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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**MALTA**

**DRAFT ACT**

**ON THE HUMAN RIGHTS AND EQUALITY  
COMMISSION**

**A Bill**  
**entitled**

*An ACT to provide for the establishment of a body to be known as the Human Rights and Equality Commission in line with the Principles relating to the Status of National Institutions (The Paris Principles) and European Union equality legislation, responsible for the promotion and protection of human rights including the right to equal treatment and non-discrimination in Malta; to provide for the dissolution of the National Commission for the Promotion of Equality for Men and Women and to provide for the conferral of its functions to the Human Rights and Equality Commission 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**

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**Part I**  
Preliminary

**Short title and commencement.**

1. (1) The short title of this Act is The Human Rights and Equality Commission Act, 2018.

(2) This Act shall come into force on such date as the Minister by notice in the Gazette establish and different dates may be so established for different purposes and different provisions thereof.

**Interpretation.**

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

“Board” means the Human Rights and Equality Board established by article 22 of this Act;

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

“Commissioner” means the Commissioner for Human Rights and Equality appointed in accordance with article 4 of this Act;

“Convention” shall have the same meaning assigned to it in the European Convention Act;

“discrimination” shall have the same meaning assigned to it in the Equality Act;

“employee” means a person employed by the Commission;

“Executive Director” means the person appointed under article 43 of this Act;

“human rights” includes the fundamental rights and freedoms enshrined in 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, articles 1 to 5 (inclusive) of the Seventh Protocol to the Convention and article 1 of the Twelfth Protocol, which articles are reproduced in the First Schedule to the European Convention Act, those fundamental rights and freedoms enshrined in any other international human rights treaties ratified by Malta in so far as they are enforceable by any person according to, and as part of, the Law of Malta, and those principles and, or practices recognised by the jurisprudence of the Maltese and international courts;

“Minister” means the Minister responsible for equality;

“person” means any natural person, or group of persons;

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

## **Part II**

### **Establishment and conduct of affairs of the Commission**

#### **Establishment of the Human Rights and Equality Commission.**

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

(2) The Commission shall be responsible to Parliament, and, subject to the provisions of this Act, 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) Without prejudice to the sub-articles (2) and (3) of this article, the Commission shall, in the performance of its functions, have regard to, and be guided by, best international practice applicable to national human rights institutions and equality bodies.

(5) 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.

#### **Composition of the Commission.**

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 eighteen but not more than twenty other members.

(2) The Commissioner and the members of the Commission shall, in the performance of their functions under this Act, be officers of Parliament.

(3) The members of the Commission shall include:

- (a) the Commissioner for Children *ex officio*;
- (b) the Commissioner on Gender-Based Violence and Domestic Violence *ex officio*;
- (c) the Commissioner for Mental Health *ex officio*;
- (d) the Commissioner for Older Persons *ex officio*;
- (e) the Commissioner for the Rights of Persons with Disability *ex officio*;
- (f) the Commissioner for Voluntary Organisations *ex officio*;

- (g) the Information and Data Protection Commissioner *ex officio*; and
- (h) the Refugee Commissioner *ex officio*.

(4) The Commission shall be composed, as far as possible, of a balanced, wide and pluralist representation of Maltese society.

### **Eligibility.**

5. (1) A person shall be eligible to be nominated and appointed as the Commissioner for Human Rights and Equality if that person:

- (a) is in possession of a recognised academic qualification; and
- (b) has consistently shown a clear commitment to the protection and promotion of human rights and equality; and
- (c) has at least ten years of professional experience within the human rights and equality sector.

(2) Without prejudice to article 4(3) of this Act, a person shall be eligible to be nominated and appointed as a member of the Commission if that person:

- (a) has demonstrated the ability to deal with issues relating to human rights and equality, and, or legal and administrative issues connected therewith; and
- (b) has consistently shown a clear commitment to the protection and promotion of human rights and equality; and
- (c) has at least five years of professional or voluntary experience within the human rights and equality sector.

### **Appointment of the Commission.**

6. (1) The Speaker of the House of Representatives shall, following a public consultation and having due regard to the preceding article, compile and present to the House of Representatives a list of nominees to the Commission for the consideration of the House:

Provided that such public consultation shall be conducted in an efficient, effective and timely manner.

Provided further that having due regard to the preceding article the Commissioner for Human Rights and Equality shall be nominated by the Minister, who shall present the nominee to the House of Representatives for its consideration.

(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.

(3) The members of the Commission shall designate any one of its members to act as Deputy Commissioner and the member so designated shall have all the powers and shall 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 Commissioner shall be published in the Government Gazette:

Provided that the appointment of the person to act as Deputy Commissioner shall be supported by at least two-thirds of all the members of the Commission.

