



MALTA WOMEN'S LOBBY

POSITION PAPER

on the National Commission for Human Rights and Equality Bill (Bill No. 3 of 2026)

*Submission to the Ministry responsible for Equality and to the House of Representatives
July 2026*

1. Introduction and General Position

The Malta Women's Lobby (MWL), while regretting that it has not been consulted on the proposed National Commission for Human Rights and Equality Bill (Bill No. 3 of 2026) bill, is taking the opportunity to give its views on the proposed law.

Overall, the Lobby supports the Bill's stated objectives: the establishment, for the first time, of a national human rights institution guided by the Principles relating to the Status of National Institutions (the Paris Principles); the transposition of Council Directive (EU) 2024/1499 and Directive (EU) 2024/1500 on standards for equality bodies; and the introduction into Maltese law of Article 1 of Protocol No. 12 to the European Convention on Human Rights. These are genuine and long-overdue advances which the Lobby has consistently advocated.

However, we are concerned that the Bill is planning to merge the **National Commission for the Promotion of Equality (NCPE)**, which has a distinctive institutional identity, history and accumulated specialist capacity especially in the area of **equality between women and men**, with the whole broader field of human rights. **This is unacceptable. Rightfully, the Commission for the Rights of Persons with Disability (CRPD) will be left intact and will not be merged within the new set up. So why is NCPE being merged?**

We reiterate that consolidation must not mean demotion. Equality between women and men is both a distinct legal mandate and a horizontal constitutional, EU and treaty commitment, engaging CEDAW, the Istanbul Convention, the EU Treaties, the gender-equality directives and Directive (EU) 2023/970 on pay transparency. Furthermore, Directives (EU) 2024/1499 and 2024/1500 require equality bodies to have the independence and resources necessary to perform all their tasks effectively.

This paper sets out the Lobby's concerns and proposes concrete amendments, article by article, examined through the lens of equality between women and men.

2. Summary of Principal Concerns

First, the Bill introduces a genuinely regressive administrative limitation rule: article 29(3) runs the two-year period from the earlier of act of discrimination and its discovery, so a concealed infringement may be time-barred before the complainant could reasonably know of it. The English text also contains the special equal-pay limitation provision required by Directive (EU) 2023/970, while the authoritative Maltese text omits it. Related numbering and cross-reference errors compound the uncertainty.

Secondly, the Bill retains, with little material change, defects already present in Cap. 456: in that article 6(2) permits an employer to charge the complainant for preparing a discrimination report. The reform is the appropriate occasion to remove this

Thirdly, the institutional design does not sufficiently secure the gender-equality mandate. No minimum complement of gender expertise is required; the Commission is not expressly subject to the 40% gender-balance rule; no dedicated structure, specialist staffing complement or separately identifiable allocation is guaranteed; and the anti-deadlock appointment

mechanism ultimately permits the Commissioner to be appointed by a simple parliamentary majority. This could potentially mean appointing someone with no qualifications and experience related to gender equality between women and men.

Fourthly, the positive-action provisions remain difficult to measure and enforce. Article 45 is qualified by "as far as possible", contains defective arithmetic, is silent on chairpersonships and transition, and provides no structured compliance process. Article 44 already includes a generic equality-mainstreaming duty but does not expressly require gender impact assessment or gender budgeting and provides for public reporting only once every five years.

Fifthly. The Bill also omits the express sexual-harassment offence presently found in article 9(3) of Cap. 456, without making the intended effect of that omission clear. The point that it should be there is further emphasised by the Istanbul Convention.

Sixth: enforcement is incomplete: urgent interim protection and final opinions are non-binding, with no direct route by which the Commissioner may seek a judicial order on the victim's behalf.

Finally, material differences between the Maltese and English texts, resolved constitutionally in favour of the Maltese text, create avoidable legal uncertainty, notably in relation to multiple discrimination, equal pay and mediation.

