FEEDBACK BY THE MALTA CHAMBER

Bill 3 (2026) To Establish a National Commission for Human Rights and Equality

Presented to	**:**	Ministry for Equality and Civil Rights.
Date	**:**	05/08/2026
Version	**:**	01 Release

THE MALTA CHAMBER

1. INTRODUCTION

On 22nd July 2026, The Malta Chamber of Commerce, Enterprise and Industry (The Malta Chamber) respectfully submitted a request for the **immediate postponement of the final debate and Third Reading vote in Parliament** on Bill No. 3 (2026), titled the *National Commission for Human Rights and Equality Act* given that no consultation was carried out on such an important legislation.

The Malta Chamber unequivocally supports legislation that reinforces human rights, upholds human dignity and fosters inclusive, non-discriminatory communities. However, **The Malta Chamber expresses profound concern regarding the unprecedented procedural haste and lack of genuine consultation** on a Bill of such constitutional, legal, and economic magnitude.

Rushing this legislation through Parliament during the summer recess, without meaningful engagement with employers, trade unions, and constituted bodies is inacceptable to industry and the general public at large. It also dismisses proper democratic scrutiny.

While The Malta Chamber notes that the Government is citing the need for the urgent transposition of *Council Directive (EU) 2024/1499* and *Directive (EU) 2024/1500* (establishing standards for equality bodies) in order to meet the set deadlines, The Malta Chamber feels that **delayed administrative transposition on the Executive's part does not justify rushing ahead without proper consultations.**

We note that as currently drafted, Bill No. 3 introduces **severe legal, operational, and financial risks for businesses across Malta**. It inverts fundamental civil law principles, duplicates existing regulatory frameworks, imposes draconian procedural timelines, and exposes employers to unmanageable third-party liabilities.

The Malta Chamber reiterates that it would be more beneficial if there is an immediate pause on Bill 3's Third Reading rather than a rushed through law.

In this paper The Malta Chamber has outlined 5 key areas that need a rethink.

KINDLY NOTE THAT THE FEEDBACK IN THIS PAPER MIGHT NOT BE EXHAUSTIVE AND THE MALTA CHAMBER RESERVES THE RIGHT TO RAISE OTHER ISSUES THAT IT MAY IDENTIFY AT A LATER STAGE, GIVEN THAT SOCIAL PARTNERS WERE ASKED TO GIVE FEEDBACK IN WRITING WITHIN A VERY SHORT TIME-FRAME WHICH DOES NOT EVEN ALLOW ONE TO CONSULT PROPERLY WITH MEMBERS AND EXPERTS ON THE SUBJECT MATTER.

2. CONCERNS

The following section outlines some of the concerns envisaged. They are classified under 5 main headings:

A. Constitutional & Procedural Objections
B. Legal Doubts & Deviations
C. Critical Employer duties & Operational Overheads
D. Sectoral Impacts & Regulatory Conflicts
E. Addressing Evident Broader Social & Integration Realities

A. Constitutional & Procedural Objections

A1. Going Beyond the Minimum Mandate of the EU Directive

It seems that the proposed domestic implementation possibly goes well beyond the minimum mandates of EU law. The Government seems to be introducing broad domestic liabilities and open-ended protected characteristics that far exceed European standards, without granting affected sectors the requisite time to understand and adapt.

The Malta Chamber re-iterates that transposition of EU Directives should be at the minimum thresholds outlined in the EU Directive, particularly to protect competitiveness.

B. Legal Doubts & Deviations

B1. Disproportionate reversal of the Burden of Proof (Articles 16 & 34)

Under standard civil law, the party making an allegation must substantiate the claim being made. Articles 16(3) and 34(1) of Bill No. 3 invert this principle across all investigative and judicial forums (both Court litigation and NCHRE Commission proceedings) as *per* below:

- <u>Phase 1 — Complainant Allegation (Low Threshold):</u> The complainant need only establish a basic *prima facie* case, presenting surface-level facts from which discrimination could hypothetically be presumed, often relying on circumstantial or statistical data under Article 34(2). Intention, bad faith, or explicit fault need not be proven.

- Phase 2 — Employer Evidentiary Defence (Proving a Negative): Once that low initial threshold is crossed, the legal burden shifts entirely to the employer. The employer must prove a complete negative, meaning, that no breach occurred or that differential treatment was strictly justified by a legitimate aim via proportionate means, relying on years of documented historical HR records.
- Phase 3 — Mandatory Judicial Finding: If an employer fails to disprove the presumption, Article 16(3) mandates that the Court *shall* automatically rule against the employer.

Furthermore, Article 34(2) is also concerning as it will require businesses to produce years of objective, documented scoring data to avoid liability.

The Malta Chamber is of the opinion that he who alleges must bring forth the necessary proof to substantiate the claim being made.

B2. Asymmetry of redress and threat of Malicious claims

The Bill provides state-funded legal support and representation for accusers, but does not appear to provide equivalent safeguards, financial compensation, legal aid, or clear mechanisms for redress for employers or businesses that may be wrongfully accused. In workplace dispute scenarios, the relatively low *prima facie* threshold could potentially be misused by individuals acting in bad faith, creating reputational and operational risks for managers and businesses.

The Malta Chamber notes that with state aid backing the complainant and the Commission acting as an active party within the same case, innocent businesses face severe reputational and financial ruin with no avenue to recover costs.

B3. Criminalisation of Administrative Oversight (Article 35)

Under Article 35, the Commissioner is granted sweeping investigative powers to administer oaths, compel records, and summon business representatives. Failure to comply without *'sufficient cause'* is categorised as a criminal offense, carrying fines of up to €1,000, up to 3 months' imprisonment, or both.