(4) 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 this article. The term of appointment of such member shall be for the remaining period of the term of the member whose post has become vacant.

### **Disqualification.**

7. (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, throughout their term in office, 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.

### **Declaration and conflict of interest.**

8. (1) Upon nomination in accordance with article 6 of this Act, all prospective members of the Commission shall declare in writing their status in society, as well as any interest which may be pertinent to their role within the Commission.

(2) Such declaration shall include the member's occupation as well as any role which that member may have within any organisation:

Provided that such declaration shall be presented to the House of Representatives by not later than seven days from the presentation of the list of nominees to the House of Representatives.

(3) Any member of the Commission who has any direct or indirect interest in any matter or situation being considered or investigated by the Commission or the Board, 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.

(4) 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 House of Representatives without delay.

(5) Where the House of Representatives is of the opinion that the interest of the member is such as to disqualify him from remaining a member, the President acting in accordance with a resolution of the House of Representatives shall terminate his appointment as a member of the Commission.

### **Term of office.**

9. (1) Every member of the Commission shall hold office for a term of four years and may be re-appointed for one further term at the end of his term of office.

(2) No member shall hold office for more than two consecutive terms:

Provided that if a member appointed to the Commission in terms of article 4(3) of this Act remains in his office for a period which exceeds the two consecutive terms referred to in this article, such Commissioner shall, in terms of article 5(2), appoint a representative to act as a member of the Commission in his place.

**Termination and resignation.**

**10.** (1) The President, acting in accordance with a resolution of the House of Representatives, shall terminate the appointment of any member of the Commission if such member:

- (a) Fails to attend three consecutive meetings of the Commission 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.

(2) Any member of the Commission may, at any time, resign his office by notice in writing to the Speaker of the House, and the resignation shall take effect on the day on which the Speaker of the House receives such notice:

Provided that without prejudice to Article 9(2) of this Act, members of the Commission appointed in terms of Article 4(3) of this Act, shall hold their office as members of the Commission for two consecutive terms and any notice of their resignation shall not be accepted.

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

**11.** (1) The meetings of the Commission shall be called by the Commissioner as often as may be necessary for the due fulfilment of its functions but not less than 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 Commissioner.

(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.

(5) 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.

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

(7) 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.

(8) The Commission may appoint sub-committees or working groups as it deems appropriate in order to better discharge its functions:

Provided that any sub-committee or working group so appointed shall always be chaired by a member of the Commission.

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

(10) Such proceedings shall be reduced to writing by the end of the first twelve months from the coming into force of this Act, and shall be made publicly available and easily accessible and shall, as far as possible, address all issues regarding the functions of the Commission.

### **Legal and judicial representation.**

12. 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.**

13. The functions of the Commission shall be to protect and promote human rights and the right to equal treatment and non-discrimination, which include the following:

- (a) to work towards the elimination of abuse of human rights and the right to equal treatment and non-discrimination;
- (b) to encourage the development of a culture of respect for human rights and the right to equal treatment and non-discrimination and intercultural dialogue;
- (c) to enhance public knowledge and understanding on human rights and the right to equal treatment and non-discrimination and combat all forms of unjust discrimination by increasing public awareness, especially through the dissemination of information and education;
- (d) 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;
- (e) to monitor and examine the implementation of national policies related to human rights and the right to equal treatment and non-discrimination and to make such recommendations as it deems appropriate in order to ensure that these policies conform to human rights and the right to equal treatment and non-discrimination;
- (f) to examine and keep under review the adequacy and effectiveness of legislative or administrative provisions in force, as well as bills and legislative proposals, either at the request of the authorities or on its own volition, and to make such recommendations as it deems appropriate in order to ensure that these provisions conform to 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 already in force and the adoption or amendment of administrative measures;
- (g) to monitor and promote the harmonisation of national legislation, regulations and practices with international human rights and equality and non-discrimination instruments to which Malta is a party, and their effective implementation;
- (h) to prepare reports on the national situation with regards to human rights and the right to equal treatment and non-discrimination in general, or on any one or more specific matter or sector;
- (i) to receive complaints from any person, association, organisation and, or legal entity on any matter concerning the protection of human rights and the right to equal treatment and non-discrimination;
- (j) to appoint a Human Rights and Equality Board to investigate alleged cases relating to violations of human rights and of the right to equal treatment and non-discrimination which it decides to take up, either on a complaint being lodged in accordance with the previous sub-paragraph or on the Commission's own initiative,

