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I assent.

(L.S.)

GEORGE VELLA
President

17th August, 2021

ACT No. LVIII of 2021

AN ACT to amend the Equal Opportunities (Persons with Disability) Act, and to provide for other matters ancillary or consequential thereto, Cap. 413.

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:

Short title.

Cap. 413.

Amendment of
article 2 of the
principal Act.

1. The short title of this Act is the Equal Opportunities (Persons with Disability) (Amendment) Act, 2021 and this Act shall be read and construed as one with the Equal Opportunities (Persons with Disability) Act, hereinafter referred to as the "principal Act".

2. Article 2 of the principal Act shall be amended as follows:

(1) The definitions "accommodation", "alteration" and "assistive means" shall be deleted.

(2) The definition "child" shall be deleted.

(3) The definitions "communication", "compulsory school age" and "contract of service" shall be deleted.

(4) The definition "Convention" shall be substituted by the following:

" "Convention" means the United Nations Convention on the Rights of Persons with Disabilities Act;". Act No. LIX of 2021.

(5) The definitions "disability", "educational authority", "educational institution", "employment", "employment agency", "foster carer", "harassment", "impairment", "language" and "mental disorder" shall be deleted.

(6) The definition "minor" shall be deleted.

(7) Immediately after the definition "Minister" there shall be added the following new definitions:

" "Optional Protocol" shall have the same meaning as assigned to it in article 2 of the United Nations Convention on the Rights of Persons with Disabilities Act; Act No. LIX of 2021.

"Panel" means the Panel established in terms of article 33B;

"person with disability" shall have the same meaning assigned to it in article 2 of the United Nations Convention on the Rights of Persons with Disabilities Act;". Act No. LIX of 2021.

(8) The definitions "pensionable age", "property", "qualified person with a disability", "reasonable accommodation" and "rights of persons with disability" shall be deleted.

(9) Immediately after the definition "person with disability", as added, there shall be added the following new definitions:

" "persons with lived experience of disability" means any persons who would have experienced disability through regular interactions in their personal or professional lives with persons with disability;

"substantive Convention rights" shall have the same meaning as assigned to it in article 2 of the United Nations Convention on the Rights of Persons with Disabilities Act;". Act No. LIX of 2021.

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(10) Immediately after the definition "voluntary organizations" there shall be added the following new definition:

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" "UNCRPD Committee" shall have the same meaning as assigned to it in article 2 of the United Nations Convention on the Rights of Persons with Disabilities Act."

Deletion of Part II of the Principal Act.

3. Part II of the principal Act shall be deleted.

Deletion of Part III of the Principal Act.

4. Part III of the principal Act shall be deleted.

Deletion of Part IV of the Principal Act.

5. Part IV of the principal Act shall be deleted.

Amendments of Part V of the principal Act.

6. Part V of the principal Act shall be amended as follows:

Act No. LIX of 2021.

(1) In sub-article (1) of article 20 of the principal Act the words "determining the reasonableness of any action to be undertaken by any person in the fulfilment of the provisions of this Act," shall be substituted by the words "determining the reasonableness of any action to be undertaken by any person in the fulfilment of the provisions of this Act or of the United Nations Convention on the Rights of Persons with Disability Act,".

(2) Article 20A of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof the words "for a period of three years" shall be deleted;

(b) sub-article (2) thereof shall be substituted by the following:

"(2) The Board shall be convened whenever necessary, following a request by the Commissioner, and for the purposes of every such convocation, a panel of not less than three (3) and not more than seven (7) persons shall be appointed, including the Chairperson and Vice Chairperson of the Board.";

(c) sub-article (3) thereof shall be substituted by the following:

"(3) The majority of persons seated on a Board for every convocation of the said Board shall be persons with disability, or persons supporting persons with disability who cannot represent themselves, and such persons shall be representatives from public entities, experts in the sector, including technical experts, or representatives from organisations of persons with disability, and their selection for a particular convocation shall best reflect the subject-matter on the agenda of a particular Board meeting.";