3. Article-by-Article Analysis and Proposed Amendments

3.1 Article 4(2) — Multiple and intersectional discrimination

The Maltese text of article 4(2)(b) defines multiple-ground discrimination as arising from "aktar minn tnejn" (more than two) protected characteristics, whereas the English text reads "a combination of two (2) or more". Under article 74 of the Constitution, the Maltese text prevails. Discrimination on exactly two combined grounds—for example sex and ethnic origin—would therefore fall outside the Maltese multiple-grounds formulation. The Bill also treats multiple discrimination as merely additive and does not define intersectional discrimination as a distinct interaction of grounds, notwithstanding CEDAW General Recommendation No. 28, paragraph 18, and the express recognition of intersectional discrimination in the recitals to Directives (EU) 2024/1499 and 2024/1500.

Proposed amendment:

In the Maltese text of article 4(2)(b), substitute "aktar minn tnejn (2) mill-karatteristiċi protetti" with "tnejn (2) jew aktar mill-karatteristiċi protetti", so as to conform with the English text.

In article 4(2), add paragraph (c): "on an intersectional basis, where discrimination is based on two (2) or more protected characteristics which interact in an inseparable manner and produce a distinct form of disadvantage; and, in assessing that discrimination and any remedy, the Commission, court, tribunal or other competent authority shall have regard to the combined and compounded effect of the characteristics concerned."

3.2 Article 6(2) — Cost recovery for employment discrimination reports

Article 6(2), substantially reproducing article 5(2) of Cap. 456, permits an employer to recover from the person requesting a report the reasonable expense of drawing it up, recoverable from the discriminator only if discrimination is later established. This places an up-front financial deterrent at the information-gathering stage and sits uneasily with the free assistance required of an equality body and with the effectiveness principle underlying Directives (EU) 2024/1499 and 2024/1500. The employer's duty to explain its own procedures should not be financed by the person alleging discrimination.

Proposed amendment:

Delete article 6(2) and renumber the subsequent sub-articles accordingly, while retaining the employer's reporting duty under article 6(1).

3.3 Article 9 and article 29(8) — Sexual harassment: sanctions and mediation

Article 9(3) of Cap. 456 presently makes sexual harassment an offence. The Bill's article 9 ends with a due-diligence defence for persons responsible for workplaces and service settings and contains no equivalent sanctions clause. Although article 4(3)(c) recognises that sexual harassment may also constitute an offence under the Criminal Code, it does not explain whether repeal is intended to remove the existing standalone offence where the conduct does not otherwise meet a Criminal Code threshold. The legal and policy effect should be made explicit and effective, proportionate and dissuasive sanctions preserved.

The Bill also allows mediation in any complaint. Article 29(8) makes mediation conditional on the parties' agreement, so the procedure is not mandatory and does not, on that account alone, breach Article 48 of the Istanbul Convention. General consent, however, is not a sufficient victim-centred safeguard in harassment and sexual-harassment complaints, where power imbalance, fear of retaliation and secondary victimisation require a specific assessment.

Proposed amendment:

Retain in article 9, or in the consequential and transitional provisions, an express sanctions provision equivalent in protective effect to article 9(3) of Cap. 456. Its elements and penalties should be reviewed for legal certainty and coherence with the Criminal Code and the Employment and Industrial Relations Act, and it should be without prejudice to any greater civil or criminal liability under another law.

In article 29(8), following bilingual concordance and renumbering, add: "In a complaint involving harassment or sexual harassment, mediation shall be offered only where the complainant, after receiving independent information on the available remedies, freely and expressly requests it in writing. The complainant may withdraw at any time without prejudice. Before offering mediation, the Commissioner shall assess safety, power imbalance, risk of retaliation and secondary victimisation; may require separate or shuttle arrangements; and shall ensure that refusal or withdrawal does not delay or prejudice the investigation."

3.4 Articles 18, 19 and 21 — Composition, expertise, balance and appointment

Eligibility under article 19 requires experience in any field within human rights or equality. That is an appropriate individual threshold, but it does not ensure that the ten-member

Commission collectively contains specialist knowledge of equality between women and men that make up half of the population. The collective requirement belongs in the composition and appointment provisions rather than in the eligibility test. The Commission is also not expressly brought within the 40% rule that it will monitor. Finally, article 21(1) allows appointment of the Commissioner by simple majority after two failed two-thirds votes. A transparent nomination process and a renewed search are preferable responses to deadlock and better support the independence and pluralism required by the Paris Principles.

