I assent.

(L.S.)

GUIDO DE MARCO
President

19th January, 2000

ACT No. I of 2000

Equal Opportunities (Persons with Disability) Act.

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:-

PART I

Preliminary

Short title and commencement.

1. This Act may be cited as the Equal Opportunities (Persons with Disability) Act, 2000, and shall come into force on such date as the Minister responsible for social welfare policy may by notice in the Gazette establish and different dates may be so established for different provisions and different purposes thereof.

Interpretation.

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

"accommodation" includes residential or business accommodation, and structural adaptation or modifications to existing buildings;

"auxiliary aid" means any palliative or therapeutic device, any prosthetic aid, or any other device or aid that may be required by a person with a disability specifically because of that disability;

"Commission" means the National Commission Persons with Disability established in terms of section 21 of this Act, and includes

any officer of the Commission duly authorised by it to act on its behalf for a specific purpose or class of purposes under this Act;

"compulsory school age", in relation to a person means the age at which such person is subject to the provisions of the Education Act insofar as these relate to such age;

Cap. 327.

"contract of service" means an agreement of employment between two persons, or between one person and an association of persons, whether written, oral or implied, whereby the employee shall be under an obligation to render to the employer services for definite hours, be it on a full-time, part-time or temporary basis, at a specified wage, salary, remuneration in kind or any other benefit or privilege, subject to the right of the employer to exercise control, supervision, direction, and any form of disciplinary action, as may be allowed by law, over the employee as to the method of performance of his duties;

"disability" means, a physical or mental impairment that substantially limits one or more of the major life activities of a person;

"educational authority" means a body or person administering an educational institution;

"educational institution" means a kindergarten, school, college, university or other institution at which education or training is provided;

"employment" means work under a contract of service;

"employment agency" means any person who, or association of persons that, whether for payment or not, assists persons to find employment or other work or assists employers to find employees or workers, and includes any activity carried out in Malta for the recruitment of persons for employment in Malta or outside Malta;

"family member", in relation to an individual, includes –

(a) the parents;

(b) the spouse;

(c) a son, daughter, brother or sister aged eighteen (18) years or over; and

(d) a legal guardian or curator of such individual;

"impairment" in the context of disability, means any loss, restriction or abnormality of psychological, physiological, or anatomical structure or function;

"Minister" means the Minister responsible for social policy and its development, and includes any person duly authorised by the said Minister to act on his behalf for a specific purpose or class of purposes under this Act;

"pensionable age", in relation to a person, means any age during which such person is entitled to a pension in respect of retirement under the provisions of the Social Security Act; Cap 318.

"qualified person with a disability" means -

(a) in relation to any employment as is referred to in Title 1 of Part III of this Act, a person with a disability who is over compulsory school age but has not yet reached pensionable age, and who, with or without any accommodation in accordance with the aforementioned Title, can perform the essential functions of the employment position that he holds or applies for or can hold or apply for; and

(b) in relation to the provision of goods, facilities or services as are referred to in Title 4 of Part III of this Act, a person with a disability who meets the essential eligibility requirements for the provision of such goods, facilities or services or for participation in such programmes or activities as may be provided by any person or body in terms of the aforementioned Part of this Act.

PART II

Disability Discrimination

Disability discrimination because of less favourable treatment.

3. (1) A person shall be discriminating against another person on the grounds of disability in any circumstances relevant for the purposes of any provision of this Act, if :

(a) in circumstances which are similar or are not materially different, he treats or proposes to treat a person who has a disability less favourably than he treats or would treat a person who does not have such a disability; or

(b) he treats or proposes to treat a person less favourably on the basis of a characteristic that appertains generally to persons

who have such a disability or a presumed characteristic that is generally imputed to persons who have such a disability.

(2) For the purposes of paragraph (a) of subsection (1) of this section, the fact that different accommodation and, or, services may be required by the person with a disability shall in no case be deemed as constituting circumstances which are materially different.

Disability discrimination because of non-compliance with requirement or condition.