(d) sub-article (4) thereof shall be substituted by the following:

"(4) The Board shall be presided by the Chairperson, assisted by the Vice Chairperson, who shall both be persons with disability, appointed by the Commissioner for renewable periods of three (3) years, who shall retain their roles throughout said period for all convocations of the Board convened throughout the said period.";

(e) in sub-article (11) thereof the words "in the case where the person wishing to make a request needs help to formulate such request in an oral form and, or in writing, it shall be the duty of the Commissioner to take reasonable steps to provide appropriate help" shall be substituted by the words "in the case where the person intending to make a request needs support to formulate such request in an oral form and, or in writing, it shall be the duty of the Commissioner to take reasonable steps to provide appropriate support".

7. Part VI of the principal Acts shall be amended as follows:

Amendments to
Part VI of the
principal Act.

(1) Paragraph (1) of article 22 of the principal Act shall be amended as follows:

(a) sub-paragraphs (a) and (b) thereof shall be deleted;

(b) in sub-paragraph (c) thereof the word "ensure" shall be substituted by the words "effect monitoring in order to ascertain";

(c) sub-paragraphs (d) and (e) thereof shall be deleted;

(d) in sub-paragraph (i) thereof immediately after the words "conciliate in relation to such complaints" there

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shall be added the words ", or otherwise take relevant action in respect of enforcement";

(e) immediately after sub-paragraph (t) thereof there shall be added the following new sub-paragraphs:

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"(u) monitor facilities offering services to persons with disability and licensed in terms of the Social Care Standards Authority Act, and to undertake relevant investigations and compliance and enforcement actions in respect of such;

(v) fulfil the role of market surveillance authority in terms of Directive (EU) 2019/882 on the accessibility requirements for products and services, through its Investigations Unit and Enforcement Unit."

(2) In sub-article (7) of article 24 of the principal Act the words "by the Minister after consultation with the Commissioner" shall be substituted by the words "by the Commissioner".

(3) Article 26 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof the words "on those terms and conditions as indicated by the Minister" shall be deleted;

(b) in sub-article (2) thereof the words "after consultation with the Minister" shall be deleted.

Amendments of
Part VII of the
principal Act.

8. Part VII of the principal Act shall be amended as follows:

(1) Immediately preceding article 32 of the principal Act the title of Part VII thereof shall be substituted by the following title "ACCESS TO JUSTICE", and immediately after the title, as substituted, there shall be added the following new sub-title:

"TITLE 1 – COMPLAINTS, INVESTIGATIONS AND ENFORCEMENT".

(2) Article 32 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following:

"(1) The Commission shall have the power to carry out inspections and investigations on any occasion and for any purpose related to the responsibilities and functions pertaining to the said Commission under the Act and subsidiary legislation made thereunder, as well as any other applicable law, including but not limited to the Accessibility Standards for All in the Built Environment Regulations. Saving as otherwise provided for in this Act, the Commission shall have exclusive jurisdiction in relation to matters involving any substantive Convention rights, or otherwise brought under any provisions of this Act, unless the discrimination alleged in such matters is of a multiple or intersectional nature, and shall also have the power to enforce sanctions in conformity with the Act. The Commissioner may, on behalf of the Commission, initiate investigations on any matter involving an act that allegedly breaches any of the substantive Convention rights, or otherwise violates any of the provisions of this Act.";

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(b) in sub-article (2) thereof the words "under any of the provisions of this Act." shall be substituted by the words "in terms of any substantive Convention rights, or otherwise under any provisions of this Act." and paragraph (b) thereof shall be substituted by the following:

"(b) any person referred to in article 33A of this Act";

(c) immediately after sub-article (3) thereof the following new sub-articles shall be added:

"(4) In the exercise of the powers mentioned in the previous sub-articles, the Commissioner shall be assisted by the following mechanisms:

(a) an Investigations Unit within the Commission to carry out investigations of complaints; and