The Malta Chamber asserts that equating administrative delays or internal documentation hurdles with criminal culpability is dangerously disproportionate.

C. Critical Employer duties & Operational Overheads

C1. Unrealistic 10-Day Reporting mandate (Article 6)

Article 6 requires an employer, upon request from a complainant or the Commission, to furnish a comprehensive written report on allegations, HR procedures and preventative measures within 10 working days.

The Malta Chamber notes that:

- ***10 working days is entirely inadequate for an HR or legal department to conduct an internal investigation, interview witnesses, review historical records, and draft a legally defensible report.***
- ***Crucially, if an employer fails to reply or provides an answer deemed 'evasive' without justification, Courts and Tribunals are empowered to draw adverse legal inferences—effectively assuming the employer acted unlawfully.***

C2. Unprecedented Liability for 3rd Party Harassment (Article 5)

Under the proposed rules, employers and workplace managers are held **strictly liable** for harassment or sexual harassment committed against their employees by *third parties*, including clients, customers, independent contractors, or external suppliers.

To escape liability, the employer must prove they took all steps that were *'reasonably practicable'* to prevent the conduct before it occurred.

The Malta Chamber notes with alarm that taking swift disciplinary action after an event occurs is insufficient under this Constitutional Bill. Furthermore, it is not clear what 'reasonably practicable' means.

Furthermore, businesses are effectively forced to 'police' customer and vendor behaviours, draft complex contractual indemnities and overhaul public-facing operations to a disproportionate level.

C3. Cumulative Regulatory Exhaustion

This Bill does not exist in a vacuum.

Malta's business community is currently absorbing the administrative impact of the EU Pay Transparency Directive, the Work-Life Balance Directive, Employment and Industrial Relations Act (EIRA) updates and mandatory transparent working conditions legislation.

The Malta Chamber affirms that layering an aggressive, open-ended NCHRE regime on top of existing mandates risks paralysing the majority of enterprises HR infrastructure.

D. Sectoral Impacts & Regulatory Conflicts

The Malta Chamber reiterates observations shared during MCESD meeting held on 31st July 2026, that overarching scope of Bill No. 3 (2026) creates direct operational friction across multiple existing regulatory jurisdictions*:*

Firstly, a conflict with DIER & Industrial Tribunal remit. The creation of parallel NCHRE procedures to EIRA enables forum shopping by complainants, leading to duplicated legal costs, overlapping employment remits, and potential jurisdictional conflicts between entities. The Malta Chamber is of the opinion that the EIRA obligations should prevail, but the nature of the Constitutional nexus of this law raises serious doubts.

Secondly, it impacts on Financial Services & Insurance (Article 11). By mandating that customer-facing entities abolish discriminatory rules and notify the NCHRE annually when protected characteristics affect policy terms, the Bill directly undermines standard actuarial risk assessments, recasting legitimate risk-based underwriting as presumptive discrimination.

Thirdly, it raises concerns regarding Governance imbalance & Political infiltration. While granting the Commissioner broad *ex-officio* powers to initiate investigations on subjective doubts, the governance structure fails to reserve dedicated seats for the business community, while allowing active political appointees onto the board.

E. Addressing Evident Broader Social & Integration Realities

Rather than creating symbolic, overly punitive regulatory machinery, duplicated rights under multiple acts, state resources should address root-cause human rights challenges in Malta, including reforming the legal status of migrant workers, expediting protection order decisions, and integrating existing migrant populations into the workforce.

The Malta Chamber recommends allowing employers to count individuals under temporary protection or integration programs toward the 2% disability quota when qualified disabled applicants are demonstrably unavailable in the local labour market, replacing punitive fines with active integration incentives. (This proposal might not fall directly within the remit of the Bill, however, it is definitely one that supports human rights.)

3. RECOMMENDATIONS & CONSTUCTIVE ALTERNATIVES

To achieve a balanced, workable, and constitutional framework that genuinely protects human dignity without crippling enterprise, while noting that time to study and analyse was severely restricted due to implications mentioned earlier.

The Malta Chamber is putting forward the following 6 recommendations:

1. ***Rebalance the Burden of Proof* (Articles 16 & 34).** This can be done by restoring traditional civil principles by requiring explicit, verifiable proof of a direct causal nexus or discriminatory intent before shifting the legal burden to the employer, while preserving legitimate defences based on objective HR criteria.
2. ***Revise Reporting Timeframes* (Article 6).** Extend the reporting window from 10 to at least 30 working days for complex matters, introduce automatic extensions during statutory shutdown periods (such as Santa Marija and Christmas) and eliminate automatic adverse legal inferences for administrative delays.
3. ***Harmonise apparent overlaps with DIER*.** Establish a unified single-window portal that explicitly delineates authority between the Industrial Tribunal and the NCHRE, preventing dual-forum litigation and conflicting legal rulings.
4. ***Establish Statutory Safe Harbours*** by granting employers legal protection against third-party harassment claims if they maintain certified anti-harassment policies, provide staff training, and offer clear internal reporting mechanisms.
5. ***Protect Financial Risk Models & Rebalance Governance*.** Explicitly exempt objective models used in banking and insurance from discrimination mandates and guarantee formal commercial community representation to the business community on the NCHRE board.

4. CONCLUSION

Passing legislation of this constitutional magnitude without thorough public consultation, social dialogue and economic impact assessments risks harming the very ecosystem that generates employment and economic prosperity in Malta.

The Malta Chamber reiterates its call for the immediate postponement of the Third Reading of Bill No. 3 (2026) until the above 5 remedial recommendations are taken clearly and unequivocally onboard in the revised version of the Bill.

THE MALTA CHAMBER

www.maltachamber.org.mt

+356 2203 2304