MALTA EMPLOYERS' ASSOCIATION

Update

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Proposed Equality Bill – Unfair & Unnecessary

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The Ministry of Social Dialogue and Industrial Relations is presenting, for parliamentary approval, two Bills, "The Human Rights & Equality Commission Act 2015" and the "Equality Act 2015". These bills are being promoted as instruments that will bring Malta in line with requirements of EU directives. They are also being sold as solutions to Maltese legal shortcomings in Equality and Discrimination in Employment and work in general. Nothing could be further from the truth. In matters of employment, equality, and discrimination Malta is 100% compliant with EU directives and in addition current legislation is more than adequately serving employees, unions and employers.

The "Equality for Men and Women Act; Chapter 456" and the "Employment and Industrial Relations Act", which includes Part II "Protection against Discrimination related to Employment", Part IV "Enforcement and non-compliance related to Employment" and Part II "The Industrial Tribunal" successfully regulate all matters relating to work. This legal framework is supported by a structure that includes a Commissioner and a Director of Labour who exercise a persuasive authority when work problems occur. This Director is backed by a Department that includes an advisory service to Employees and inspectors to guarantee adherence to laws and rules. There is also a functioning

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"Industrial Tribunal" with all the guarantees for an impartial judicial process for all grievances, whether coming from an Employee, a Union or an Employer. This valid set-up must not be disturbed and messed with.

Through the proposed Bills, Employers will be subjected to a justice regime different from that applicable to normal citizens. This amended legislation will attribute to the Commissioner, in competition and in parallel with the Industrial Tribunal, a wide and arbitrary authority to investigate, prosecute, judge and finally condemn an accused Employer if he does not manage to prove his innocence to the satisfaction of the same Commissioner. Since the Bills of the Ministry entrench the unjust "burden of proof" concept, this process will occur with the accused Employer deemed "a priori" guilty. So the universal principle of innocence until guilt is proven is being discarded in respect of employers. Furthermore this proposed omnipotent Commissioner is also being granted the unheard of authority to delegate any of his powers to any person holding office under him/her. Such a measure is completely out of place in a democracy that is supposed to guarantee safeguards to ensure a competent and impartial justice process. The MEA is hoping that Legal practitioners, as promoters of equitable justice procedures, will wake up to the threat posed by these proposed two Bills.

It is worrying that extreme fringes of the gay and feminist movements seem to have the power to successfully promote unnecessary legislation which seriously threatens the rights of Employers. These Bills will definitely hinder Employers' ability to exercise their responsibilities free from frivolous and vexatious harassment. Most worryingly these Bills will create a Commissioner with an obligation and power to pursue a pro-active task of promoting what appear to be the radical agendas of the various gay and feminist lobby groups. Some passages of the Bills, in particular where the empowered pro-active role of the Commissioner is explained, (eg. surveillance of University syllabuses, etc) actually read like 1984 Orwellian texts. The Bills are embellished with a cascade of nebulous and improbable definitions of offences and protected characteristics that will make it impossible for a targeted employer to escape an orchestrated persecution.

With no need for a complaint from anyone and with no alleged victim a Commissioner may, at his discretion, initiate a procedure against any presumed employer offender. For example, a Commissioner may decide to investigate a Company that has no gender balance at Board Level. Being an investigator, a prosecutor, a judge and executor a Commissioner will confirm the presumed guilt of such a Company and demand a Board gender balance rectification. Who cares about the right of a shareholder to freely select the director to represent his shareholding interests? Such a development results plausible after a careful reading of the text of the: "Human Rights and Equality Commissioner Act 2015", Functions of the Commission (I) (IV), "Equality Act 2015", Articles 6 (1) (2) (3) (b).

The MEA supports, and is in favour of encouraging gender balance and more female representation in business, which should reflect the increasing female participation in the labour force. However, to achieve this balance the MEA does not favour or approve mandatory "positive discrimination" and the setting of quotas in favour of women. Enshrined in law these concepts will be a statutory denial of human and other rights pertaining to Employees and Employers. Positive Discrimination and Quotas deny unhindered access to an equal opportunity for advancement in work; they are a negation of meritocracy and will result in discrimination and mediocrity.

These two bills are riddled with vague and unclear definitions of offences, real offences as well as offences subjectively "perceived" by alleged victims. There are also references to a transgression consisting of "an intention to offend". Facing a Commissioner, and a priori considered guilty, an Employer will certainly struggle to prove her/his innocence of the crime of harbouring an "intention" to transgress. It is inevitable that were these Bills to be adopted

there will be a proliferation of frivolous as well as deliberately orchestrated litigation with Employers. This litigation will be indulged in by well known NGO's and notorious lobby groups. Unnecessary and unjustified litigation is distracting, time consuming and expensive to confront. Frivolous litigation is bound to seriously obstruct the business operations of Small & Medium sized Enterprises (SMEs). In instances it may even result in a small business closing down.

At EU level, a supplementary and unnecessary draft directive, "Implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation", has not been approved by more than 8 member states and so has been stalled for six years and will soon be discarded. This draft directive has been described, by the European Employers' Association, (Business Europe) as anti-business, inadequate, disruptive and problematic to apply. Now it results that the two proposed Maltese Bills in their provisions go beyond this discredited and stalled EU Directive.

There is a feeling that Employers might be facing lobbies that have been allowed to box above their weight. We are witnessing a leveraging of emotional pressure on a public conditioned to political correctness. Extreme fringes of feminist and gay lobbies are being allowed to impose their ideologies on everybody. Much as their proposals are frequently stretched to absurd limits there is a fear to resist them. Whoever speaks up risks being viciously ostracised. It seems employers are also facing an ineffectual political class which prevalently seeks to ensure and harvest the votes of distinct segments of the electorate.

The Employers of the private sector, as they provide essential goods and services and maintain over 160,000 people in invariably decent and gainful employment, deserve much better treatment and consideration from government and politicians. They deserve better than these two ill-advised bills that will seriously threaten their basic rights and their ability and willingness to fulfil their important role. There is therefore a serious need to stop these unnecessary destabilising bills from being enacted and applied to the world of work.