- when there is enough reason to do so, and as far as is reasonably possible, ensure the adequate remedy to and the cessation of such violations;
- (k) to ensure that the Board is performing its duties in accordance with the provisions of this Act;
  - (l) to provide independent assistance, including legal assistance where and as appropriate, to persons who are victims of human rights violations and, or persons who are suffering from discrimination in breach of the Equality Act;
  - (m) to maintain consultation and, where it considers it so appropriate to better fulfil its functions, to co-operate with governmental organisations responsible for the promotion and protection of human rights and the right to equal treatment and non-discrimination or the elimination of human rights and equality violations and discrimination or which are devoted to protecting particularly vulnerable groups;
  - (n) 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 and the right to equal treatment and non-discrimination or the elimination of human rights and equality violations and discrimination or which are devoted to protecting particularly vulnerable groups;
  - (o) 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;
  - (p) to co-operate with other organisations in order to promote and protect human rights and the right to equal treatment and non-discrimination;
  - (q) to participate in international fora and contribute to global and regional human rights and equality and non-discrimination developments;
  - (r) to provide the necessary knowledge and skills in order to facilitate the implementation of equality legislation enforceable in Malta through the use, among others, of training and awareness raising campaigns; and
  - (s) to perform any such other function as may be assigned to it by this Act or any other law.

### **Powers of the Commission.**

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

- (a) to freely consider and report upon questions falling within its competence, whether on its own initiative or upon a request by Government, Parliament or any other public body;
- (b) to publish its findings in accordance with the provisions of this Act;
- (c) to request the Board to investigate any matter that concerns the breach of human rights and, or of the principle of equal treatment and non-discrimination, either following the receipt of a complaint or on its own initiative;
- (d) to monitor the workings of the Board;
- (e) to take up cases in its own name before the competent court, as appropriate; and
- (f) any other powers as conferred to it under any provision of this Act.

### **Commission to request Board to initiate investigations.**

**15.** Where the Commission has reasonable suspicion of a breach of a human right and, or of the principle of equal treatment and non-discrimination, it may request the Board to initiate investigations on the matter:

Provided that in cases so initiated, article 28 of the Equality Act shall not apply.



### **Complaints.**

16. (1) Without prejudice to any other remedy available in any other law, any person who believes that he is a victim of an infringement of human rights and, or of the right to equal treatment and non-discrimination, may file a complaint to the Commission, requesting the Commission to order the defendant to desist from such unlawful acts and, where applicable, to order the payment of compensation for such damages, including non-pecuniary damages, suffered through such unlawful act.

(2) Every complaint submitted to the Commission shall be made in writing:  
Provided that where the person submitting the complaint requires assistance to reduce an oral complaint to writing, the Commission shall take the necessary steps to assist such person:  
Provided further that a complaint shall always be signed by the person submitting such complaint.

(3) The Commission shall record every complaint received and forward these complaints to the Human Rights and Equality Board established under this Act to be duly investigated, where appropriate.

(4) The Commission shall ensure that complaints are dealt with in a timely manner.

### **Complaints submitted by persons detained or patients in health facilities.**

17. Notwithstanding any provision in any law, any letter written by a person in custody or by any patient of any hospital within the meaning of the [Mental Health Act](#) addressed to the Commission, 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 Commissioner 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.

### **Complaints submitted by associations, organisations or legal entities.**

18. (1) Without prejudice to any other remedy available in any other law, any association, organisation, or legal entity may file a complaint on behalf or in support of a person who believes that he is a victim of an infringement of human rights and, or of the right to equal treatment and non-discrimination, with his consent, requesting the Commission to order the defendant to desist from such unlawful acts and, where applicable, to order the payment of compensation for such damages, including non-pecuniary damages, suffered through such unlawful act.

(2) Any association, organisation, or legal entity may lodge a complaint even in cases where no one specific person is identified as a victim of an infringement of human rights and, or of the right to equal treatment and non-discrimination:  
Provided that the complaint is of general concern and, or concerns a particular sector or group of society.

(3) Every complaint submitted to the Commission shall be made in writing.

### **Institution of civil proceedings by Commission.**

19. Without prejudice to any provision of this Act, the Commission may file an application against the Attorney General before the First Hall of the Civil Court in its Constitutional

Jurisdiction where it is of the opinion that a legislative provision is unconstitutional, or is contrary to the provisions of the Equality Act.

### **Annual Report.**

**20.** (1) As soon as practicable after the end of every calendar year, but in any case, by no later than the end of March of the following year, the Commission shall prepare a report on its activities during that 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 the right to equal treatment and non-discrimination and to suppress their infringement, during the period to which the report relates.

(3) A copy of the annual report shall be laid on the Table of the House by no later than one month from the date of its compiling, and after such submission, be made available and easily accessible to the general public by any means, including electronic means.

