

# Update

ISSUE 567  
26 APRIL 2018

## The Equality Bills

The MEA has been very closely involved in the debate about the Equality Bills. The following is an abstract of recent developments in this regard. There are two Equality Bills:

1. **The Equality Bill**
2. **Human Rights and Equality Commission Bill**

The Equality Bill is intended to establish the grounds for discrimination in all spheres of life, including employment. The Human Rights and Equality Commission Bill is more focused on structures, and enforcement procedures.

What is of importance to MEA is the implications that these Bills, in some aspects, have on employment relationships

A few months ago, we received an amended Equality Bill (amended from previous versions in previous years), but not a copy of the Human Rights and Equality Commission Bill. Our position was that the Association could not possibly be in a position to offer its reactions as the two pieces of legislation are complementary and cannot be discussed separately.

In March of this year, MEA received a copy of a revised Equality Bill and also a proposed Human Rights and Equality Commission Bill.

These documents were discussed and evaluated in detail. MEA has sent its reactions to the Minister, and the highlights of these reactions are:

**Work problems alleged by the NCPE will not be solved by additional legislation but by an ulterior effort, conducted by the same NCPE and the Director of Employment and Industrial Relations, to monitor, supervise and pursue strict and effective enforcement. Only in this manner will discrimination and non-respect of equality norms be defeated.**

**The Association is objecting to:**

a) **The elevation of the NCPE to the status of an autonomous "Tribunal" with the authority (through the Human Rights and Equality Board) to identify a suspect, interrogate, investigate, accuse, prosecute, judge, condemn and punish. This will occur with no basic safeguards for the alleged offender.**

b) **A total absence of regard to issues of impartiality, conflicts of interest and separation of powers in the two Acts being proposed.**

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c) The introduction of the risk of double jeopardy to alleged offenders. This arises as procedures may get initiated with no formal complainants and investigations may carry on even after a case would have been treated by another adjudicating body.

d) The gross intrusion by the Human Rights and Equality Board into the authority of adjudicating bodies presided by judges and magistrates as well as chairpersons of Industrial Tribunals. This constitutes a usurpation of power granted to these bodies in full accordance with the Constitution of Malta. Not as much can be stated in respect of this proposed “Human Rights and Equality Board“ which considering the authority intended to be bestowed on it, appears completely unconstitutional.

These are very serious objections as the implications on employers can be quite serious, and even unconstitutional. We are presenting a very strong case for a rethinking of these Bills as we want a fair and objective system which safeguards the rights of all parties and which also ensures that obligations are met as well. We believe that the current legislative set-up is already serving both employers and employees well.

Our position has been also very clearly stated by a series of articles penned by the MEA vice president, Mr. Arthur Muscat which have been published in The Times. The following is the most recent of these articles. **MEA will keep employers informed about any further developments on this issue and will organise information sessions and other activities as necessary in the near future.**

## **IT IS NOT JUST ABOUT EMPLOYERS!**

Having discarded a first attempt in 2016, officials at the Ministry of the Hon. Helena Dalli are having another go with amended versions of a proposed “Equality Act 2018”, and a “Human Rights and Equality Commission Act 2018”.

One can identify numerous changes from the original 2016 proposals which were then heavily criticized by the MEA.

Do the changes put MEA’s mind at rest, in that now an equitable, balanced and sound piece of legislation is being proposed? No, not at all, the MEA is more worried than ever as it is now evident that these particular Ministry officials are simply unable, or do not want, to comprehend an elementary distinction between legally valid measures and measures that are legally not valid.

The 2016 proposals among many irregularities attempted to create a Human Rights and Equality commissioner authorised to identify a suspect, interrogate, investigate, accuse, prosecute, judge, condemn and punish.

The MEA, then, in its own name, and on behalf of all citizens, and not just employers, cried foul. The objections to such a set-up were simple to understand. One cannot and should not combine an investigative and prosecution role with a judicial role. There is a concept, called impartiality that the Ministry officials simply find incomprehensible. There is no understanding of the meaning of separation of powers and conflicts of interest.

As an alternative to the fallacious 2016 proposals the Ministry officials are now in 2018 proposing a “Commissioner for Human Rights and Equality” who will chair an 18 member commission which will in turn appoint a Human Rights and Equality Board.

The commission will receive complaints, from any person, which it will pass on to the Board to investigate, to take decisions and to impose penalties.

The Board, made up of a Commissioner plus 4 other members will practically function as a Judicial Tribunal with extensive powers to award and inflict up to €10,000 – in damages and €20,000 – in penalties for non-compliance with its decisions.

One guess as to who will be chairing, with a casting vote, this “Human Rights and Equality Board”.

Incredible, but you have to believe it, the Board will be chaired by the same “Commissioner for Human Rights and Equality”.

That is the “Human Rights and Equality Commissioner” will be appointing himself/herself as the “Commissioner of the Human Rights and Equality Board” and so proceed after performing an investigative role, to assume a judicial role.

This person will be entertaining a complaint within the Commission, then referring it, for judicial processing, to himself/herself as the Commissioner chairing the “Human Rights and Equality Board”!

It has taken these enlightened ministry officials two years to come up with this ridiculous

pseudo solution to the basic issue of ensuring an essential impartiality to an adjudicating body.

This is only one fundamental defect of these two 2018 bills and it is not the scope of this short article to go into a capillary unravelling of other fallacious contradictions present in these proposals.

I cannot believe that these proposals have been vetted and sanctioned by the Attorney General's office.

It is incomprehensible how apparently extremist elements belonging to particular lobbies are exposing to disrepute a Ministry for Equality and a National Council for the Promotion of Equality (NCPE) that in truth have done so much for

the promotion of women and gay rights equality and the elimination of discrimination.

Under so many aspects, ironical as it may sound, these 2018 proposals are a manifest example of an abuse of the human rights of an alleged offender, chief among which there is the sacrosanct right of an accused to have access to a fair, balanced and impartial adjudicating tribunal. Then there is that notorious EU tolerated violation of the sacrosanct right to have one's innocent status respected until guilt is proven beyond doubt, and not guilty until innocence is proven.

This whole upheaval, of a currently very functional and EU compliant Maltese labour legal framework, has no justification except to satisfy extremist

lobbies in what appears to be a vindictive streak for long enduring past injustices. There is also a ludicrous desire of these Ministry officials to project themselves as promoters of enlightened cutting edge civil rights legislation.

In conclusion this is not an article on the issues of equality, discrimination and minority rights, this is an article on the existence, or not, of a genuine motivation and competence on the part of the Equality Ministry to draft laws that are equitable and just to all citizens and not particular groups or categories. Ulterior motivations, hidden agendas, anger and arrogance can only lead to defective legislative proposals that carry the stamp of bitterness.