Proposed amendment:

In article 21(4), require that the Commission collectively cover the principal fields within its mandate and that at least two (2) members have proven specialist expertise in equality between women and men, including at least one with senior professional knowledge of Maltese and EU gender-equality law and policy.

Add to article 21(4): "Not less than forty per cent (40%) of the members of the Commission, including the Commissioner, shall be women and not less than forty per cent (40%) shall be men; in the remaining appointments, due consideration shall be given to the representation of non-binary persons."

Before a motion proposing a Commissioner is tabled, require a public call, published selection criteria and a reasoned assessment by the Appointments Commission transmitted to the Speaker. Amend article 21(1) so that, if the second two-thirds vote fails, the nomination lapses and a fresh public selection process begins. Any candidate emerging from the fresh process should still require a two-thirds vote; a simple-majority fallback should not apply.

Require the Appointments Commission itself to operate transparently, to publish its methodology and recommendations subject to lawful privacy protections, and to be constituted with due regard to gender balance and pluralism.

3.5 New article — Dedicated gender-equality mandate, structure and resources

The Bill contains no structural guarantee that the specialist gender-equality capacity developed within the NCPE will remain visible and adequately resourced after merger. Article 51(6), which requires funds to be used in a balanced manner between mandates, is useful but does not identify a specialist staffing complement, allocation or accountability mechanism. Directives (EU) 2024/1499 and 2024/1500 require equality bodies to have the human, technical and financial resources necessary to perform their tasks effectively across their mandates. Because the NCPE presently covers several grounds, the appropriate resource floor is the resource demonstrably devoted to gender-equality work—not the NCPE's entire former budget—together with additional funding for the new Commission's wider remit.

Proposed amendment:

Add a new article after article 28: "(1) There shall be within the Commission a dedicated Gender Equality Directorate, headed by an officer with proven expertise in equality between women and men, responsible for the Commission's functions relating principally to sex, pregnancy, family responsibilities and gender, including the functions arising under Directives 2004/113/EC, 2006/54/EC, 2010/41/EU, (EU) 2022/2381, (EU) 2023/970 and (EU) 2024/1500."

"(2) The Commission's financial plan shall identify a distinct allocation and a minimum specialist staffing complement sufficient for the functions in sub-article (1). In determining that allocation and complement, the House shall have regard to the resources demonstrably

devoted by the NCPE to equality between women and men in the last complete financial year, changes in workload and costs, and the additional resources required by the Commission's expanded mandate. The merger shall not reduce the Commission's effective capacity to fulfil its gender-equality functions."

"(3) The Commission's annual report shall account separately for the performance, staffing, expenditure and outcomes of the Gender Equality Directorate."

3.6 Article 26 — Standing Advisory Committee and civil society

The Bill already empowers the Commission to consult organisations and cooperate with civil society, including under articles 25 and 28. Those mechanisms remain discretionary, while the Standing Advisory Committee in article 26 consists exclusively of ex officio public office-holders. Article 15 of Directive (EU) 2024/1500 requires appropriate cooperation mechanisms with relevant public and private entities, including civil-society organisations, and the Paris Principles emphasise pluralism and effective cooperation. Permanent advisory participation is a reasonable way to make that obligation visible, regular and accountable; it is not the only model permitted by the Directive.

Proposed amendment:

Add to article 26(1): three (3) representatives of civil-society organisations active in human rights and equality, at least one (1) nominated by organisations whose principal object is equality between women and men; one (1) representative nominated by representative trade-union organisations; and one (1) representative nominated by representative employers' organisations. Appointments should follow a public call, transparent criteria and fixed three-year terms renewable once.

Add to article 26(2): "The Commission shall consult the Standing Advisory Committee on its annual work plan and on opinions, reports or recommendations of general application, without prejudice to the independence of the Commission. The Commission shall publish a summary of the Committee's recommendations and its response."