(4) The report shall be discussed by the Social Affairs Committee of the House of Representatives or any other committee substituting the same:  
Provided that the Commission shall be invited to attend the Committee’s meetings and shall be allowed to make its representations to the same Committee.

### **Publication.**

**21.** 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**

### **The Human Rights and Equality Board**

#### **Establishment of the Human Rights and Equality Board.**

**22.** There shall be a Board, which shall be known as the Human Rights and Equality Board, which shall be appointed by the Commission and shall investigate cases relating to alleged infringements of human rights and the principle of equal treatment and non-discrimination, brought before it either upon the Commission’s own initiative or upon receipt of a complaint in accordance with articles 16, 17 and 18 of this Act.

#### **Composition.**

**23.** (1) The Board shall be composed of:  
(a) The Commissioner;  
(b) A person holding a degree in law and having experience in issues relating to human rights and the principle of equal treatment; and

- (c) Three other persons who shall be suited to deal with issues relating to human rights and the principle of equal treatment, having professional experience in working within the human rights sector for at least five years.

(2) The persons referred to in sub-article (1)(b) and (c) of this article shall be appointed by the Commission:

Provided that such appointments shall be approved by a two-thirds majority of the members of the Commission:

Provided further that the persons referred to in sub-article (1)(b) and (c) of this article shall not be appointed from amongst the members of the Commission.

(3) The persons referred to in sub-article (1)(b) and (c) of this article shall hold office for a term of four years and may be re-appointed for one further term at the end of their term of office:

Provided that such persons shall hold office for no more than two consecutive terms:

Provided further that the Commission may at any time and by a vote of at least two-thirds of the members of the Commission, call for the resignation of any one of the persons referred to in sub-article (1)(b) and (c) of this article.

(4) The Board shall have a Secretary appointed from amongst the Commission's staff, who shall attend every meeting of the Board, keep a detailed record of every such meeting and to carry out any such functions as may be necessary for the smooth and efficient running of the investigations:

Provided that the Secretary shall not have a vote.

(5) The quorum of the Board shall be of four members, one of whom shall be the Commissioner or, in his absence, the Deputy Commissioner.

(6) The validity of every Board proceeding shall not be affected by any vacancy amongst its members or by a defect in the appointment of a member.

(7) Decisions of the Board shall be taken by a majority of the members present and voting, and the Commissioner shall have a casting vote in the case of an equality of votes:

Provided that without prejudice to the decision of the Board, any member of the Board may present, in writing, his dissenting opinion, which shall be recorded in the minutes of the final sitting of the Board.

(8) The proceedings of the Board shall be regulated by the Commissioner following consultation with the Commission.

(9) All members of the board, shall at all times, be bound by the duty of professional secrecy.

(10) The Board shall be presided by the Commissioner who shall preside over every meeting of the Board, unless he is substituted by the Deputy Commissioner in accordance with article 6(3) of this Act.

### **Powers of the Board.**

**24.** For the performance of its functions, the powers of the Board shall be the following:

- (a) To receive requests by the Commission formally requesting the Board to commence investigations on a specific matter in accordance with article 15 of this Act;
- (b) To receive complaints submitted to the Commission in accordance with articles 16, 17 and 18 of this Act;
- (c) To commence investigations with regard to the complaints and requests received;

- (d) To refuse to investigate complaints in accordance with articles 27 and 28 of this Act;
- (e) To collect evidence, hear any person, natural or legal, as the case may be, and obtain any information and any documents which may be necessary for such purpose in accordance with the provisions of article 33 of this Act;
- (f) To take decisions requiring the cessation or prevention of any infringement of human rights and, or of the right to equal treatment and non-discrimination in accordance with the provisions of this Act and the Equality Act;
- (g) To order interim measures in the circumstances referred to in article 40 of this Act;
- (h) To impose penalties in accordance with the provisions of this Act; and
- (i) Any such other powers as are conferred to it under any provision of this Act.

#### **Power to enter premises.**

**25.** For the purpose of performing his functions as chairperson of the Board under this Act and where the Board has reasonable grounds to suspect that there is evidence, other than items subject to legal privilege, which is relevant to the case being investigated, the Commissioner shall have the power:

- (a) to enter freely and without prior notice any place other than a dwelling house at any time of day or night in order to inspect and carry out therein any investigation falling within the scope of this Act:  
Provided that the Commissioner may enter a dwelling house only with the consent of the occupant, and only when he is accompanied by a police officer not below the rank of Inspector in possession of a search warrant;
- (b) To request the assistance of a member of the Police force in the execution of the aforementioned powers; and
- (c) To inspect any document which the Board believes may be of assistance in relation to any investigation falling within the scope of this Act.