4. A person shall be discriminating against another person on the grounds of disability if such other person is required to comply with a requirement or condition with which the majority of persons who do not have the disability comply or are able to comply, and

(a) which is unreasonable in the circumstances of the case; and

(b) with which such other person does not comply or is unable to comply.

Disability discrimination because of auxiliary aids.

5. A person shall be discriminating against another person on the grounds of disability if he treats or proposes to treat such other person less favourably than he treats or would treat others who do not have such a disability because of the fact that such other person is accompanied by or possesses an auxiliary aid that is used by such other person or because of any matter related to that fact, whether or not it is the practice to treat in such less favourable manner any person who is accompanied by or is in possession of such an auxiliary aid.

Disability discrimination because of assistance.

6. A person shall be discriminating against another person on the grounds of disability if he treats or proposes to treat such other person less favourably than he treats or would treat others who do not have such a disability because of the fact that such other person is accompanied by -

(a) an interpreter; or

(b) a reader; or

(c) an assistant; or

(d) a carer,

who provides interpretative, reading or other services to such other person because of the disability of such other person or because of any matter related to that fact, whether or not it is the practice to treat less favourably any person who is accompanied by an interpreter, a reader, an assistant or a carer, as the case may be.

PART III

Prohibition of Disability Discrimination

Title 1 - Employment

7. (1) No employer shall discriminate on the grounds of disability against a qualified person with a disability in regard to – Employment.

(a) procedures relative to applications for employment;

(b) the hiring, promotion or dismissal of employees;

(c) employee compensation;

(d) job training; and

(e) any other terms, conditions and privileges related to employment

(2) For the purposes of subsection (1) of this section and without prejudice to the generality of Part II of this Act, an employer shall be considered to discriminate on the grounds of disability against a person as is referred to therein, if such employer unreasonably –

(a) limits, segregates or classifies such a person in a way that adversely affects the opportunities or status of such a person ; or

(b) participates in any contract, or other arrangement or relationship, the implementation of which has the effect of subjecting such a person to discrimination; or

(c) uses standards, criteria or methods of administration that have an adverse effect on the opportunities, status or benefits of such a person; or

(d) fails to make reasonable accommodation for the disability of such a person, unless the employer can prove that the required accommodation would unduly prejudice the operation of the trade or business run by such employer; or

(e) denies employment opportunities to such a person where such denial is based on the need of the employer to make reasonable accommodation for the disability of such a person; or

(f) uses qualification standards, employment tests, or other selection criteria that screen out or tend to screen out a person or a class of persons with a disability unless the employer can prove that the standards, tests or other selection criteria are an essential qualification or requirement for the position in question; or

(g) fails to select and to administer tests concerning employment in the manner most effective to ensure that, when the test is administered to such a person and such person happens to have a disability that impairs sensory, manual or speaking skills, the results of such tests accurately reflect the skills or aptitudes of such a person.

(3) Whenever an employer excludes from any employment or continuation of employment a person who is qualified to take up such employment or to continue in such employment or otherwise limits in any way the opportunities, status or benefits of such a person because of the disability of another person with whom such person is known or believed to have a relationship or association, such exclusion or limitation shall, for the purposes of this section, be deemed as if it were a discrimination on the grounds of disability against a person as is referred to in subsection (1) of this section.

(4) For the purposes of paragraph (d) of subsection (2) of this section, the factors to be considered in determining whether an accommodation would unduly prejudice the operation of the trade or business run by the employer shall include:-

(a) the nature and cost of the accommodation;

(b) the overall financial resources of the workplace involved in the making of the accommodation;

(c) the number of employees at the workplace requiring accommodation;

(d) the effect on expenses and resources and the impact of the required accommodation upon the operation of the workplace;

(e) the overall financial resources of the employer;

(f) the overall size of the business of the employer including the number of employees, and the number, type and location of its workplaces;

(g) the type of operation or operations of the employer, including the composition, structure and functions of the work-force; and

(h) the availability of financial assistance from public funds to defray the expense of any accommodation.

