

# Comments by FORUM Union Maltin

Below are the comments and observation on Human Rights and Equality Commission and the Promotion of Equality and Prevention of Discrimination Act as part of the public consultation exercise. FORUM believes that there shall be harmonisation between the various laws that make reference to equality and discrimination.

## Human Rights and Equality Commission

### Functions of the Commission

Further details and clarification on the functions of the Commission with special reference to sub article (ix);

### Evidence

Who will be deciding the fine (*Multa*) in sub article (3)-i.e. The Civil / Criminal Court or the Commission?

### Power to Enter Premises

With reference to on site investigation, is the Commission going to request an authorised warrant by the relevant court to enter private premises is such a way to guarantee balance of power and limit potential abuse?

### Commitments

The Act shall define which entities and/or bodies fall under this remit.

### Annual Report

The Annual report shall be prepared by not later than 30<sup>th</sup> March and not 30<sup>th</sup> June of the following year in order to be submitted to the House of Representative in a timely manner and not a year later since between July and September Parliament is in recess.

### Experts

Where there is mentioned “at the request of the Ombudsman” should Ombudsman be referring to Commissioner?

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## Promotion of Equality and Prevention of Discrimination Act

Why is the focus of the proposed amendments are targeted mainly to employment?

## Definitions

1. Distinctions between refugees and economic migrants should be made in the act;
2. The Act shall define “perception of disability” since is directly related to discrimination in the workplace.
3. In definition of “pay” what it is mean by the term “ORDINARY”?
4. In “Pregnancy” why it is being used the term *implanted* and not *fertilized*?
5. “Protected characteristics” Why HIV status is being given such importance when there can be other medical conditions that are not contagious and harmful to others and are discriminated against on the workplace. To include third party perception of such characteristics – Perception of disability.
6. “Victim” – Can family members have a right within the context of this definition?

**Article 6** – Re *Positive Action* – Provided that such positive action or reasonable accommodation shall not include the establishment of quotas or interference with any democratic process, the result of which may always be respected even if there is imbalance in the result.

**Article 16** – Insurances: (4c) A rational as to why the use of sex or other protected characteristics is a determining factor. Proposed addition underlined.

## Duties of Employer

**Article 22(1)** Why there is more emphasis to harassment and sexual harassment rather than all forms of discrimination?

**Article 22(3)** shall establish a capping on the expenses; The second para shall be reversed in the sense that: expenses shall not be borne by the person claiming s/he is harassed or discriminated unless it results following a due process that the allegations were false or unfounded.

## Right of Action

**Article 23(2)** Is this act establishing that victims can take action and require damages for “moral or non-material damage”? As far as we know, till today, Maltese legislation does not compensate such considerations.

Article 23(3) Need further clarification on how this article will function.

## Burden of Proof

Too taxing.

## Sanctions

Which court will be administering the fines/imprisonment?