(b) an Enforcement Unit within the Commission to take the following measures in respect of any person who infringes any provision of the Act, or any other law which the Enforcement Unit is entitled to enforce, or who

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fails to comply with any decision given by the Investigations Unit or the Test of Reasonableness Board:

(i) impose an administrative fine in accordance with the provisions of this Act; and

(ii) order the cessation of any act or omission which are in breach of any provision of the Act and any other law which the Enforcement Unit is entitled to enforce;

(c) the Investigations Unit and Enforcement Unit shall also serve towards the Commission's fulfilment of its role as market surveillance authority in respect of Directive (EU) 2019/882 on the accessibility requirements for products and services, acting in conjunction with other relevant stakeholders locally and at European Union level, and in line with other relevant primary and secondary legislation.

(5) In exercising the duties in terms of this article, the Commission shall be granted the right of entry into any premises, public or private, for the purposes of:

(a) carrying out investigations, inspections, or surveys;

(b) ascertaining that nothing contrary to the provisions of the Act, to the regulations made thereunder, or to any term imposed by any of the Investigations Unit, or the Test of Reasonableness Board, is taking, or has taken place, and proceeding with any action accordingly;

(c) ascertaining or reproducing such data or information as the Commission may require;

(d) making plans of any premises and registering audio-visual footage of the said

premises after entry in accordance with this sub-article;

(e) doing anything that is ancillary or consequential thereto.

(6) In the case of a dwelling house or a condominium, such right of entry, inspection and monitoring as provided for in this Act, shall be subject to giving prior notice of at least forty-eight (48) hours, except in cases of emergency, and shall not apply before half past seven in the morning and after seven o'clock in the evening, and where such entry, inspection or monitoring is refused, it shall be lawful for any Magistrate, on good cause being shown to him by the Commissioner, or by one of his authorised officers on oath, to grant a warrant authorizing such entry, inspection or monitoring.

(7) The Minister shall, by means of regulations made under this Act, establish penalties in respect of when a person refuses to permit entry, or else obstructs inspection or monitoring, when the warrant issued pursuant to sub-article (6) is produced, and when a person obstructs, threatens, attacks or impedes any officer of the Commission in the exercise of his duties under the Act.

(8) Any person authorised pursuant to this article shall produce a means of identification issued by the Commission."

(3) Immediately after article 32 of the principal Act the following new articles shall be added:

"Enforcement.

32A. (1) The Enforcement Unit shall act after being duly authorised to do so by the Investigations Unit following its investigations carried out as provided for in this Act.

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(2) Notwithstanding the provisions of sub-article (1), where the Enforcement Unit has *prima facie* evidence that the infringement represents an immediate hardship for the aggrieved party, the said Enforcement Unit may be directed by the Investigations Unit to take urgent interim measures to remedy the situation in advance of the termination of the investigations process, including the immediate cessation of the act or omission contributing to the infringement:

Provided that the person against whom such measures are contemplated, shall, thereafter, be given a reasonable opportunity to state his opinion and propose any remedies.

Reasonableness.

32B. In conducting its investigations, the Investigations Unit shall be guided by the principle of reasonableness as established in article 20, and may consult with the Board to determine what is reasonable as the case may be, with investigations being suspended pending the outcome of any such reference by the Investigations Unit to the Board.

Administrative fines.

32C. The Minister shall, by means of regulations made under this Act, enact provisions in respect of administrative fines issued in terms of this Act.

Appeals from decisions.

32D. (1) The Administrative Review Tribunal shall be competent to hear and determine appeals from decisions of the Investigations Unit as provided for in this Act or in any law.

(2) The provisions of the Administrative Justice Act, in so far as they apply to the Administrative Review Tribunal, shall apply to any proceedings before said Tribunal, and the words "public administration" in the said law shall be construed as a reference to the Investigations Unit.

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Procedure of Appeal.

32E. (1) The right to appeal to the Tribunal shall be competent to any person to whom the decision is addressed.

