

MALTA

ATT Nru. I ta' l-2003

ATT mahruġ b'ligi mill-Parlament ta' Malta.

ATT biex iġib 'il quddiem l-ugwaljanza għall-irġiel u n-nisa.

ACT No. I of 2003

AN ACT enacted by the Parliament of Malta.

AN ACT to promote equality for men and women.

I assent.

(L.S.)

GUIDO DE MARCO
President

4th February, 2003

ACT No. I of 2003

AN ACT to promote equality for men and women

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:-

1. (1) The short title of this Act is the Equality for Men and Women Act, 2003. Short title and commencement.

(2) This Act shall come into force on such date as the Minister responsible for social policy may by notice in the Gazette appoint and different dates may be so appointed for different purposes or provisions of the Act.

2. (1) In this Act, unless the context otherwise requires: Interpretation.

“Commissioner” means the Commissioner for the promotion of equality appointed under article 11 of this Act, and Commission means the Commission established under the said article;

“discrimination” means discrimination based on sex or because of family responsibilities and includes the treatment of a person in a less favourable manner than other person has been or would be treated on the grounds of sex or because of family responsibilities and “discriminate” shall be construed accordingly;

“employment” means any gainful activity including self-employment and includes promotion and transfer to another post, as well as access to vocational or professional training, the duration of the employment or its extension or termination;

“Minister” means the Minister responsible for equality;

“sexual harassment” means the unlawful activities listed in subarticle (1) of article 9;

“vocational training” includes all forms of vocational training and retraining.

(2) For the purposes of this Act, and unless the context otherwise requires, the terms “man” and “woman” include males and females irrespective of their age.

(3) For the purposes of subarticle (1) of this article discrimination based on sex or because of family responsibilities is:

(a) the giving of less favourable treatment, directly or indirectly, to men and women on the basis of their sex or because of family responsibilities;

(b) treating a woman less favourably for reasons of actual or potential pregnancy or childbirth;

(c) treating men and women less favourably on the basis of parenthood, family responsibility or for some other reason related to sex;

(d) any treatment based on a provision, criterion or practice which disadvantages a substantially higher proportion of members of one sex unless that provision, criterion or practice is appropriate and necessary and can be justified by objective factors unrelated to sex.

(4) Nothing in subarticle (2) of this article shall be deemed to constitute discrimination in so far as such treatment -

(a) is given to grant special protection to women during childbirth or pregnancy;

(b) constitutes measures of positive action for the purpose of achieving substantive equality for men and women.

(5) In relation to access to employment, a less favourable treatment which is based on a characteristic related to sex shall not constitute discrimination where by reason of the particular occupational activities concerned, or of the context in which they are carried out,

such a characteristic constitutes a genuine occupational requirement and where such treatment remains within the limits of what is appropriate and necessary in the circumstances:

Provided that the burden of proof shall lie on the person who alleges that there is a genuine occupational requirement.

3. Nothing in this Act shall be construed as affecting any rule relating to religious practice, access to priesthood or membership in any religious order or other religious communities.

Scope of this Act.

4. (1) It shall be unlawful for employers to discriminate, directly or indirectly, against a person in the arrangements made to determine or in determining who should be offered employment or in the terms and conditions on which the employment is offered or in the determination of who should be dismissed from employment.

Discrimination in employment.

(2) Without prejudice to the provisions of article 26 of the Employment and Industrial Relations Act, employers shall also be deemed to have discriminated against a person if such employers –

Act XXII of 2002.

(a) manage the work, give promotions, distribute tasks, offer training opportunities or otherwise arrange the working conditions in a manner that employees are assigned a less favourable status than others on the basis of sex or because of family responsibilities; or

(b) alter the working conditions, or the terms of employment of employees to the detriment of such employees after such employees have invoked any right accorded to him under this Act or claimed the performance in his favour of any obligation or duty under this Act; or

(c) neglect their obligation to suppress sexual harassment as provided under subarticle (2) of article 9 of this Act.

5. (1) It shall be the duty of employers upon the request of any person claiming to have been sexually harassed or discriminated against, or upon a request made by the Commissioner acting upon a complaint or otherwise, to provide such person or the Commissioner, as the case may be, within ten working days of such a request with a report on the allegation made or the procedures used by the employers in the matter alleged to constitute such sexual harassment or discrimination.

Report on employment procedures.

(2) The employers shall be entitled to claim from the person requesting the report, reimbursement of such reasonable expenses incurred in drawing up and making the report:

Provided that such expenses may be recovered from the person responsible for such sexual harassment or discrimination if it is found that such sexual harassment or discrimination did in fact take place.