(5) For the purposes of this section, the term "make reasonable accommodation" includes –

(a) making existing facilities used by employees readily accessible to and usable by persons with disabilities; and

(b) restructuring jobs, instituting part-time or modified work schedules, reassigning vacant positions, acquiring or modifying equipment or devices, appropriately adjusting or modifying examinations, training materials or policies, providing qualified readers or interpreters, and making any other similar accommodation for a person with a disability.

Medical examinations.

8. (1) Save as provided for in subsections (2) and (3) of this section, an employer shall not conduct or require any medical examination or otherwise make any enquiries of an applicant for employment or of any of his employees as to whether such applicant or employee is a person with a disability or as to the nature or severity of such disability except to ascertain the ability of the applicant to perform job-related functions or to identify the cost involved in any adaptations that may be required as a result of such disability.

(2) After an offer of employment has been made to an applicant for employment and, prior to the commencement of such employment, an employer may conduct or require a medical examination or make the offer of such employment conditional on the results of such examination if all applicants for this same kind of employment are made subject to such an examination.

(3) Whenever an examination as is referred to in subsections (1) and (2) of this section is in fact conducted, any information obtained regarding the medical condition and history of the applicant in relation to his disability shall be -

(a) collected and maintained on separate forms;

(b) kept in separate medical files; and

(c) treated as a confidential medical record.

(4) Notwithstanding the provisions of subsection (3) of this section, if such applicant is subsequently employed, nothing shall preclude his employer from informing, if he so deems fit,

(a) supervisors and managers within the same establishment regarding any necessary restrictions on the work or duties of such applicant and any necessary accommodations that may be required and,

(b) first aid and safety personnel regarding any emergency treatment that might be required by such applicant because of his disability or regarding any special precautions that might need to be taken because of the said disability.

(5) Further to the provisions of subsection (1) of this section, but subject to the provisions of subsections (3) and (4) of this section, an employer may also conduct voluntary medical examinations, including the compilation of voluntary medical histories, which form part of a health programme for employees.

(6) For the purposes of this section, any medical examination as is referred to therein shall include any medical and, or, psychological assessment that may be necessary in the circumstances of the case.

Trade Unions. Cap 266.

9. It shall be unlawful for a registered organisation under the Industrial Relations Act, or for the committee of management or a member of the committee of management of such a registered organisation, to discriminate against -

(a) a person, on the grounds of the disability of such person or a disability of any of the family members of such person -

(i) by refusing or failing to accept his application for membership; or

(ii) in the terms or conditions on which such organisation is prepared to accept his application for membership; and, or

(b) a member of such registered organisation, on the grounds of the disability of such member or a disability of any of his family member by -

(i) denying him access to any benefit provided by the organisation or limiting his access to such benefit; or

(ii) depriving him of membership of the organisation; or varying the terms of such membership.

Employment agencies.

10. (1) It shall be unlawful for an employment agency to discriminate against a person on the grounds of his disability or a disability of any of his family members:

(a) by refusing to provide such person with any of its services; or

(b) in the terms or conditions it offers to provide such person with any of its services; or

(c) in the manner in which it provides such person with any of its services.

(2) For the purposes of this section, an employment agency shall not be deemed to discriminate against a person on the grounds of his disability, if, taking into account his training, qualifications and experience relevant to the work sought, and all other relevant factors that it finds reasonable to take into account, such person would, because of his disability, be unable to carry out the inherent requirements of the work sought.

Title 2 - Education

Education.

11. (1) Save as provided for in subsections (2) and (3) of this section, it shall be unlawful for an educational authority or institution to discriminate against -

(a) an applicant for admission as a student on the grounds of his disability or a disability of any of his family members -

(i) by refusing or failing to accept his application for such admission, or

(ii) in the terms or conditions on which such educational authority or institution is prepared to admit him as a student; and, or,

(b) a student on the grounds of his disability or disability of any of his family members by -

(i) denying him access, or limiting his access, to any benefit provided by such educational authority or institution; or

(ii) expelling him from the educational institution he is attending.