3.7 Article 29 — Limitation periods, equal pay and cross-references

Article 29(3) bars a complaint more than two years from the act or the date the complainant first became aware of it, "whichever is the earlier". This is a new restriction when compared with the complaint provision in Cap. 456 and can expire before concealed discrimination is discovered. Directive (EU) 2023/970, article 21, requires equal-pay limitation periods not to begin before the claimant knows or can reasonably be expected to know of the infringement. The English Bill includes article 29(4), establishing a three-year equal-pay prescriptive period and suspension mechanisms, but that provision is absent from the Maltese text. In addition, the English references in articles 28(1)(x) and 39 point to article 29(7), although mediation appears in English article 29(8).

Proposed amendment:

Substitute article 29(3) with: "The Commissioner shall not take cognisance of a complaint unless it is made within two (2) years from the date on which the alleged act occurred, or, in the case of a continuing act, ceased or ceased to have discriminatory effect, or from the date on which the complainant first became aware, or could reasonably have been expected to become aware, of the alleged breach, whichever is the later."

Add a discretion to admit a late complaint where the interests of justice so require, having regard in particular to concealment, trauma, disability or impaired capacity, fear of retaliation, the continuing effect of the act, prejudice to the parties and the public interest.

State expressly that this administrative time limit does not curtail a longer prescriptive period or judicial remedy available under another law.

Insert into the Maltese text, as article 29(4), a complete and legally verified counterpart of English article 29(4) on equal-pay claims under Directive (EU) 2023/970. Renumber all following sub-articles in both texts and correct the references in articles 28(1)(x) and 39 so that they identify the mediation provision after concordance.

3.8 Articles 36 and 37 — Urgent protection and follow-up of opinions

Article 36 permits the Commissioner only to recommend interim measures, while article 37 makes the final opinion non-binding. Article 36(2) then inconsistently refers to the recommendation as an "order" and penalises only a failure to provide implementation information. A pregnancy-related dismissal or ongoing harassment may require urgent enforceable protection, but empowering the Commissioner to impose a binding measure directly would raise due-process questions. A rapid application by the Commissioner to the competent court or tribunal provides a stronger and legally safer route. Directive (EU) 2024/1500, article 10, expressly contemplates court participation by equality bodies and judicial consideration of their submissions.

Proposed amendment:

Replace article 36(2) with a power for the Commissioner, where an urgent recommendation is not promptly accepted or implemented, to apply—with the complainant's written consent where the investigation follows an individual complaint—to the competent court or tribunal for an interim order. The application should be heard urgently and determined on a prima facie case, the risk of serious or irreparable harm, proportionality and the balance of prejudice. Correct all references to a non-binding recommendation as an "order".

Add to article 37: "Where the person in breach does not remedy the situation or respond adequately to the Commissioner's recommendations within the period specified, the Commissioner may, with the victim's written consent, apply to the competent court or tribunal through expedited proceedings. The court or tribunal shall independently determine, on the evidence, whether to order compliance, cessation, redress or compensation available under article 16."

3.9 Article 40 — Annual report and equality data

Article 40 requires data to be disaggregated by protected characteristic, but does not ensure that gender-equality outcomes remain distinctly visible within the merged mandate or that intersections between sex and other characteristics are reported. The privacy proviso permits pseudonymisation where anonymisation is not possible; publication of small or pseudonymised datasets may nonetheless enable re-identification. Reporting should therefore combine visibility with data-protection safeguards.

Proposed amendment:

Add to article 40(2): "The annual report shall contain a distinct chapter on equality between women and men, including complaints, investigations, opinions, follow-up and outcomes; the implementation of equal-pay and pay-transparency obligations; compliance with article 45; and the work, staffing and expenditure of the Gender Equality Directorate. Data shall, where statistically and lawfully possible, be disaggregated by sex and relevant intersecting characteristics."

Add publication safeguards requiring aggregation, suppression of small cells and anonymisation appropriate to re-identification risk. Pseudonymised personal data may be

collected and used where lawful and necessary, but shall not be published as if it were anonymous.