(2) An appeal from a decision of the Investigations Unit shall be made by application and shall be filed with the Secretary of the Tribunal within twenty (20) days from the date on which said decision has been notified.

Appeal Decisions. 32F. In determining an appeal, the Tribunal shall take into account the merits of the appeal, and may confirm or annul the decision appealed from, in whole or in part, and shall give in writing the reasons for its decision, and cause such decision to be made public and communicated to the parties to the appeal."

(4) Immediately preceding article 33A of the principal Act, there shall be added the following new sub-title:

"TITLE 2 – LEGAL REDRESS".

(5) In article 33A of the principal Act, the words "proceedings for redress before the competent Court" shall be substituted by the words "proceedings for redress before the UNCRPD Redress Panel or the competent Court".

(6) Immediately after article 33A there shall be added the following new articles:

UNCRPD Redress
Panel.

"33B. (1) There shall be a Panel within the Commission, to be referred to as the UNCRPD Redress Panel, competent to hear petitions alleging that one or more substantive Convention rights have been, are being, or are likely to be contravened, and it shall be composed of three (3) persons, including a Chairperson, being persons with disability or persons with lived experience of disability, appointed by the Commissioner, who may from time to time appoint more than one Panel.

(2) Saving as otherwise provided for in this Act, the Panel shall have exclusive jurisdiction in relation to matters involving any substantive Convention rights, unless the discrimination alleged in such matters is of a multiple or intersectional nature.

(3) The persons composing the Panel shall be appointed for a term of two (2) years, and during their term of office they may only be removed from office by the Commissioner on the same grounds as for the removal of a Magistrate.

(4) The Panel shall be tasked with determining any petition, submitted to it by any person with disability on their own behalf, or by any person on behalf of any other person with disability for whom, or with whom, they are authorised to exercise legal capacity.

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(5) The Panel shall respect and apply the principles of good administrative behaviour laid down in article 3 of the Administrative Justice Act, and in delivering its decisions, the Panel shall be guided by the provisions of the United Nations Convention on the Rights of Persons with Disabilities Act, including the Schedules annexed thereto.

(6) There shall be such number of chambers of the Panel as the Commissioner may prescribe. The petitions shall be assigned to the various Panels on a rotation basis, by such officers as are designated by the Registry of the Panel.

Procedures before the UNCRPD Redress Panel.

33C. The procedures before the Panel shall be regulated by means of regulations made by the Minister under this Act.

Appeals to the Administrative Review Tribunal.

33D. (1) Any petitioner or defendant in a petition brought before the Panel may appeal from a decision of the said Panel within twenty (20) days from the date that such decision is communicated to the petitioner and the defendant.

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(2) An appeal under this article shall be made to the Administrative Review Tribunal in accordance with the procedure laid down under the Administrative Justice Act and regulations prescribed thereunder.

Matters within the jurisdiction of the First Hall of the Civil Court.

33E. (1) Any person who alleges that one or more substantive Convention rights have been, are being, or are likely to be contravened, and is seeking a remedy of a pecuniary nature exceeding the sum of five thousand euros (€5,000), whether or not such remedy is sought in conjunction with any other form of relief, or is a person other than a person described in article 33B(4), may, without prejudice to any other action with respect to the same matter that is lawfully applicable, apply to the First Hall of the Civil Court for redress, and the said Court shall have exclusive jurisdiction in relation to any such matters, unless the discrimination alleged in such matters is of a multiple or intersectional nature.

(2) The First Hall of the Civil Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of article 33E(1), and may make such orders, issue such acts and give such directions as it may consider appropriate, for the purpose of enforcing, or securing the enforcement, of the rights in question:

Provided that the Court may, if it considers it expedient to do so, decline to exercise its powers under this sub-article in any case where it is satisfied that adequate means of redress for the alleged infringement are, or have been available to the person concerned under any other ordinary law.