#### **Investigations.**

**26. (1)** Subject to article 27 of this Act, the Board may, in response to a complaint or a request by the Commission, decide to carry out an investigation to determine whether an infringement of human rights and, or of the right to equal treatment and non-discrimination has taken place or is taking place.

(2) Where in the course of an investigation the Board has reasonable grounds to suspect that a crime has been committed and where such act or omission falls outside the remit of such Board, the Board shall refer the matter to the Police:

Provided that the Board may in any case request the Commission to give its consent to conduct an investigation in respect of any issues of general interest contained in the complaint.

#### **Matters not subject to investigation.**

**27.** The following matters may not be subject to investigation by the Board:

- (a) Any matter certified by the Prime Minister to affect the internal or external security of Malta;
- (b) 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;
- (c) Action taken by the Minister responsible for justice under the Extradition Act; and
- (d) The exercise of the power of the Prime Minister under article 515 of the Criminal Code.

**Refusal to Investigate.**

**28.** (1) The Board shall refuse to investigate, or investigate further any complaint or request received if:

- (a) It is of the opinion that the complaint or request is frivolous or vexatious or is not made in good faith;
- (b) Proceedings relating to the subject-matter of the complaint or request are pending before any other competent court or tribunal;
- (c) An investigation on the subject-matter of the complaint or request is pending before the Ombudsman in terms of the Ombudsman Act;
- (d) The subject-matter of the complaint or request has already been investigated by the Board or any other competent court or tribunal;
- (e) Subject to the provisions of article 18(2), the Board is of the opinion that the complainant does not have a sufficient personal interest in the subject-matter of the complaint; or
- (f) In relation to complaints received in accordance with article 18(2), the Board is of the opinion that the complaint is not of general concern or does not concern a particular sector or group of society.

(2) If upon the receipt of a complaint or request, or in the course of an investigation of a complaint or request of an alleged human rights infringement, it appears to the Board that other means of redress should be resorted to by the complainant under any other law, the Board may refuse to investigate, or investigate further any such complaints:

Provided that if the Board receives more than one complaint or request of an alleged human rights infringement which have common but not necessarily identical issues, the Board may, with the consent of the Commission and with the consent, in writing, of the complainants, conduct a general investigation on their behalf, in respect of such human rights infringement.

Provided further that the Board may in any case request the Commission to give its consent to an investigation in respect of any issues of general interest contained in a complaint.

(3) In any case where the Board decides not to investigate or make further investigation of a complaint or request it shall inform the complainant of that decision, and shall state its reasons thereof;

Provided that the decision of the Board not to investigate or make further investigation of a complaint or request shall not be subject to judicial review.

**Complaints to be submitted within two years.**

**29.** The Board shall not act upon any complaint unless it is made by not later than two years from the day upon which the complainant first had knowledge of the matters detailed in the complaint:

Provided that the Board may in any case request the Commission to give its consent to 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 of society.

**Withdrawal of complaint.**

**30.** An investigation commenced upon receipt of a complaint shall be discontinued upon the withdrawal of the complaint:

Provided that this shall not prohibit the Board from requesting the Commission to give its consent to an investigation in respect of any issues of general interest contained in the complaint on the basis of any information already collected during that investigation if it considers that the investigation is in the public interest, or relating to a particularly vulnerable group or minority of society.

Provided further than where the investigation upon receipt of a complaint is discontinued according to the provisions of this article, the Commissioner shall inform in writing the complainant and the person against whom the complaint is directed that the investigation has been discontinued.

#### **Notice of commencement of investigation.**

**31.** (1) Upon the commencement of an investigation, the Board shall notify all interested parties of such commencement by means of registered mail by not later than five working days from its decision to commence the investigation.

(2) The registered mail of commencement of an investigation sent to the person, establishment or entity who is allegedly in breach of human rights and, or the principle of equal treatment and non-discrimination shall contain:

- (a) specific reference to the act or omission constituting the alleged breach of human rights and, or the principle of equal treatment and non-discrimination in question; and
- (b) a request to submit, within twenty working days, submissions on the allegations made:  
Provided that the Board shall have the right to proceed with the investigation whether such submissions were submitted or not.

#### **Parties may make submissions.**

**32.** At any time during the investigation, up until where the parties concerned declare they have no further evidence and, or submissions to present to the Board, any party concerned may make representations to the Board on the subject-matter of the investigation:

Provided that any evidence and, or submissions shall be presented to the Board within thirty days from when a request to produce such evidence and, or submissions is made.

#### **Evidence.**

**33.** (1) Subject to the provisions of this Act, the Board may summon any person, natural or legal, as the case may be, who in its opinion is able to:

- (a) Provide any information relevant to the subject-matter of the case that is being investigated by the Board; and
- (b) Provide any documents, papers or things which are relevant to the subject-matter of the case that is being investigated by the Board.