3.10 Article 44 — Equality duty, gender impact assessment and budgeting

Article 44(1)(c) already establishes a valuable generic duty to integrate equality in services and in the formulation and implementation of laws, policies and activities. The provision should be made operational for equality between women and men through express gender impact assessment and gender budgeting. The present five-year reporting cycle is too slow to identify and remedy implementation failures within a legislature, and article 44(2) provides no structured response to substantive non-compliance beyond reporting a failure to supply information.

Proposed amendment:

Add to article 44(1): "integrate a gender perspective in the preparation, design, implementation, monitoring and evaluation of laws, policies, regulatory measures, services and spending programmes, including through proportionate gender impact assessment and gender budgeting in the national budgetary process."

Require annual public implementation reports against measurable Action Plan indicators and a formal review of the Action Plan at least every two (2) years. Reports should be laid before the House, transmitted to the Commission and assessed publicly by the Commission.

Permit the Commissioner, after investigation and representations, to issue a compliance recommendation requiring a time-bound remedial plan. The public authority should be required to publish or provide a reasoned response, and persistent failure should be specifically reportable to the House.

3.11 Article 45 — Gender balance on officially appointed bodies

The Lobby has long advocated the 40% rule and welcomes its inclusion. As drafted, however, the rule is weakened by "as far as possible", the phrase "forty per cent of the rest" is mathematically incorrect, and the Bill does not explain how the rule applies to small bodies, staggered appointments or existing bodies. There is no annual reporting duty, chairpersonship measure or structured response to default. The ten-year review asks only whether the article remains necessary and the two linguistic texts differ as to whether subsequent reviews are performed by the Commissioner or the Commission.

Proposed amendment:

Substitute the operative rule in article 45(1) with: "The public administration shall ensure that the composition of each officially appointed body comprises not less than forty per cent (40%) women and not less than forty per cent (40%) men. Where the size of the body makes both thresholds mathematically impossible, its composition shall approximate them as closely as possible and shall include at least one woman and one man where the body has two or more members. In the remaining appointments, due consideration shall be given to the representation of non-binary persons."

Apply the rule to each body newly constituted or fully reconstituted after commencement. During a staged transition, no individual appointment should worsen an existing imbalance where a suitably qualified candidate of the under-represented gender is available, and full compliance should be required by the first complete reconstitution or within three (3) years, whichever is earlier. Provide narrow exceptions for ex officio

appointments and for a demonstrated absence of suitable candidates following an open call, supported by published reasons.

Require annual publication of the gender composition of every covered body and chairpersonship. Across all chairpersons appointed by the public administration, at least forty per cent (40%) should be women. Empower the Commissioner to issue a compliance notice requiring a remedial plan and, after default, to seek an appropriate court order. For legal certainty, state that decisions of a body are not invalid solely because of non-compliance with its composition rule.

Substitute article 45(3) so that the Commission evaluates the measure after five (5) years and every five (5) years thereafter and advises whether it should be maintained, extended or strengthened. Use the same institutional actor in both linguistic texts.

3.16 Articles 46 to 48 — Staffing of the Commission

The staffing provisions require pluralism but do not expressly safeguard the specialist institutional memory transferred from the NCPE. An unqualified hiring quota could conflict with general employment law and individual merit requirements. The sounder approach is to preserve minimum specialist capacity, pursue balanced representation and use lawful positive action where under-representation is demonstrated.

Proposed amendment:

In article 48(1), add: "In recruiting and assigning officers, the Commission shall pursue balanced representation consistent with law, use lawful positive-action measures where under-representation is demonstrated, and maintain a specialist staffing complement sufficient to perform its functions on equality between women and men, including within the Gender Equality Directorate. Staff transferred under article 57 with relevant expertise shall, subject to fair workforce planning and individual rights, be deployed so as to preserve that institutional capacity."