(2) Where an educational authority or institution has been wholly or primarily established for students who have a particular or a specific disability, such educational authority or institution may restrict admission to such an institution to persons who only have that particular or specific disability and refuse admission to other persons who do not have that particular or specific disability but another disability.

(3) Where the admission of a person with a disability as a student in an educational institution would necessitate the procurement of services or facilities that are not required by students who do not have a disability, the educational authority or institution concerned may refuse or fail to accept the admission as a student of such a person in that educational institution if such authority or institution proves that the admission of such person in such institution would require services or facilities the provision of which would impose unjustifiable hardship on the educational institution or authority concerned.

Title 3 - Access

Access to premises.

12. (1) Save as provided for in subsection (2) of this section, it shall be unlawful for any person to discriminate against another person on the grounds of the disability of such other person or a disability of any of his family members:

(a) by refusing to allow such other person access to, or the use of any premises, or of any facilities within such premises, that the public or a section of the public is entitled or allowed to enter or use (whether on payment or not); or

(b) in the terms or conditions on which such person is prepared to allow such other person access to, or the use of any such premises or facilities; or

(c) in relation to the provision of means of access to such premises including any necessary alterations to such premises or facilities so as to make such access possible; or

(d) by requiring such other person to leave such premises or to cease to use such facilities or to unjustifiably restrict in any way such use.

(2) Where -

(a) such premises or facilities as aforesaid in this section are designed or constructed in such a way as to render them inaccessible to a person with a disability; and

(b) any alteration of such premises or facilities would impose unjustifiable hardship on whoever is required to provide such an access,

then it shall not be unlawful for such a person to discriminate against a person with a disability by refusing him such access to or use of any premises or facilities as are referred in paragraph (a) of subsection (1) of this section or to refuse to carry out any alterations to such premises or facilities that would otherwise render such premises or facilities accessible to a person with a disability.

Title 4 - Provision of Goods, Facilities or Services.

Provision of goods and services to qualified persons with a disability.

13. (1) Save as provided for in subsection (3) of this section, no qualified person with a disability shall, on the grounds of disability, be excluded from participation in or be denied the benefits of the programmes or activities of any person or body in relation to the goods, facilities or services to which this section applies or be discriminated against by any person or body providing such goods, facilities or services which the qualified person seeks to obtain or use.

(2) This section applies to the provision (whether on payment or not) of goods, facilities and services to the public or any section of the public and includes in particular, but without prejudice to the generality of the foregoing -

(a) access to and use of any place which members of the public or a section of the public are permitted to enter;

(b) the provision of property rights and of housing;

(c) accommodation in a hotel, boarding house or similar establishment;

(d) facilities by way of banking, insurance or for grants, loans, credit or finance;

(e) participation in occupational and other pension schemes;

(f) facilities for education;

(g) facilities for entertainment, sports or recreation;

(h) facilities for transport or travel by land, sea or air;

(i) the services of any profession or trade, or of any local or other public authority;

(j) membership of associations, clubs or other organisations;

(k) enjoyment of civic rights and performance of civic duties; and

(l) such other facilities and services as the Minister may prescribe by regulations made under this Act.

(3) The provisions of subsections (1) and (2) of this section shall not apply where compliance with such provisions in relation to a qualified person with a disability would be impracticable or unsafe and could not be made practicable and safe by reasonable modification to rules, policies or practices, or the removal of architectural, communication or transport barriers or the provision of auxiliary aids or services.

Title 5 - Accommodation

Accommodation.

14. (1) Save as provided for in subsections (2) and (3) of this section no person, whether as principal or agent, shall discriminate against another person on the grounds of the disability of such other person or a disability of any of the his family members -

(a) by refusing the application of such other person for accommodation; or

(b) in the terms or conditions on which the accommodation is offered to such other person; or

(c) by deferring the application of such other person for accommodation or by according to such other person a lower order of precedence in any list of applicants for that accommodation; or

(d) by denying such other person access, or limiting the access of such other person, to any benefit associated with accommodation occupied by such other person; or

(e) by evicting such other person from any accommodation that is occupied by such other person; or

(f) by subjecting such other person to any other detriment in relation to accommodation occupied by such other person; or

(g) by refusing to permit such other person to make reasonable alterations to accommodation occupied by such other person if -

(i) such other person has undertaken to restore at his own expense the accommodation to its condition before alteration on leaving the accommodation and the action required to restore the accommodation to its condition before alteration, is, in fact, practicable;

(ii) the alteration does not involve the alteration of premises occupied by other persons.