(2) When summoning any person, natural or legal, as the case may be, for the purpose of this article, the Board shall:

- (a) Establish the date and time of the summons before the Board, or the date by which the documents, papers or things requested are to be presented to the Board;
- (b) Specify what information and, or documents, papers or things are required; and
- (c) State the consequences for failing to provide the information and, or documents, papers or things requested.

(3) The Commissioner shall have the power to administer an affirmation, declaration, or oath to any witness summoned in accordance with the Commissioner for Oaths Ordinance and with that witness' personal belief, creed or religion:

Provided that the term belief, creed or religion shall refer to any religious or philosophical belief, and a reference to such belief, creed or religion shall include a reference to a lack thereof.

**Where evidence requested is not given.**

**34.** (1) The Board may request, by means of an application before the Civil Court, First Hall, that any person, natural or legal, as the case may be, summoned in accordance with article 33 who:

- (a) fails without sufficient cause to attend at the time and place mentioned in the summons;
- (b) fails without sufficient cause to answer or to answer fully and satisfactorily, to the best of his knowledge and belief all questions asked by the Board; or
- (c) fails without sufficient cause to produce any document, paper or thing he was required to produce,

be ordered by such Court to comply with the summons issued to them by the Board in accordance with article 33 or give any other order which it may consider appropriate and required according to the specific circumstances of the case.

(2) No person, natural or legal, as the case may be, summoned by the Board 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 Board, be entitled to the same privileges to which a witness giving evidence before a court of law is entitled.

**Exemptions from disclosure.**

**35.** (1) Where the Prime Minister certifies that the giving of any information or the answering of any question or the production of anything, 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 seriously damage 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 Board 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:

Provided that the Board may, by an application filed before the First Hall of the Civil Court, request the Court to order the disclosure of any information or the answering of any question or the production of anything, paper or other document and the Court shall accede to the Board's request if the Court deems that the information, or the answering of any question, or the production of anything, paper or other document contains or refers to matter in relation to which the public interest that is served by disclosure outweighs the public interest that is served by non-disclosure.

(2) Subject to the provisions of sub-article (1), the provision 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 Board.

**Secrecy of information.**

**36.** (1) Information obtained by the Board and any 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.

### **Decisions of the Board.**

**37.** (1) Following an investigation in accordance with this Act, a decision of the Board shall be made in writing and shall state:

- (a) the act or omission constituting the breach of human rights and, or the principle of equal treatment and non-discrimination in question;
- (b) the submissions of all parties, if any;
- (c) the reasons and the legal basis leading to the decision taken;
- (d) the decision of the Board;
- (e) the measures, if any, which the party or parties are required to take and the time within which such measures are to be taken, where appropriate and in accordance with article 38 of this Act and;
- (f) the penalty, which shall be applicable should the party or parties concerned ignore the decision of the Board and take no appropriate action within the time fixed by the Board's decision, as appropriate and in accordance with article 39 of this Act.

(2) All parties concerned shall be duly informed of the decision of the Board.

(3) In giving any decision the Board shall give due consideration to the principles of natural justice and proportionality.

(4) The Commission shall, at its earliest, but in any case by no later than one year from its establishment, formulate the policies and procedures which shall regulate the proceedings of the Board, having due regard to the principles of natural justice, proportionality, effectiveness and timeliness.

### **Finding and termination of an infringement.**

**38.** (1) Where the Board is of the opinion that there has been or that there is an infringement of human rights and, or the right to equal treatment and non-discrimination, it shall, in its decision, require the party concerned to take such measures which are adequate and appropriate to provide a remedy for or to bring such infringement effectively to an end, as the case may be:

Provided that the Board may also, according to circumstances, order the payment of compensation for such damages, including non-pecuniary damages, suffered through such unlawful act:

Provided further that such compensation for non-pecuniary damages shall be proportionate to the damage suffered, and shall in no case exceed the sum of ten thousand Euro (10,000).

(2) The decision of the Board shall indicate the period within which such measures are to be taken, and the measures imposed by the Board may include measures for the protection of the victims of the infringement, including measures to remedy the prejudice suffered by the victims of the infringement.



### **Penalties.**

**39.** (1) Where the decision of the Board is ignored and no appropriate action is taken by the party concerned within the parameters and time fixed by the Board's decision, the Board may in the decision order the payment of a penalty for noncompliance with the decision:

Provided that such penalty shall in no case exceed the sum of twenty thousand Euro (20,000).

(2) Without prejudice to the previous sub-article, the Board may also 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.

