


# **THE EQUALITY ACT**

RECAST VERSION - DR. ROBERTA LEPRE


# BACKGROUND & CONTEXT

## EU DIRECTIVES


- Directive 2000/43/EC - implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
  - Directive 2000/78/EC - implementing a general framework for equal treatment in employment and occupation
  - Directive 2004/113/EC - implementing the principle of equal treatment between men and women in the access to and supply of goods and services
  - Directive 2006/54/EC - on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)
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# BACKGROUND & CONTEXT


## MALTESE LAW

- The Equality for Men and Women Act
  - Equal Treatment of Persons Order
  - Access to Goods and services and their supply (Equal treatment) Regulations
  - The Employment and Industrial Relations Act
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# THE BRIEF

- General provision against discrimination
  - Revised list of grounds of anti-discrimination to ensure that all basis of discrimination are adequately included
  - Provisions tackling intersectional discrimination
  - Provisions covering all spheres of life
  - Provisions that allow (i) NGO's to submit cases on behalf of victims; (ii) class actions; and (iii) cases of discrimination to be processed without the need of an individual victim
  - Provisions that allow for dissuasive sanctions in cases of proven discrimination
  - Positive equality duties and obligations
  - All relevant provisions of Dir 2000/43/EC, Dir 2000/78/EC, Dir 2004/113/EC and Dir 2006/54/EC in one Act
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# THE NEW ACT

- Definitions
  - General principles
  - Harmonisation between existing grounds
  - New grounds
  - Intersectional discrimination
  - Wide scope, covering various spheres of life
  - Standing of NGOs/class actions/processing of cases without individual victim identification
  - Positive duties
  - Punishments
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# GENERAL PROVISION AGAINST DISCRIMINATION

It shall be unlawful to engage in any discrimination, whether direct or indirect, whether ordinary or intersectional, on the basis of any one or more of the protected characteristics laid down under this Act

on → Discrimination refers to direct and , or indirect discrimination based on one of the protected characteristics laid down under this Act...

# PROVISIONS TACKLING INTERSECTIONAL DISCRIMINATION

Intersectional discrimination refers to discrimination that occurs when a person is treated less favourably on the basis of two or more of the protected characteristics;



# REVISED LIST OF GROUNDS OF ANTI-DISCRIMINATION TO ENSURE THAT ALL BASIS OF DISCRIMINATION ARE ADEQUATELY INCLUDED

Protected characteristics shall be age; belief, creed or religion; disability; family responsibilities; family or marital status; gender expression or gender identity; HIV status; maternity; pregnancy; race, colour or ethnic origin; sex or sex characteristics; and sexual orientation



# PROVISIONS COVERING ALL SPHERES OF LIFE

## *Scope*

No person, establishment or entity, whether in the private sector or within the public administration, shall discriminate against any other person in relation to :

- Advertising
- Educational and vocational guidance
- Employment
- Employees' and employers' organisations
- Employment agencies
- Self-employment and occupation
- Banks and financial services
- Insurances
- Access to goods and services, including medical care, social services and housing.


# ADVERTISING

It shall not be lawful for persons to publish, display or broadcast, or cause to be published, displayed or broadcast, any advertisement which promotes discrimination or which is discriminatory or which might reasonably be understood as indicating an intention to discriminate.




# ADVERTISING

“advertisement” refers to any form of advertisement, whether to the public or not and whether in a newspaper, magazine or other publication, on television or radio or on the internet or other means of electronic communication, or by display of a notice, poster, billboard, trailer or flyer or by any other means, including disseminating information about a vacancy for work or the provision of a service by word of mouth from person to person, and references to the publishing or display of advertisements shall be construed accordingly;




# EDUCATION AND VOCATIONAL GUIDANCE

Discrimination in education and vocational guidance shall include less favourable treatment in the:


- (a) access to any course, vocational training or guidance;
  - (b) award of educational support for students or trainees;
  - (c) selection and implementation of the curricula;
  - (d) assessment of the skills or knowledge of the students or trainees.
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# EMPLOYMENT

Discrimination in employment shall include less favourable treatment in the:

- (a) Assessment of work applications;
  - (b) Conduction of interviews, including requesting from job seekers information concerning their private life or family plans;
  - (c) Determination of selection criteria;
  - (d) Recruitment conditions;
  - (e) Provision of promotions;
  - (f) Granting of access to vocational guidance and/or training, including practical work experience;
  - (g) Conditions of employment;
  - (h) Pay;
  - (i) Management of work, including distribution of tasks;
  - (j) Membership of, and involvement in, any organisation of employees and employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
  - (k) Redundancy;
  - (l) Dismissal.
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# EMPLOYMENT

