

26th February 2016

The Chairman
Malta Council for Economic and Social Development
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The Equality Act 2015
The Human Rights & Equality Commission Act

The MEA has always been, and is, in favour of the establishment and respect of equality and the suppression of discrimination in the place of work and employment. Apart from its belief in ethical standards and principles MEA has taken a stand on these issues since a respect of equality and non discrimination also contributes to social and economic well being. This however does not mean that the MEA is endorsing and accepting the version of the proposed legislation.

As requested, MEA is hereby giving its views on the two proposed captioned acts. Detailed comments and queries are being submitted in respect of individual clauses however a general overall opinion is also being passed on.

General Overall Opinion
Government as an Employer

The prevalent view of MEA on the Equality Act is that Government definitely must respect equality and non-discrimination however Government must not be made to assume responsibilities or submit to regulations and promotion obligations that should not concern an Employer. Experience has shown that obligations, wrongly attributed to Government as an employer, often, without economic or objective social justification, get subsequently and arbitrarily imposed on Private Sector Employers. It is on this premise that MEA is objecting to an acceptance of a whole string of gratuitous obligations.

Particular obligations should not be foisted, by law, on Employers, be it Government or private. These obligations concern social issues outside the remit of Employers. They amount to an inappropriate imposition of proactive ways of behaviour to promote particular causes. Such behaviour impositions should feature in the remit of those NGO's engaged in promoting various causes, and what is an ongoing voluntary task of an NGO should not become a legal obligation on employers. It is objectionable that a law, rather than focusing on protection and guarantees that are due, deviates and instead stipulates obligations to "promote" concepts and ideologies, this towards a conditioning of persons to a particular way of thinking and behaving.



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A law may be enacted to protect diversity, however should a law be enacted to “promote” diversity? Does such a task pertain to an Employer? Respecting but not promoting diversity surely cannot be considered in itself a crime or an omission or an offense.

When is differential treatment not discrimination?

It is erroneous to propose regulations which in themselves are biased and discriminatory, but declared as required and justified, to reach a particular objective. To justify the achievement of gender balance it is wrong to draft laws which favour one party and discriminate against another.

In many instances, these proposals promote and justify discriminatory treatment to “compensate” for past “injustices”. A citizen, with entrenched rights, who personally would have had nothing to do with such past “injustices”, now finds himself/herself discriminated against, so that arbitrarily set “balances” (eg. gender) are achieved. It is one thing to stop discriminatory practices and it is completely another to legitimise (Positive Action) fresh discrimination to favour, for example, gender balance. In such instances meritocracy suffers.

Amendments to Fundamental Legal Principles of impartial justice; the Presumption of guilt and the Unchecked power of the Commissioner

Presumption of guilt until the “alleged offender” proves his / her innocence is hereby being introduced. The innocent until proven guilty Principle (Proof of guilt which in a normal court of law is to be demonstrated by a Prosecution) is proposed to be discarded. According to this proposed legislation entrenched rights in respect of normal citizens will not apply in respect of an employer. When and why does an employer cease to be treated and considered like a normal citizen? Under Maltese criminal law a citizen is innocent until otherwise proven guilty, beyond reasonable doubt.

The MEA strongly objects to a “Commissioner” acquiring the power to condemn people to €5000 fines and six months’ imprisonments. There are powers that should rest with properly constituted Law Courts.

Moral / Emotional damages

MEA objects to the introduction of Moral Damages and emotional harm concepts favouring an employee. (These concepts are not contemplated in civil law). Inversely does this now mean that an Employer, unjustly accused and condemned, (by the Commission), who had to seek the protection of the law courts against this injustice by the Commission, have the right to moral / emotional damages? Will an Employer have the right, on behalf of his company, to compensation for civil damages (commercial / image or defamation damages)?

The encouragement to litigation

It is evident that there are whole passages in these legislative / regulatory proposals that have been inspired by argumentations, in favour of employees, made in so many Industrial Tribunal / Law Court cases. This inspiration has led to the dubious development of proceeding to transcribe into the actual law whole lists of valid, and not so validly defined, offences.



This will disruptively and unfairly encourage, prompt and promote unjustified and vexatious litigation by employees and various Associations and NGOs.

The setting up of the “Human Rights and Equality Commission” and the creation of a “Commissioner”

The MEA has serious reservations about the set-up and powers of the “Human Rights and Equality Commission”. In particular it is worrying that the Commissioner may take up issues on his/her own initiative even when no complaints are lodged.

Seemingly in substitution of the Police and the Law Courts the Commissioner will be able to investigate, enter premises, demand documentation, take preventive action, conclude that a summoned person is not collaborating and proceed to fine and imprison him/her. The Commissioner will also freely have access to commercial premises to investigate even in the absence of complaints or presumed victims. There is no objective justification for these excessive powers. Currently the Director of Labour instructs the Police to institute criminal proceedings against an Employer who transgresses.

Furthermore MEA objects to the provision in the law whereby, as stated earlier on, in the absence of a “victim” even an NGO, and not just the Commissioner, can still take an initiative and independently engage in a judicial act, through the Commission, against an Employer on the basis of a presumed non application, by the Employer, of obligations. Such presumed non-compliance may even be based on “statistical evidence”. This measure amounts to an invitation to NGO’s, the same Commission, and whoever else, to commence uncontrolled harassment of unjustly targeted employers.

Overall the provisions of the two Acts constitute an over-reaction to a past when social injustices on equality existed. MEA feels that this over-reaction is wrong and there is no justification for the introduction of this invasive hostile and inhibiting legislation affecting Employers and employment relations. Employers are key to the provision of work and jobs, (MEA’s members alone provide over 60,000 jobs), it is not wise to add on gratuitous difficulties to the already difficult task of maintaining and expanding sustainable employment.

MEA has serious doubts that these two Acts, as presented, will pass the SME test, so judiciously conceived by the Hon Minister for the Economy, Investment and Small Business. We should be simplifying an already cumbersome legal framework, within which Employers have to operate, and not proceed to introduce business hostile complex legislation. If additional legislation on equality is required this should be fair and objective in respect of all parties concerned. MEA has to reluctantly conclude that an erroneous assumption is being made that jobs are easily created. Employers contribute enormously to sustain that fundamental primary human right to work. Secondary rights which derive from this fundamental primary human right to work are important but should not be promoted and ensured in a manner



that jeopardises the fundamental right to work. In such a hostile environment harassed Employers will end up creating less jobs.

The MEA declares, that Government should maintain the current set-up whereby all matters and grievances concerning equality and discrimination in employment are directed to the Industrial Tribunal and not to a Commission. The Commission contemplated in these proposals should be directed to concentrate solely on the focused issue of human rights.

In conclusion no lobby group, whichever it may be, should be accorded such an overriding influence that results in biased and ill-advised national legislation.



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Note: Please distribute to MCESD members.