(3) When considering the penalty due in all cases where an infringement in terms of this Act has occurred, the Board shall take into account matters of proportionality.

(4) In all cases, the penalties imposed by the Board in its decision shall be due only when the case becomes *res judicata*.

(5) Failure by the party concerned to pay damages to complainant in terms of article 38(1) of this Act shall not be subject to the payment of any penalty.

Provided that notwithstanding the provisions of this sub-article interest at the highest rate permissible shall accrue as from the date when the decision becomes a *res judicata*.

### **Interim measures.**

**40.** (1) In cases of urgency, due to the risk of serious and irreparable harm to any person or group of persons, the Board may, where the investigation has not yet come to a conclusion and where the Commission has reasonable suspicion of a breach of a human right and, or of the principle of equal treatment and non-discrimination, by decision in writing, order interim measures which are necessary and appropriate to prevent such harm.

(2) The parties concerned shall be notified of a decision made under sub-article (1) and such decision shall apply for a specified period of time and may be renewed in so far as this is necessary and appropriate.

(3) The failure to adopt the interim measures imposed by the Board shall be duly considered in the Board's final decision and shall affect the penalty imposed in such decision.

(4) The procedure set out in this article shall be done in the timeliest manner possible in order to prevent any further risk of serious and irreparable harm to any person or group of persons.

### **Recovery of Penalties.**

**41.** Penalties imposed by the Commission in accordance with the provisions of this Act shall be recovered by the Commission as civil debt.

### **Right of appeal.**

**42.** (1) Any person, natural or legal, as the case may be, who is aggrieved by a decision of the Board 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 days from the date on which that decision has been notified to them.

(2) 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.

(3) The Court of Appeal shall set down the cause for hearing at an early date and shall cause notice of such date to be served to the parties.

(4) After appointing the application for hearing, the Court of Appeal 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.

(5) Pending the decision of the Court of Appeal, the recovery of the penalties imposed by the Commission shall be suspended.

### **Part V**

#### **Employment of staff and resources**

##### **Executive Director.**

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

(2) The Executive Director shall hold office under a written contract of service for such period as is specified in the contract and subject to such terms and conditions as are so specified, including those relating to remuneration and allowances, as may be determined by the Commission.

(3) The Director shall not be a member of the Commission, however, unless otherwise directed by the Commissioner, he shall attend meetings of the Commission and he shall be entitled to speak at and advise such meetings.

(4) The Executive Director shall not be a public officer seconded from the government.

(5) The Executive Director shall not hold any other office or occupy any other position in respect of which emoluments are payable or carry on any business without the consent of the Commission.

(6) The Executive Director may be removed from office by the Commission for stated reasons and in accordance with its own discretion:  
Provided that this termination is supported by the votes of not less than two-thirds of all the members of the Commission.

(7) The Executive Director may, at any time, resign his office by notice in writing to the Commission.

### **Functions of Executive Director.**

44. (1) The Executive Director shall carry on, manage and control generally the administration of the Commission and perform such other functions as may be determined by the Commission.

(2) The Executive Director shall perform his functions subject to such policies as may be determined by the Commission, and shall be accountable to the Commission for the efficient and effective management of the Commission and for the due performance of his functions.

(3) The Executive Director shall provide to the Commission such information in relation to the performance of his functions, including regular information with respect to the performance of those functions in so far as they relate to the financial affairs and budget of the Commission, as the Commission may require.

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

(5) The Executive Director may make proposals to the Commission on any matter relating to its functions, including any necessary policy recommendations.

(6) The Commission may designate a member of the staff of the Commission to temporarily perform the functions of Executive Director in the absence of the Executive Director or where the position of Executive Director is vacant, and a member so designated shall, in such absence or upon such position being vacant, perform those functions.

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

45. (1) The Commission may appoint such officers and employees as necessary in order to fully perform its functions and duties under this Act.

(2) The power to appoint includes the 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 in accordance with law.

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

46. (1) The Prime Minister may, at the request of the Commission, from time to time direct that any public officers 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 officers specified therein shall, unless the officers retire 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 officers 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 them 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 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 them 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 them 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.**

47. The Commission may, in the conduct of any one of its activities or reports under this Act engage in a consultative capacity any person whose particular expertise is essential to the effectiveness of such activity or report:

Provided that if the consultant is a public officer the Prime Minister may, at the request of the Commissioner, designate the public officer to assist.

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

48. The remuneration and allowances payable to the Commissioner and the other members of the Commission shall be set by the House of Representatives:

Provided that such remuneration and allowances are not to be diminished during the Commission's term of office.

### **Contracts of supply, works or services. S.L. 174.04**

49. The Commission shall follow procurement procedures as regulated by the Public Procurement Regulations or any amendment thereto.