- The prohibition of discrimination in employment shall be applicable to all types of employees amongst all levels of the professional hierarchy, including job applicants, trainees, temporary workers and self-employed workers.
  - A job applicant who is rejected, or an employee who is rejected from accessing promotion or training opportunities, shall have a right to request from the employer, information in writing regarding the criteria upon which the successful applicant was selected.
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# EQUAL PAY FOR WORK OF EQUAL VALUE

Employees in the same class of employment are entitled to the same rate of pay for work of equal value:

- Provided that an employer and a worker or a union of workers as a result of negotiations for a collective agreement, may agree on different salary scales, annual increments and other conditions of employment that are different for those workers who are employed at different times, where such salary scales have a maximum that is achieved within a specified period of time;
- Provided further that any distinction between classes of employment based on discriminatory treatment otherwise than in accordance with the provisions of this Act or any other law shall be null and of no effect.

# EMPLOYEES' AND EMPLOYERS' ASSOCIATIONS

...it shall be unlawful for a registered organisation under the Employment and Industrial Relations Act, or for the governing body or any officer or official representative of such organisation:

(a) To subject a person to discriminatory treatment -

(i) By refusing or failing to accept an application for membership;

(ii) In the terms or conditions on which such organisation is prepared to accept applications for membership;

(b) To subject a member to discriminatory treatment by -

(i) Denying access to any benefit provided by the organisation or limiting access to such benefit;

(ii) Depriving membership of the organisation or varying the terms of such membership;

(iii) Subjecting the person to any other detriment.





# EMPLOYMENT AGENCIES

It shall be unlawful for an employment agency to subject a person to discriminatory treatment:

- (a) By refusing to provide any of its services;
- (b) In the terms or conditions it offers to provide any of its services;
- (c) In the manner in which it provides any of its services.

➔ For the purposes of this article, an employment agency shall not be deemed to discriminate against a person if, taking into account training, qualifications and experience relevant to the work sought, and all other relevant factors that it finds reasonable to take into account, such person would be unable to carry out the inherent requirements of the work sought.

# SELF-EMPLOYMENT & OCCUPATION

- No person in self-employment or occupation shall be discriminated against in relation to the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity or occupation.
- Spouses of self employed workers not being employees or partners, who participate in the activities of the self employed workers and perform the same or ancillary tasks as their spouse shall be entitled to receive from their spouse a fair compensation for their activity commensurate to the value of their contribution.

The provisions of this sub-article shall not apply where the system of community of acquests or community of the residue under separate administration subsists between the spouses.



# BANKS AND FINANCIAL SERVICES

No bank or financial institution or insurance company shall discriminate against any person in the grant of any facility in respect of the establishment, equipment or in the launching or extension of any business or the launching or extension of any form of self employment or the insurance of that business or the person in self employment.

➔ Nothing in sub-article (1) shall be deemed to constitute discrimination in so far as the conditions under which the facility or the insurance cover is offered or withheld reflect genuine considerations based on the financial risk in the grant of such facilities or of such insurance cover.

# INSURANCES

The use of one or more of any of the protected characteristics as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services shall not result in differences in the premiums and benefits relating to an individual with respect to insurance contracts concluded after 21st December 2007 where the policyholder is an individual.


→ The provisions of this sub-article shall not apply with respect to insurance contracts concluded before 21st December 2012, where the use of sex is a determining factor in the assessment of risk, if the resulting differences in the premiums and benefits relating to an individual are proportionate, and where this assessment is based on relevant and accurate actuarial statistical data.

For the purposes of this article, providers of insurance and related financial services who use such a determining factor shall file an annual notification to such effect with the Commission.

➔ Such notification shall include the following details:

- (a) The name of the service provider;
- (b) The product or service in relation to which the notification is being filed;
- (c) A rationale as to why the use of sex is a determining factor;
- (d) The actuarial statistical data on which this rationale is based.

