general interest, or relating to a particular vulnerable group or minority.                                                                                   |                                                                                                                                                                                                             | proviso. Once that complaint has been withdrawn, and there is no individual interest, the investigation should not continue.                                              |
| Part III | <p><b>Refusal to Investigate</b> – provided that an investigation may be proceeded with in respect of problems of general interest contained in the complaint.</p> <p>The Commission may conduct an investigation pursuant to a complaint not within a year 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 particular vulnerable group or minority.</p> | The prescriptive period of one year gives an individual enough time to lodge complaint. The legal principle of prescription is certain in that if one year passes the complaint should not be investigated. | <p>The Malta Chamber suggests that this proviso is deleted for the reasons explained in the preceding row.</p> <p>The Malta Chamber suggests deletion of this clause.</p> |
| Part III | <b>Investigations</b> - The Commission may in response to a complaint or on its own initiative, decide to carry out an investigation to determine whether a human right infringement or discrimination has taken place or is taking place.                                                                                                                                                                                                                                                          | Investigation should only be carried out on the basis of a complaint, there must be a juridical interest.                                                                                                   | The Malta Chamber suggests rewording of this clause so that this clause states that an investigation shall only be carried out on the basis of a complaint.               |

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| Part III | <b>Evidence-</b> Fine (Multa) for not attending and application for the first hall civil court to order the person to attend the sitting. | <p>The amounts are not proportionate to breaches in civil rights.</p> <p>The Commission is not a court of law and this article is excessive and cumbersome when it is applied in practice.</p> | <p>The fines and punishment of imprisonment for not appearing before the commission are not proportionate. They are excessive for the aim this Article is trying to achieve. We are suggesting that if a person does not attend the sitting the Commission may impose an administrative fine in the region of 50 euros.</p> <p>The Malta Chamber suggests that if an individual who does not attend the sittings without a good cause, the Commission may proceed to issue a decision without hearing the said individual.</p>                                                 |
| Part III | <b>Power to enter premises</b>                                                                                                            | Excessive power given to the Commission upholding civil rights and not undertaking criminal proceedings.                                                                                       | We suggest deletion of this clause.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Part III | <b>Penalties</b>                                                                                                                          | The penalties are excessive and are not proportionate to the objective this Bill is trying to achieve.                                                                                         | <p>The penalties should be in the region of 500-1,500 Euros. The per diem penalty of 500 per day is excessive and unreasonable. The per diem penalty should be suspended until the case become final by the Court of Appeal.</p> <p>In addition to this, there is uncertainty since the Equality Act already prescribes penalties for breach of law. Employers should not be subject to multiple penalties. We suggest deletion of the clause on penalties in the Equality Act and have a single redress and mechanism in the Act for the establishment of the Commission.</p> |
| Part III | <b>Interim Measures</b>                                                                                                                   | This article is excessive and the penalty is excessive.                                                                                                                                        | The Malta Chamber suggests deletion of this clause.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Part III | <b>Commitments</b>                                                                                                                        | The decision to make the commitments binding                                                                                                                                                   | The Malta Chamber suggests deletion of this                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

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|          |                                   | should only apply after an appeal.                                                                                                                                                                                                                                                             | clause.                                                                                                                                                                                                                                                                                                |
| Part III | <b>Appeal</b>                     | The appeal is not an adequate remedy because at that stage of the proceedings the employer is not in a position to submit evidence.                                                                                                                                                            | The clause should be amended so that where the Commission is of the view that the recommendations are not implemented the commission shall have a right to file proceedings before the Industrial Tribunal and an appeal shall be possible from the decision of the Tribunal in line with Chapter 452. |
| Part III | <b>Report</b>                     | The report should not name individual employers.                                                                                                                                                                                                                                               | This clause should be amended in order to specifically state that the report will not mention individual employers.                                                                                                                                                                                    |
| Part IV  | <b>Officers of the Commission</b> | The officers of the commission need to be independent people knowledgeable in Union Law and Equality. If the Government of Malta and Government entities are to be regulated by the Equality Bill the Commission needs to be independent from government. (similar to the ombudsman's office). |                                                                                                                                                                                                                                                                                                        |