Banks and financial institutions.

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

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

Participation of spouses in the activities of a self employed partner.

7. (1) Spouses of self employed workers not being employees or partners, who participate in the activities of the self employed workers and perform the same or ancillary tasks as their spouse shall be entitled to receive from their spouse a fair compensation for their activity commensurate to the value of their contribution.

(2) The provisions of subarticle (1) of this article shall not apply where the system of Community of Acquests or Community of the Residue under separate administration subsists between the spouses.

Education and vocational guidance.

8. (1) It shall be unlawful for any educational establishment or for any other entity providing vocational training or guidance to discriminate against any person in -

(a) the access to any course, vocational training or guidance;
or

(b) the award of educational support for students or trainees;
or

(c) in the selection and implementation of the curricula; or

(d) in the assessment of the skills or knowledge of the students or trainees.

(2) Failure by the persons responsible for such establishments and entities to fulfil their obligation to suppress sexual harassment as provided under subarticle (2) of article 9 of this Act shall for the purposes of subarticle (1) of this article constitute discrimination.

(3) It shall be the duty of educational establishments and entities providing vocational training, within the limits of their competence to ensure that curricula and textbooks do not propagate discrimination.

9. (1) Without prejudice to the provisions of article 29 of the Employment and Industrial Relations Act, it shall be unlawful for any person to sexually harass other persons, that is to say:

Sexual harassment.
Act XXII of 2002.

(a) to subject other persons to an act of physical intimacy; or

(b) to request sexual favours from other persons; or

(c) to subject other persons to any act or conduct with sexual connotations, including spoken words, gestures or the production, display or circulation of any written words, pictures or other material, where the act, words or conduct is unwelcome to the persons to whom they are directed and could reasonably be regarded as offensive, humiliating or intimidating to the persons to whom they are directed; or

(d) the persons so subjected or requested are treated less favourably by reason of such persons' rejection of or submission to such subjection or request, it could reasonably be anticipated that such persons would be so treated.

(2) (a) Persons responsible for any work place, educational establishment or entity providing vocational training or guidance or for any establishment at which goods, services or accommodation facilities are offered to the public, shall not permit other persons who have a right to be present in, or to avail themselves of any facility, goods or service provided at that place, to suffer sexual harassment at that place.

(b) It shall be a defence for persons responsible as aforesaid to prove that they took such steps as are reasonably practicable to prevent such sexual harassment.

(3) Persons who sexually harass other persons shall be guilty of an offence against this article and shall, without prejudice to any greater liability under any other law, be liable on conviction to a fine (*multa*) of not more than one thousand liri or to imprisonment of not more than six months or to both such fine and imprisonment.

10. (1) Without prejudice to the provisions of article 26 of the Employment and Industrial Relations Act, it shall be unlawful for persons to publish or display or cause to be published or displayed any advertisement, or, otherwise to advertise a vacancy for employment which discriminates between job seekers or to request from job seekers information concerning their private life or family plans:

Discriminatory advertisement.
Act XXII of 2002.

Provided that the provisions of this subarticle shall not apply in such cases where employers prove that the work in connection with the situation advertised can only be performed by a person of a specific sex.

(2) It shall not be lawful for persons to publish or display or cause to be published or displayed any advertisement which promotes discrimination or which otherwise discriminate.

(3) Persons who act in breach of subarticle (1) or (2) of this article shall be guilty of an offence against this article and shall, on conviction, be liable to the penalties established for contraventions.

(4) For the purposes of subarticle (1) of this article, advertising includes disseminating information about the vacancy by word of mouth from person to person.

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

11. (1) The Prime Minister shall upon the advice of the Minister appoint a Commission to be called the National Commission for the Promotion of Equality for Men and Women (hereinafter referred to as “the Commission”) composed of a chairperson who shall be called the Commissioner for the Promotion of Equality (hereinafter referred to as “the Commissioner”) and six other members, at least three of whom shall be women.

(2) All the members of the Commission shall be appointed by the Prime Minister from among such persons appearing to him to be best suited to deal with issues of equality for men and women, and, or, administrative issues connected therewith.

(3) Every member of the Commission shall hold office for a term of two years and may be reappointed at the end of their term of office.

(4) The Prime Minister may terminate the appointment of members of the Commission if he is satisfied that:

(a) without the consent of the Commission the members failed to attend the meetings of the Commission during a continuous period of six months;

(b) the members are undischarged bankrupt persons, or have made an arrangement with their creditors, or are insolvent or have been found guilty of any voluntary crime against the person; or

(c) the members are incapable of carrying out their duties.