(2) The provisions of subsection (1) of this section shall not apply if -

(a) the person who provides or proposes to provide the accommodation or a near relative of that person, resides and intends to continue to reside on those premises; and

(b) the accommodation provided in those premises could cater for no more than four persons.

(3) The provisions of subsection (1) of this section shall also not apply if the provision of accommodation in premises where special services or facilities would be required by the person with a disability would impose unjustifiable hardship on the person providing or proposing to provide the accommodation whether as principal or agent.

Title 6 - Exemptions

Positive discrimination.

15. Nothing under this Act shall in any way be constructed as prohibiting any form of action that may be taken in the circumstances of the case by any person, authority or institution to ensure that persons who have a disability are in one way or another -

(a) granted equal opportunities with other person who do not have a disability; or

(b) accorded special treatment commensurate with their special needs in the provision of goods, facilities, services or opportunities in order to meet such special needs; or

(c) allowed grants, benefits or programmes, whether direct or indirect, to meet their special needs,

with a view to the integration of such persons with other persons who do not have a disability in matters related to employment, education, accommodation, the provision of goods, services and facilities, the administration of laws and their capacity to lead an independent life within the community as a whole.

Insurance. coverage.

16. (1) Notwithstanding any of the foregoing provisions of this Act, a person shall not be deemed to discriminate against another person on the grounds of disability of such other person by refusing to offer to such person an insurance policy or by offering discriminatory terms or conditions for insurance coverage, provided that:

(i) such decision is based on actuarial or statistical data which is reasonably relevant to the assessment of the risk insured; and

(ii) whenever such actuarial or statistical data is not available and cannot reasonably be obtained, such decision is reasonable having regard to any other relevant factors which are relevant to the assessment of the risk to be insured.

(2) A person may, for the purpose of this section only, require from a person who requests insurance coverage, any further information relevant to the assessment of the risk to be insured.

Acts done under authority.

17. Nothing under this Act shall in any way be construed as prohibiting any person, authority or institution from complying with an order or award of a court or tribunal.

Infectious diseases.

18. Nothing under this Act shall in any way be construed as prohibiting any person, authority or institution from discriminating against a person on the grounds of his disability if -

(a) such disability constitutes an infectious or a contagious disease; and

(b) discrimination as aforesaid is considered by the health authorities as imperative in the interests of public health.

19. The provisions of this Act shall not affect any provision in a charitable instrument that confers charitable benefits, or enables charitable benefits to be conferred, wholly or in part on persons who have a disability or a particular disability. Exemption for charities.

PART IV

Test of Reasonableness

20. (1) For the purposes of this Act, in determining the reasonableness of - Test of reasonableness.

(a) any modification to rules, policies or practices; or

(b) the removal of architectural, communication or transport barriers; or

(c) the provision of auxiliary aids or services,

regard shall be had as to whether such actions could be undertaken without unjustifiable hardship.

(2) The factors to be considered in determining whether such actions could be undertaken without unjustifiable hardship shall include -

(a) the nature and cost of the actions in question;

(b) the overall financial resources of the person, body, authority or institution concerned and the effect on expenses and resources or the impact of such actions upon the operations of such person, body, authority or institution; and

(c) the availability of grants from public funds to defray the expense of the said actions.

PART V

The National Commission Persons with Disability

21. (1) The Prime Minister shall upon the advice of the Minister appoint a Commission, called the National Commission Persons with Disability (hereinafter referred to as the "Commission") composed of not less than fourteen members. Seven of the members shall be appointed from amongst such persons appearing to the Prime Minister to best Appointment and composition of the National Commission Persons with Disability.

represent the Ministries responsible for Social Policy, Labour, Health, Education, Housing and Economic Planning. Another seven of the members shall be appointed from among such persons who, in the opinion of the Prime Minister, best represent voluntary organisations working in the field of disability issues.