...an insurance contract shall be deemed to have been concluded before 21st December 2012 notwithstanding that:

- (a) the said insurance contract is extended automatically on or after 21st December 2012 on the basis of terms and conditions in an insurance contract concluded before 21st December 2012 (hereinafter referred as a "pre-existing contract");
  - (b) the said insurance contract is amended on or after 21st December 2012 on the basis of terms and conditions in a pre-existing contract, where the consent of the policyholder is not required;
  - (c) the said insurance contract is a top-up or follow-on insurance policy whose terms were agreed in a pre-existing contract, where such insurance contract is activated by the unilateral decision of the policyholder;
  - (d) a pre-existing contract is amended on or after 21st December 2012 on the request and with the consent of the policyholder, on condition that such amendment does not result in any increase in premium;
  - (e) the said insurance contract is part of a scheme under which an insurance company transfers to another insurance company all rights and obligations arising from pre-existing contracts in accordance with the provisions of the Insurance Business Act.
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# ACCESS TO GOODS AND SERVICES, INCLUDES MEDICAL CARE, SOCIAL SERVICES AND HOUSING

Discrimination in the access to goods and services shall include less favourable treatment in:

- (a) the supply of goods, services or to the general public;
- (b) the provision of health and medical care and other medical services;
- (c) social services;
- (d) transport;
- (e) housing;
- (f) sports;
- (g) the participation in a meeting or event which is open to the public.

➔ The provision of this sub-article shall only be applicable to the supply of goods and services to the general public, and outside the private and family sphere.

# EXCEPTIONS

...the following shall not be deemed to constitute discrimination:

- (a) Special protection granted to persons during pregnancy, childbirth or maternity;
- (b) Measures of positive action or reasonable accommodation for the purpose of achieving substantive equality by maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the protected characteristics laid down under this Act;
- (c) In relation to access to employment, less favourable treatment which is based on a characteristic related to any of the protected characteristics laid down under this Act, where by reason of the particular occupational activities concerned, or of the context in which they are carried out, such a characteristic constitutes a genuine occupational requirement and where such treatment remains within the limits of what is appropriate, proportionate and necessary in the circumstances:

Provided that the burden of proving a genuine occupational requirement shall lie on the person who alleges its existence.

- (d) With regards to disabled persons, measures taken at the workplace aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment;



(e) In relation to banks or financial institutions, nothing shall be deemed to constitute discrimination in so far as the conditions under which the facility or the insurance cover is offered or withheld reflect genuine considerations based on the financial risk in the grant of such facilities or of such insurance cover:

Provided that the burden of proving such a genuine consideration shall lie on the person who alleges its existence.

(f) In relation to the provision of goods and services, if the provision of the goods and services exclusively or primarily to persons having one or more of the protected characteristics laid down under this Act is, justified by a legitimate aim and the means of achieving that aim are appropriate, proportionate and necessary:

Provided that the burden of proving such a genuine consideration shall lie on the person who alleges its existence.

(g) Less favourable treatment relating to religious practice, access to priesthood or membership in any religious order or other religious communities in so far as these relate solely and purely to religious purposes;

(h) Less favourable treatment on the grounds of age and disability in the Armed Forces of Malta.

# POSITIVE EQUALITY DUTIES AND OBLIGATIONS

- Employers
  - Insurance and financial services
  - Managers/administrators
  - Educational institutions
  - Public administration
  - Company directors
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# PROVISIONS THAT ALLOW NGO'S TO SUBMIT CASES ON BEHALF OF VICTIMS

*'...any association, organisation or other legal entity, having a legitimate interest in ensuring that the provisions of this Act are complied with, may engage itself either on behalf or in support of the complainant, with his or her approval, in any judicial or administrative procedure provided for the enforcement of obligations under this Act.'*

# CLASS ACTIONS

Proviso to article 25

...nothing in this subarticle shall prevent any person having a legal interest from himself taking action for redress or where action has been taken by the Commission, from joining in and becoming party to the suit



# CASES OF DISCRIMINATION TO BE PROCESSED WITHOUT THE NEED OF AN INDIVIDUAL VICTIM

*25 (3) Any association, organisation or other legal entity, having a legitimate interest in ensuring that the provisions of this Act are complied with, may engage in any judicial act or administrative procedure provided for the enforcement of the 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.*

# DISSUASIVE SANCTIONS

(1) ...a person who alleges that any other person has committed in his or her regard any 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 act and, or, to order the payment of compensation for such damage suffered through such unlawful act.

(2) ...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 reasonable taking into account all the circumstances of the case, including any moral or non-material damages suffered by the plaintiff, and as the court on the trail of the cause shall award and assess in order to ensure that such compensation payable is dissuasive and proportionate to the damage suffered by the injured party.

# DISSUASIVE SANCTIONS

- Imprisonment up to 6 months
  - Fine up to Eur 5000
  - Both
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# OVER-RIDING PRINCIPLE

In all actions concerning children, the best interests of the child shall be the primary consideration.





THANK YOU

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