(5) The quorum of the Commission shall be of four members, one of whom shall be the Commissioner.

(6) 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.

(7) Decisions of the Commission shall be taken by the majority of the votes of the members present. The Commissioner shall also have a casting vote.

(8) Subject to the provisions of this Act and of any regulation made thereunder, the Commission may appoint sub-committees and, in general, shall regulate its own proceedings.

12. (1) The Commissioner, with the assistance of the Commission, shall have the following functions, that is to say:

Functions and status
of Commissioner
and of Commission.

(a) to identify, establish and update all policies directly or indirectly related to issues of equality for men and women;

(b) to identify the needs of persons who are disadvantaged by reasons of their sex and to take such steps within its power and to propose appropriate measures in order to cater for such needs in the widest manner possible;

(c) to monitor the implementation of national policies with respect to the promotion of equality for men and women;

(d) to liaise between, and ensure the necessary co-ordination between, government departments and other agencies in the implementation of measures, services or initiatives proposed by Government or the Commission from time to time;

(e) to keep direct and continuous contact with local and foreign bodies working in the field of equality issues, and with other groups, agencies or individuals as the need arises;

(f) to work towards the elimination of discrimination between men and women;

(g) to carry out general investigations with a view to determine whether the provisions of this Act are being complied with;

(h) to investigate complaints of a more particular or individual character to determine whether the provisions of this Act are being contravened with respect to the complainant and, where deemed appropriate, to mediate with regard to such complaints;

(i) to inquire into and advise or make determinations on any matter relating to equality between men and women as may be referred to it by the Minister;

(j) to provide assistance, where and as appropriate, to persons suffering from discrimination in enforcing their rights under this Act;

(k) to keep under review the working of this Act, and where deemed required, at the request of the Minister or otherwise, submit proposals for its amendment or substitution;

(l) to perform such other function as may be assigned by this or any other Act or such other functions as may be assigned by the Minister.

(2) On the appointment by the Prime Minister of the first members, the Commission shall have a legal personality separate from that of the Government and its judicial representation shall vest in the Commissioner:

Provided that the Commission may appoint any one or more of its members or any other person, to appear in its name and on its behalf in any judicial proceedings, and on any act, contract, agreement or document whatsoever.

Personnel of
the Commission.

13. (1) The Commission shall be administered by an Executive Director who shall act in accordance with such policies established by the Commission and such instructions as may be given to him by the Commissioner.

(2) The Executive Director shall hold office under such terms and conditions as the Commissioner, with the concurrence of the Minister, may establish. Where the Executive Director is a public officer seconded from the Government, such person shall have the right on the termination of the secondment to revert to the former post without loss of rank or seniority.

(3) The Commission may, after consultations with the Minister and subject to the approval of such Minister as to their number, remuneration and terms and conditions of service, appoint such officers as it deems fit.

(4) 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. Detailing of public officers.

(5) 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 cease to be public officers at an earlier date, and on the date specified in the direction or on the happening of any of the following events, that is to say -

(a) the acceptance by such public officers of an offer of permanent employment with the Commission; or

(b) the revocation by the Prime Minister of any direction made by him under this section in relation to such officers.

(6) Where a public officer is detailed for duty with the Commission under 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 shall for all other intents and purposes remain and be considered and treated as a public officer and without prejudice to the generality of the aforesaid such public officer:

(a) shall not during the time while he was so detailed -

(i) be precluded from applying for 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 the officer at the date on which such officer 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 such officer at the date the officer was so detailed or which would have become attached during the said period had such officer not been so detailed; and

(b) shall be entitled to have the 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 Cap. 93.
Cap. 58.

(c) any application made under subparagraph (i) of paragraph (a) above, shall be given the same consideration as if the applicant had not been so detailed.

(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 during the period in which the officer was so detailed.

Funding of the
Commission.

14. (1) The Commission shall be funded out of funds allocated to it by the Minister out of funds voted by Parliament for activities under the Ministry or out of funds that may be donated or allocated to it from other sources in Malta or abroad.

(2) At least two months prior to the end of its financial year the Commission shall submit to the Minister, a business plan (including a financial plan) covering the proposed activities of the Commission during the following financial year. When approved by the Minister and by the Minister responsible for finance, such business plan, shall be the approved budget of the Commission.

Accounts.

(3) The Commission shall keep proper accounts of its income and expenditure and shall prepare and send to the Minister statements of accounts in relation to each of its financial years.

Audit.