(2) At least one half of the total number of the members of the Commission shall themselves be persons with a physical disability or family members of persons with a mental disability and if possible, there shall be a balanced representation of women and men.

(3) The Prime Minister shall appoint a Chairman and a Deputy Chairman from amongst the members of the Commission one of whom shall himself be a person with a disability or a family member of a person with a mental disability.

Functions of the Commission.

22. The Commission, whilst paying particular attention to the different needs of children, women and men with disability, shall: -

(a) identify, establish and update all national policies directly or indirectly related to disability issues;

(b) identify the needs of persons with disabilities, their families and voluntary bodies working in the field of disability issues and to take all necessary steps or propose appropriate measures in order to cater for such needs as much as possible;

(c) ensure that all government programmes concerning the affairs and interests of persons with disabilities, their families and voluntary bodies working in the field of disability issues, are implemented in accordance with national policies for disability issues;

(d) ensure the necessary co-ordination between all government departments and agencies in implementing measures, services or initiatives proposed by government or proposed by the Commission from time to time;

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

(f) monitor the provision of services offered by government or its agencies or by any other person or group of persons, where the clients of such services are persons with disability;

(g) work towards the elimination of discrimination against people with disabilities;

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

(i) investigate such complaints as may be made to them of failure to comply with any provision of this Act in an individual case and, where it seems appropriate, conciliate in relation to such complaints;

(j) inquire into, and make determinations on, matters referred to it by the Minister;

(k) provide, where and as appropriate, assistance, including legal and financial assistance, to persons with disabilities in enforcing their rights under this Act;

(l) keep under review the working of this Act and, when deemed fit by the Commission or so required by the Minister, draw up and submit to the Minister proposals for amendments to same;

(m) examine enactments, and (when requested to do so by the Minister) propose enactments, for the purpose of ascertaining whether the enactments or proposed enactments are or would be, inconsistent with or contrary to the objects of this Act, and to report to the Minister the results of any such examination;

(n) provide all such services that may be necessary or required for the Commission to attain its objectives;

(o) collate, analyse and publish statistics related to the disability sector which, *inter alia*, indicates the national level achieved in inclusive policy.

Legal status of the Commission.

23. On the appointment by the Prime Minister of the first members, the Commission shall have its own legal personality and its legal and judicial representation shall vest in the Chairman or the Deputy Chairman; 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.

Tenure of office of Commission members.

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

(2) The Prime Minister may terminate the appointment of a Commission member if he is satisfied that -

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

(b) he 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 a person;

(c) he is incapable of carrying out his duties;

(d) if, being a member chosen on the basis of his representative status, he ceases to retain such representative status.

Proceedings and business.

25. (1) The quorum of the Commission shall be of five members, one of whom shall be the Chairman or the Deputy Chairman.

(2) 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.

(3) Decisions of the Commission shall be taken by majority of the votes of the members present. The Chairman or, in his absence, the Deputy Chairman, shall also have a casting vote.

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

Personnel of the Commission.

26. (1) The Commission shall be administered by a full time Executive Director who shall hold office under such terms and conditions as the Commission, with the concurrence of the Minister, may establish. Where the Executive Director is a public officer seconded from the government, he shall have the right, on the termination of his secondment, to revert to his former post without loss of rank or seniority.

(2) The Commission may, after consultation with the Ministe , appoint such officers as it may think fit, subject to the approval of the Minister as to numbers and as to remuneration and other terms and conditions of service.

(3) The Commission shall deal with all documents and other information in its possession or under its control, or otherwise coming to its notice, concerning persons with disability, and all matters and things relating to such persons, as confidential and the obligation of confidentiality imposed upon the Commission shall extend to all the members of the Commission, the Executive Director and to all the officials and servants of the Commission.