## **Part VI** Financial provisions

### **Finance.**

50. (1) The House of Representatives shall ensure that the Commission shall at all times have an adequate budget to properly perform its functions.

(2) At least three months prior to the end of every financial year, the Commission shall present to the House of Representatives a business plan, which includes a financial plan, which will indicate the ensuing year's activities and the finance required for the ensuing year. If approved by the House of Representatives, such business plan shall be the approved budget of the Commission.

(3) The finance required for the remuneration of the members of the Commission, for the salaries of its officers and employees, including the members of the Board, and for all its other expenses and resources for the performance of its functions and duties shall not exceed a maximum amount indicated in the business plan.

(4) The House of Representatives shall not reduce the approved budget of the Commission for the previous year unless a general reduction is envisaged for all similar entities within that year's national budget:

Provided that where such reduction is envisaged, it shall not be higher than the average reductions within that budget:

Provided further that the House of Representatives shall not reduce the budget of the Commission by more than five (5) per cent of the approved budget of the Commission for the previous financial year unless such a reduction is supported by the votes of not less than two-thirds of all the members of the House of Representatives.

(5) The Commission shall be empowered to accumulate funds and may carry over unused funds from one year to the other.

(6) The financial year of the Commission shall be the twelve months ending on the 31st of December, provided that the first financial year of the Commission after the coming into force of this Act shall commence on the date of the coming into force of this Act and shall end on the 31st day of December of the following year.

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

51. The finance approved by the House of Representatives for the expenses of the Commission shall be a charge on the Consolidated Fund without any further appropriation other than this Act.

#### **Accounts.**

52. (1) The Commission shall keep proper accounts of its income and expenditure and shall prepare and send to the Speaker of the House of Representatives statements of accounts in relation to each of its financial years.

(2) 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.**

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

### **Part VII**

Dissolution of the National Commission for the Promotion of Equality for Men and Women

#### **Dissolution of National Commission for the Promotion of Equality for Men and Women.**

54. (1) The Minister shall establish a date to be known as 'establishment day' wherein the National Commission for the Promotion of Equality for Men and Women shall be dissolved, and the Commission shall formally begin to operate:

Provided that such date shall not be later than three months after the coming into force of this Act.

#### **Transition Period.**

55. (1) The period referred to in article 54 of this Act shall be a transition period during which the National Commission for the Promotion of Equality for Men and Women established under the Equality for Men and Women Act shall transition into the Commission.

(2) During this period, the members and staff of the National Commission for the Promotion of Equality for Men and Women shall work together with the new members and staff of the Commission to ensure that the work of the former is transferred to the latter in an efficient and smooth manner.

(3) During this period, the National Commission for the Promotion of Equality for Men and Women should aim to address and close all cases which are pending before it.

(4) Any complaint received during the period between the coming into force of this Act and the setting up of the Board shall be duly recorded:

Provided that any investigation in this regard shall not commence until the setting up of the Board is complete.

**Transfer of functions.**

**56.** (1) All functions that immediately prior to the establishment day were vested in the National Commission for the Promotion of Equality for Men and Women shall be transferred to the Commission.

(2) Reference to the National Commission for the Promotion of Equality for Men and Women in any law shall be construed as reference to the Commission.

**Transfer of staff.**

**57.** (1) Every person who immediately before the establishment day was a member of the staff of the National Commission for the Promotion of Equality for Men and Women shall, on the establishment day, be a member of staff of the Commission.

(2) The employees referred to in sub-article (1) shall not, on the establishment day, be brought to less favourable terms and conditions than the terms and conditions of service relating to remuneration to which the employees were subject immediately before that day:

Provided that any collective agreement negotiated with any trade union or staff association in this regard shall continue to apply.

**Part VIII**  
Miscellaneous

**Regulations for Commission's guidance.**

**58.** The House of Representatives may by resolution from time to time, if it thinks fit, make regulations for the better implementation of this Act.

**Power of the Minister.**

**59.** The Minister may make regulations to implement and to give better effect to the provisions of this Act and without prejudice to the generality of the foregoing may, by such regulations, prescribe anything that is to be or which may be prescribed and provide for any matter consequential, incidental to or connected with the provisions of this Act.

**Part IX**  
Consequential Amendments

**Amendment to the Ombudsman Act, Cap. 385.**

**60.** In Part A of the First Schedule to the Act, immediately after the words 'The Commission for Investigation of Injustices' there shall be inserted the words 'The Human Rights and Equality Commission'.

**Objects and Reasons**

The object and reason of this Bill is to establish the Human Rights and Equality Commission, in view of the Principles relating to the Status of National Institutions (The Paris Principles) and provide for matters ancillary to it.