(3) If in any proceedings in any Court other than the First Hall of the Civil Court, or the Constitutional Court, any question arises as to the infringement of any of the substantive Convention rights, the said Court shall refer the question to the Panel or to the First Hall of the Civil Court, depending on whether such question would fall within the scope of articles 33B(4) and 33C read jointly, or of article 33E(1) of this Act, unless in its opinion the raising of the question is merely frivolous or vexatious; and that Court shall give its decision on any question referred to it under this sub-article and, subject to the provisions of article 33E(4), the Court in which the question arose shall dispose of the question in accordance with that decision.

Appeals to the
Constitutional
Court.

(4) Any party to proceedings brought before the First Hall of the Civil Court in pursuance of this article shall have a right of appeal to the Constitutional Court which, in addition to the jurisdiction conferred on it by article 95 of the Constitution, shall have jurisdiction to hear and determine all appeals in terms of this sub-article and exercise all such powers as are conferred on it by this Act.

(5) No appeal shall lie from any determination under this article that any application or the raising of any question is merely frivolous or vexatious.

(6) The Rules of Court made in accordance with article 46(7) of the Constitution, as in force from time to time, shall apply *mutatis mutandis* to the practice and procedure of the Courts for the purpose of this article, as if the proceedings instituted under this article were proceedings instituted under article 46 of the Constitution.

Redress sought in
terms of different
laws.

(7) Where it is alleged that any of the substantive Convention rights have been, are being, or are likely to be contravened, the demand for redress, or the reference to the First Hall of the Civil in accordance with article 46 of the Constitution, or article 4 of the European Convention Act and this article may be made in the same application or reference.

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Cap. 319. (8) Where an application for redress or any reference to the First Hall of the Civil Court is made exclusively either under article 46 of the Constitution, or under article 4 of the European Convention Act, or under this article, and is still pending before the First Hall of the Civil Court, or the Constitutional Court, the Court may examine whether or otherwise the alleged facts complained of are in breach of the corresponding substantive Convention rights, in the first case; or of corresponding rights enforceable under the Constitution, or under the European Convention Act, in the second case; and if the Court so determines, it may order accordingly the redress it may deem appropriate under any of the aforesaid laws:

Cap. 319. Provided that if a final decision on an application has already been given by the Courts in terms of Chapter IV of the Constitution or in terms of the European Convention Act, a person shall be prohibited from filing an action based on the same facts under this Act.

Communication with the UNCRPD Committee. 33F. (1) No person shall be hindered in the exercise of his right to communicate with the UNCRPD Committee in accordance with the provisions of the Optional Protocol.

Rights under Act without prejudice to other rights. (2) The provisions of this Act shall be without prejudice to any other action that may be available under the Act, or under any other law."

(7) Articles 34 and 34A of the principal Act shall be deleted.

Amendments of Part VIII of the principal Act.

9. Part VIII of the principal Act shall be amended as follows:

(1) Article 35 of the principal Act shall be substituted by the following:

"35. 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, for providing for any matter which is required or authorised by this Act to be prescribed."

(2) Article 36 of the principal Act shall be deleted.

(3) In article 37 of the principal Act the words "When another law is inconsistent with this Act" shall be substituted by the words "When another law, not being the United Nations Convention on the Rights of Persons with Disabilities Act, is inconsistent with this Act".

Act No. LIX of 2021.

10. Immediately after article 37 of the principal Act there shall be added the following new article:

Addition of new article to the principal Act.

"Transitional provision.

Act No. LVIII of 2021.

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38. Any competent Court that has before it pending proceedings instituted under the Act may also apply the provisions of the Equal Opportunities (Persons with Disability)(Amendment) Act and, or the United Nations Convention on the Rights of Persons with Disabilities Act in reaching its decision on any pending proceedings."

11. The Procedure for the Investigation of Complaints Regulations are hereby being repealed.

Repeal of Procedure for the Investigation of Complaints Regulations. S.L. 413.01.

Passed by the House of Representatives at Sitting No. 488 of the 13th July, 2021.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