Detailing of public officers for duty with the Commission.

27. (1) The Prime Minister may, at the request of the Commission, from time to time direct that any public officer 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 officer specified therein shall, unless the officer retires 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 officer of an offer of transfer to the service of, and permanent employment with the Commission made in pursuance of subsection (8) of this section; or

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

(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 subsection (2) of this section 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 section, 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.

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(6) Where an application is made as provided in subparagraph (i) of paragraph (a) of subsection (5) of this section, 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, with the approval of the Prime Minister, offer to any public officer detailed for duty with the Commission under subsection (2) of this section 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 him pursuant to this section 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 him and the Commission; and for the purposes of the

Cap. 93.
Cap. 58.

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.

Financing of the Commission.

28. 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. If approved by the Minister and by the Minister of Finance, such business plan, shall be the approved budget of the Commission.

Accounts and audit.

29. (1) The Commission shall keep proper accounts of their income and expenditure and shall prepare and send to the Minister statements of account in relation to each financial year of the Commission.

(2) The accounts of the Commission shall be audited by an auditor or auditors to be appointed by it and approved by the Minister:

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

(3) 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 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.

Annual Report.

30. (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 shall submit to the Minister a report on its activities during the year, hereinafter 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 scope of the duties of the Commission and shall also include activities and initiatives undertaken to examine and, or, provide for the different needs of children, women and men with disabilities.

(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 such report together with copies of the current Commission business plan and the financial plan, to be laid before the House of Representatives.

Exemption from tax and duties.

31. The Commission shall be exempt from any liability for the payment of income tax.

PART VI

Complaints, Investigations and Enforcement

Complaints and investigations.

32. (1) The Commission may itself initiate investigations on any matter involving an act that is allegedly unlawful under any of the provisions of this Act.

(2) The Commission may also initiate investigations on the receipt of a complaint in writing alleging that a person has committed an act that is unlawful under any of the provisions of this Act. Such complaint may be lodged with the Commission by:

(a) any person aggrieved by the act; or

(b) any person who is the parent, or legal curator or family member of a person with a mental disability.

(3) If it appears to the Commission that a person wishes to make a complaint under subsection (2) of this section and that person requires assistance to formulate the complaint orally and, or, in writing, it shall be the duty of the Commission to take reasonable steps to provide appropriate assistance to that person.

Investigation procedures.

33. (1) In respect of general investigations or investigations of complaints undertaken by the Commission, the Minister shall prescribe by regulations -

(a) the procedure whereby the Commission may require a person to furnish any information as is necessary for the investigations aforesaid in this section, and the time, manner, and form in which such information is to be furnished;

(b) the procedures to be followed where a person fails to supply such information;

(c) the circumstances in which, following these investigations aforesaid, the Commission may take appropriate legal action.

(2) Any regulations made under subsection (1) of this section shall prescribe, in the case of an alleged discrimination by one person against another, the arrangements whereby the Commission may itself refer the matter to the First Hall of the Civil Court:

Provided that no such referral shall prevent an individual having a legal interest from making a claim of discrimination the subject of an action, including an action for damages before the said Court.

Civil proceedings.

34. A claim by any person having a legal interest in the matter, made personally or through his or her legal representative, that another person has committed an unlawful act of discrimination against him or her as provided for under this Act shall be subject to civil action in like manner as any other claim for damages; and any damages in respect of an unlawful act of discrimination may include compensation for injury to feelings whether or not they include compensation under any other head, up to a maximum of two hundred liri as the court may declare.

PART VII

Miscellaneous

Regulations.

35. (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 :-

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

(b) for the exemption of any person, or class of persons or body, from any of the requirements of Part III of this Act as may be specified in the aforesaid regulations; provided that any such exemption shall only be declared 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.

(2) Any regulations made by virtue of this section may specify different periods of exemption in relation to:-

(a) the provision of different goods, facilities or services;

(b) different persons or bodies; or

(c) different classes of persons or bodies.

Passed by the House of Representatives at Sitting No. 220 of 17th January, 2000.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives