VERŻJONI ELETTRONIKA

A 608

I assent.

(L.S.) **MYRIAM SPITERI DEBONO**
President

1st August, 2025

ACT No. XXVI of 2025

AN ACT to regulate civil judicial proceedings involving persons holding public office and to establish the conditions under which the State and public entities assume responsibility of a civil nature and recover civil damages from persons who incur responsibility of a civil nature by reason of actions taken in the exercise of public functions.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives in the present Parliament assembled and by the authority of the same, as follows:-

Short title and scope.

1. (1) The short title of this Act is the Holders of Public Office and Public Entities (Responsibility) Act, 2025.

(2) The scope of this Act is to establish the conditions under which the State and public entities assume responsibility of a civil nature, act as guarantor in proceedings involving precautionary acts, and make good *in lieu* of the person held liable in respect of judgments against persons who incur responsibility of a civil nature by reason of acts done in the exercise of public functions.

Interpretation.

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

"act done in the exercise of a public function" means any act done, or purported to be done by a person within the State administration in the exercise of such person's function, and

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includes any omission;

"civil responsibility" includes any finding of responsibility and any order for the payment of damages by a court or a tribunal established by law, including any order for the payment of compensation by a court of constitutional or conventional jurisdiction under Chapter IV of the Constitution of Malta and, or under the European Convention Act; Cap. 319.

"judicial proceedings" means proceedings before a court or tribunal in which a claim or an order for payment is made on the basis of civil responsibility;

"public administration" shall have the same meaning assigned to it in article 2 of the Public Administration Act; Cap. 595.

"State administration" means any individual employed or otherwise lawfully exercising a public function as part of the executive operations of the Government, of the public administration and of holders of offices established or in respect of which provision is made in the Constitution;

"State Advocate" means the State Advocate as established in the State Advocate Act. Cap. 603.

Personal responsibility of persons holding public office.

3. (1) In any judicial proceedings instituted against a person within the State administration with respect to an act done in the exercise of a public function, the State shall assume responsibility of a civil nature and the payment of moneys including any damages or compensation which the Courts may, by final and definitive judgment, order to be paid by reason of an act done in the exercise of a public function by the person within the State administration.

(2) Any request to initiate civil judicial proceedings for the payment of moneys including any damages or compensation, as provided in this Act, shall together with the service on the person within the State administration who carried out the act in the exercise of a public function be served also, without the registrar charging any fees, on:

(a) in the case of an entity within the State administration, the head of the entity or to a person within such entity having the judicial representation of such entity, as well as the State Advocate; or

(b) where by reason of the nature of the office of the respondent there is no entity as referred to in paragraph (a), to the State Advocate; or

(c) in the case of a Department within the State administration, the relevant Permanent Secretary as well as the State Advocate:

Provided that every time limit for the filing of a reply to any such act by a person within the State administration being a defendant or a respondent in judicial proceedings shall not commence to run before the act is served as required under this sub-article.

(3) The entity on behalf of, or within which the act in the exercise of a public function has been carried out and the State Advocate, shall have the right to intervene *in statu et terminis* in any proceedings related to the said act and to file a sworn reply and any other judicial act that may be presented by the parties to the case.

(4) (a) The State shall act as guarantor for any sum which the Courts may order to be secured by means of civil acts of a precautionary nature pending a final and definitive Court judgment as provided in sub-article (1). Once the State provides such guarantee, the warrants or precautionary acts issued against the respondent shall be immediately revoked, and a counter-warrant and the relative decree of revocation and cancellation shall be issued in respect thereof.

(b) After a final and definitive judgment as referred to in sub-article (1) has been delivered, the State shall indemnify the person condemned to effect payment in accordance with that judgment from the effects of any executive act or warrant issued against such person by virtue of the said final and definitive judgment. Once the State either deposits in court the amount due following such final and definitive judgment or deposits an unconditional guarantee to the effect that it shall pay the amount due by virtue of the said judgment, any executive warrant or act shall be revoked immediately and the counter-warrant and the relative decree of revocation and cancellation shall be issued in respect thereof.

(5) The State shall only be obliged to pay the payment of moneys including damages or compensation arising from civil responsibility under this Act insofar as the person within the State administration who has been sued has not acted with criminal malicious intent as established by a Court of Criminal Jurisdiction or with culpable gross negligence.

(6) In the case where the State has already paid the payment of moneys including damages or compensation, it shall have a right to recover from such person within the State administration the damages or compensation paid on the basis of this article if eventually a Court

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by means of a final and definitive judgment establishes that such person had acted either with criminal malicious intent as established by a Court of Criminal Jurisdiction, or with culpable gross negligence, in the performance of the act which gave rise to the payment of any amounts as provided in this Act. When in a case to which this Act applies, the court in a final and definitive judgment finds that the behaviour of the defendant constituted behaviour done with culpable gross negligence or that such behaviour is one to which this Act does not apply, such judgment shall, notwithstanding that the State may not be a party to the case or that it is only an intervener *in statu et terminis* therein, constitute a *res judicata* and an executive title in favour of the State on the basis of which the State may proceed directly to recover any moneys paid by it and which it has a right to recover from the defendant in accordance with this Act.

(7) This Act shall not preclude the initiation or continuation of criminal or disciplinary proceedings independently of the civil action provided for in this article, without prejudice to the guarantees granted under this Act.

(8) In the case of conflict between this Act and any other law, except for the Constitution, the provisions of this Act shall prevail.

Transitory provision.

4. The provisions of this Act shall apply from the date of entry into force of this Act to pending judicial proceedings in which a person within the State administration is the respondent. However the applicant or the respondent shall affect service in accordance with article 3(2) within a period not exceeding thirty (30) days from the date of entry into force of this Act:

Provided that in respect of cases which on the date of coming into force of this Act shall have been adjourned for judgment, no service in accordance with article 3(2) shall be required if any person as mentioned in paragraphs (a), (b) or (c) of article 3(2) who would have to be served in accordance with the said article is already a party or intervener to the case, provided that if no such person is a party to the case, it shall be sufficient that the State Advocate is informed of the case by means of a judicial letter which shall be filed before judgment is delivered and in any case, not later than thirty (30) days from the date of coming into force of this Act.

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Passed by the House of Representatives at Sitting No. 371 of the 29th July, 2025.

ANĠLU FARRUGIA
Speaker

ELEANOR SCERRI
Clerk of the House of Representatives

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