(4) The accounts of the Commission shall be audited by an auditor or auditors appointed by it with the approval of the Minister:

Provided that the Minister responsible for finance may require the books and records of the Commission to be audited or examined by the Auditor General who for the purpose shall have power to carry out such physical checking or other verifications, and may demand and acquire such information, as may be necessary.

(5) The financial year of the Commission shall commence on the 1st January and shall end on the 31st December of each year:

Provided that the first financial year of the Commission shall begin on the coming into force of this Act and end on the 31st December of the next following year.

Annual
report.

15. (1) As soon as practicable after the end of every calendar year, but in any case not later than the 31st day of March of the following year, the Commission may submit to the Minister a report of its activities during the year (such report hereinafter in this section referred to as an “Annual Report”).

(2) Each 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, initiatives, investigations and initiatives undertaken to suppress discrimination and to promote equality for men and women.

(3) The Minister shall, as soon as practicable but in any case not later than two months after its submission to him by the Commission, cause a copy of the Annual Report together with a copy of the then current business and financial plan of the Commission to be laid on the Table of the House.

16. The Commission shall be exempt from any liability to pay tax, in respect of its income, under the Income Tax Act. Exemption for Income Tax, Cap 123.

17. (1) The Commissioner may initiate investigations on any matter involving an act or omission that is allegedly unlawful under the provisions of this Act. Complaints and investigation.

(2) The Commissioner may also initiate investigations on the receipt of a complaint in writing by persons who claim to be the victims of an act or omission contrary to the provisions of this Act.

(3) If it appears to the Commissioner that persons who wish to make a complaint under subarticle (2) of this article require assistance to formulate the complaint, the Commissioner shall take or order the taking of such reasonable steps as may be necessary to assist such persons in making the complaint.

18. (1) After carrying out an investigation the Commissioner may - Action by the Commissioner following an investigation.

(a) dismiss the complaint, or

(b) find that the complaint is proved and thereupon, shall:

(i) where the action complained of constitutes an offence, make a report to the Commissioner of Police for action on his part; or

(ii) where the action complained of does not constitute an offence, call upon the person against whom the complaint is directed to redress the situation, and mediate between the complainant and such person to settle the matter;

(2) The findings of the Commissioner under subarticle (1) shall not be binding on the complainant and the person against whom the complaint is directed unless they expressly declare in writing to be so bound.

(3) In respect of general investigations or of investigations upon complaints by the Commissioner, the Minister may prescribe:-

(a) the procedure whereby the Commissioner may require any person to furnish such information as may be necessary for the investigation, as well as the time within which and the manner in which such information is to be furnished;

(b) the procedures to be followed where a person fails to supply such information the circumstances, in which following an investigation as aforesaid, the Commission may itself take legal action.

(4) Regulations under subarticle (3) may provide, in the case of an alleged discrimination by one person against another, the arrangements whereby the Commission may itself refer the matter to the competent civil court or to the Industrial Tribunal for redress:

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

(5) The Commissioner and every other member of the Commission or any member of the staff of the Commission shall treat any matter coming to their knowledge in the course of an investigation as confidential and shall not disclose the same unless such disclosure is necessary in the course of a prosecution or an action for redress under this Act.

Civil
proceedings.
Act XXII of 2002.

19. (1) Without prejudice to the provisions of article 30 of the Employment and Industrial Relations Act, a person who alleges that any other person has committed in his or her regard any act which under any of the provisions of this Act is unlawful, shall have a right of action before the competent court of civil jurisdiction requesting the court to order the defendant to desist from such unlawful acts and, where applicable, to order the payment of compensation for such damage suffered through such unlawful act.

(2) In any proceedings under subarticle (1) of this article it shall be sufficient for the plaintiff to prove that he or she has been treated less favourably on the basis of sex or because of family responsibilities

and it shall be incumbent on the defendant to prove that such less favourable treatment was justified in accordance with the provisions of this Act.

20. (1) The Minister may make regulations generally for giving effect to the provisions of this act, and the enforcement thereof, and in particular, but without prejudice to the generality of the foregoing:-

Power to
make
regulations.

(a) for providing for any matter which is required or authorised by the Act to be prescribed; and

(b) for providing for any matter relating to equality between men and women; and

(c) for the exemption of any person, or class of persons or body, from the requirements of article 4 (1) of this Act in so far as it relates to article 4 (1) paragraphs (a) and (b), article 5 and article 10 of this Act as may be specified in the aforesaid regulations; provided that any such exemption shall only be prescribed by the Minister after consultation with the Commission and provided that such exemption shall be for a specified period of time which can be renewed by the Minister after consultation with the Commission.

Passed by the House of Representatives at Sitting No. 858 of the 27th January, 2003.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives