

Submission to the Working Group on the proposed Human Rights and Equality Commission

FLAC

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About FLAC

FLAC is an independent human rights organisation dedicated to the realisation of equal access to justice for all.

FLAC Policy

Towards achieving its stated aims, FLAC produces policy papers on relevant issues to ensure that government, decision-makers and other NGOs are aware of developments that may affect the lives of people in Ireland. These developments may be legislative, government policy-related or purely practice-oriented. FLAC may make recommendations to a variety of bodies drawing on its legal expertise and bringing in a social inclusion perspective.

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For **more information**, contact us at

FLAC,

13 Lower Dorset Street, Dublin 1

T: 1890 350250 / 01 874 5690 | E: info@flac.ie | W: www.flac.ie

Submission to the working group on the proposed merger of the Irish Human Rights Commission and the Equality Authority into a Human Rights and Equality Commission

FLAC, the Free Legal Advice Centres, thanks the working group for this welcome opportunity to make a brief submission on this topic, addressing three key questions on which the Working Group is consulting.

FLAC is part of the Equality & Rights Alliance (ERA) which submitted a response on Proposed Merger of the Equality Authority and the Irish Human Rights Commission in October 2011. **We endorse ERA's response and wish to be associated with its recommendations.** Rather than rehearse them all, we would like to cite just a few matters that particularly concern us because of our work in the provision of legal advice and information to the public and other organisations which themselves serve the public and because of our legal casework and research work in areas of law that particularly affect marginalised and disadvantaged people.

Q1. What do people want the new body to do?

ERA has highlighted the **promotion, legislative & policy review, information, training and assistance functions** that the merged body should have.

- **We particularly stress the importance for the new body to be able to give legal information, advice and representation where it is needed** in order to vindicate human rights and equality and prevent discrimination.

As noted in ERA's submission, this body is well placed to ensure compliance with human rights law. This is particularly relevant regarding respect for rights in the recession. This would be accomplished by **ensuring that all parts of government understand and ensure that the minimum core rights necessary for people to live in dignity are maintained and that any reduction in rights is assessed in accordance with human rights law in order to have minimal impact on the most vulnerable.**

- In line with the recommendation of Council of Europe Commissioner for Human Rights, the new body **'should also take up the mandate of the Combat Poverty Agency and the National Consultative Committee on Racism and Interculturalism (NCCRI), both dissolved in 2008'**.
- It should be used to **introduce an explicit and positive equality and human rights duty to the public service** in terms of services and employment, in line with the current Government Programme, with additional capacity to advise the private sector on similar measures.
- It should be used to **spearhead a National Action Plan on Human Rights.**
- We would also like to suggest, based on our experience in taking the Lydia Foy case on transgender rights, that the **grounds on which discrimination is prohibited under the existing Equality Acts should**

specifically include 'gender identity' as the current gender ground may not cover all issues of discrimination against transgender persons.

Q.2 What features and functions does it need to do these things?

The new body should be described clearly enough and supported sufficiently to ensure that anybody whose rights are at risk of violation or discrimination and who would be otherwise unable to afford advice or representation should be able to look to the merged body for support. A minimum base standard required might be identified by assessing the strength and capacity of the legal units of both existing bodies before their budgets were so drastically cut.

- The new body should have **capacity to bring proceedings in its own name** and to **submit *amicus curiae* briefs to any court**, as of right.
- It needs the **power and capacity to represent individuals and organisations** in appropriate cases in any relevant court (including courts outside Ireland).
- It needs the **power to legally aid a person or body seeking to assert non-discrimination / human rights**, particularly in view of the fact that the Legal Aid Board is excluded from providing representation before the Equality Tribunal.
- It should **retain the capacity to submit 'Shadow Reports'** on human rights mechanisms.
- **Adequate resources** should be available for the operation of any and all functions assigned to the new body.

Q3. How should it be structured and what working methods should it use to achieve the above?

The new Human Rights and Equality Commission must be independent, and be perceived to be independent, if it is to accomplish its aims. FLAC agrees with ERA's stance in this regard and in relation to the new HREC's accountability. There must be adequate time taken to consult on and scrutinise the draft legislation establishing the new body and to allow it to develop with a common vision. There should not be a hurried fusing together of two very different cultures and ways of work.

- The HREC should have available a **range of working methods**, including research, inquiries, mediation, litigation and representation.
- To avoid suspicion of political favouritism or bias the **Board of the new Commission should be chosen by a selection committee using clear and transparent criteria and should be appointed by the Oireachtas on the nomination of the Government**. The Board should appoint the Commission's staff, who should be public servants, rather than civil servants attached to a Government Department, in order to comply with the UN Paris Principles for National Human Rights Institutions.

FLAC thanks the Working Group for the opportunity to present its position on the proposed merger.