3.17 Linguistic concordance, cross-references and inclusive drafting

The discrepancies identified in sections 3.3 and 3.10 are not isolated. The English definition of "family member" contains marriage- and partnership-of-convenience exclusions absent from the Maltese text; the English definition of "sexual harassment" omits "humiliating", which appears in Maltese; the definition of the "right to equal treatment and non-discrimination" refers to Part I although the substantive right is in Part II; articles 28(1)(x) and 39 misidentify the English mediation sub-article; article 45(3) alternates between the Commissioner and the Commission; and the arrangements in article 1 are differently ordered. Because article 74 of the Constitution gives precedence to the Maltese text, these are substantive litigation risks rather than editorial niceties.

Proposed amendment:

Before enactment, require a complete article-by-article concordance review of the Maltese and English texts by the Office of the Attorney General, including definitions, internal references, numbering, operative actors and transitional provisions, followed by a formal certification that the two texts are legally equivalent.

Use language-appropriate inclusive drafting throughout. In English, repeat the office-holder or use singular "they" where clear; in Maltese, use natural inclusive formulations rather than literal translations that compromise legal clarity.

4. Conclusion and Priority Amendments

The Malta Women's Lobby supports the establishment of a National Commission for Human Rights and Equality in accordance with the Paris Principles and the incorporation of Protocol No. 12. The Bill can strengthen Malta's equality and human-rights architecture, but only if merger does not dilute the accumulated capacity and visibility of equality between women and men.

The legal position should be stated precisely. Article 29 introduces a new and serious restriction; the missing Maltese equal-pay provision and the cross-reference errors are new drafting failures; while articles 6(2) and 7(2) reproduce existing barriers that this reform should remove. The broad exclusions, uncertain sexual-harassment sanctions, weak urgent-remedy route and incomplete institutional safeguards require correction before enactment.

The Lobby identifies the following five amendments as priorities for Committee Stage:

- Correct article 29: adopt a knowledge-based limitation rule with an interests-of-justice discretion, insert the equal-pay provision in Maltese and repair all numbering and cross-references.
- Correct article 4(2) and expressly recognise intersectional discrimination in both linguistic texts.
- Guarantee collective gender expertise, balanced composition, a dedicated Gender Equality Directorate, minimum specialist staffing and a separately identifiable, evidence-based resource allocation.
- Narrow articles 2(3), 2(4) and 43, preserve effective sanctions for sexual harassment, and provide victim-centred safeguards for mediation.
- Make articles 44 and 45 measurable and enforceable through impact assessment, gender budgeting, transition rules, chairpersonship monitoring, annual reporting and a proportionate compliance process.

The Lobby urges the Ministry and the House to adopt the amendments set out in Part 3, requests the opportunity to appear before the relevant Parliamentary Committee at Committee Stage, and remains available to assist to improve this bill.

5. Selected Legal Authorities

The principal legal materials relied upon in this paper are listed below. References to the Bill are to Bill No. 3 of 2026 as published by the House of Representatives.

1. Constitution of Malta, article 74 (language of laws and precedence of the Maltese text).
2. Equality for Men and Women Act, Cap. 456, especially articles 3, 5, 7, 9 and 17 (law presently in force and provisions to be repealed).
3. Council Directive 2000/78/EC, article 4(2) (occupational requirements connected with a religious ethos).
4. Directive 2004/113/EC and Directive 2006/54/EC (equal treatment between women and men in goods and services and in employment and occupation).
5. Directive 2010/41/EU, especially article 2(b) (self-employed workers' spouses and life partners recognised by national law).

6. Directive (EU) 2023/970, especially article 21 (limitation periods and suspension in equal-pay claims).
7. Council Directive (EU) 2024/1499 and Directive (EU) 2024/1500, including provisions on independence, resources, litigation, cooperation and monitoring, and their recitals on intersectional discrimination.
8. Convention on the Elimination of All Forms of Discrimination against Women; CEDAW Committee, General Recommendation No. 28 (2010), paragraph 18 (intersectionality).
9. Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), article 48 (mandatory alternative dispute resolution).
10. Principles relating to the Status of National Institutions (Paris Principles), annexed to UN General Assembly Resolution 48/134 of 20 December 1993 (independence, pluralism, mandate and resources).
11. Protocol No. 12 to the European Convention on Human Rights, article 1 (general prohibition of discrimination).

Malta Women's Lobby

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