

MARRIAGE EQUALITY

Civil Marriage for Gay and Lesbian People

Consultation Process on New Human Rights And Equality Body
Working Group's Secretariat,
Department of Justice and Equality,
Floor 2, Bishop's Square,
Redmond's Hill,
Dublin 2

23rd November 2011

Dear Madam / Sir

Please accept this e-mail as Marriage Equality's Submission to the Working Group on the new Human Rights and Equality Commission (HREC)

1. Introduction

Marriage Equality welcomes the opportunity to participate in the consultation process on the establishment of a new Human Rights and Equality Commission. We wish the Working Group every success in its deliberations.

The key questions raised in the call for submissions are addressed in sections 2-4 below.

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

The creation of a new body presents an opportunity to further embed a culture of respect for human rights and equality in Irish society. As the HREC will be independent of both government and civil society (in line with the *Paris Principles*), it will be ideally placed to act as a neutral and authoritative voice on such matters.

The HREC should be empowered, and enabled through adequate funding, to undertake tasks that are beyond the capacity of civil society organisations working in the equality and human rights sector. Empirical studies continually demonstrate that relying on individuals to enforce human rights and equality law is unrealistic, especially in the case of vulnerable people.¹ Scholarship in the field has also pointed to the limits of remedial and reactive models of enforcement.² Specialized equality bodies and national human rights institutions have a particular role to play in effecting proactive and systemic change. In order to do so effectively such bodies must be equipped with appropriate powers and we discuss some of these in the next section.

¹ See for example, European Union Agency for Fundamental Rights (2011) *Fundamental Rights: Challenges and Achievements in 2010* (Vienna: FRA).

² See for example, S. Fredman (2011) *Discrimination Law*, 2nd edition (Oxford: Oxford University Press) and S. Fredman (2008) *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford: Oxford University Press).

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

Marriage Equality submits that the HREC should retain, in a revised form, the existing powers and functions currently vested in the Equality Authority and the Irish Human Rights Commission. Powers to conduct inquiries or enquiries, to intervene in and initiate litigation, and to provide legal assistance in cases of strategic importance, are crucial and ought to be strengthened.

If the HREC is to operate as Ireland's designated equality body for the purposes of EU equality law, its mandate must include *inter alia* the provision of assistance to victims of discrimination. The Equality Authority currently fulfills that role through the services provided by its Public Information Centre and Legal Section. The HREC's information function should be extended to cover section 19 of the Intoxicating Liquor Act 2003. The strategic litigation work of the Equality Authority has made an invaluable contribution to the development of equality law in Ireland. NGOs, such as Marriage Equality, rely on that strategic case-work in developing our understanding of the legislation to combat discrimination and prejudice. It is imperative that the HREC retains such a role and continues to have access to the considerable body of expertise built up within the Legal Section of the Equality Authority.

In addition we recommend that the HREC be empowered to:

Promote equality of opportunity and human rights in the areas that come within its remit

Oversee compliance with a public sector equality and human rights duty

Such functions could be modeled on those of the UK Equality and Human Rights Commission (EHRC), while also drawing on the expertise of the Equality Authority in promoting equality of opportunity.³ For instance, the EHRC's specific human rights duty encompasses the protection and promotion of human rights, as envisaged in the Paris Principles:

The Commission shall, by exercising the powers conferred by this Part:
(a) promote understanding of the importance of human rights
(b) encourage good practice in relation to human rights
(c) promote awareness, understanding and protection of human rights, and
(d) encourage public authorities to comply with Section 6 of the Human Rights Act 1998 (c.42) (compliance with Convention rights).⁴

Section 6 of the Human Rights Act 1998 is in broad terms similar to section 3 of the European Convention on Human Rights Act 2003. The Irish Human Rights Commission's programme of human rights training for the civil and public service is a good exemplar of the type of promotional work that ought to be carried out by the HREC.

The establishment of the HREC provides an opportunity to revisit the most effective means of securing compliance with the state's obligations under the European

³ The Equality Authority is mandated to promote equality of opportunity under section 39 of the Employment Equality Acts 1998-2008 and under section 39 of the Equal Status Acts 2000-2008.

⁴ Section 9(1) Equality Act 2006.

Convention and with the duties of public sector bodies under equality law. In light of the equivalence commitment undertaken in the 'Good Friday' Agreement, we submit that the Working Group ought to consider the role of the HREC in monitoring a public sector equality duty.

Enter into human rights and equality agreements/ action plans with named organisations:

Currently, the Equality Authority has the power to conduct equality reviews and action plans. We recommend that the HREC be empowered to enter into a human rights and equality agreement or action plan with named public or private sector organisations. Such a power could draw on the existing expertise of the Equality Authority in conducting equality reviews and also perhaps draw on good practice from other jurisdictions (e.g. the experience of the Canadian Human Rights Commission in entering into memoranda of understanding with employers).⁵

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

In light of international standards, it would seem that the newly established HREC should autonomously decide which working methods are appropriate in carrying out its functions.⁶

We would be very grateful if you would acknowledge receipt of this submission.

Yours faithfully

Moninne Griffith
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⁵ See generally: http://www.chrc-ccdp.ca/preventing_discrimination/moulist_listepe-eng.aspx

⁶ See Principle 5(2) in ECRI (2007) *ECRI General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level*, CRI (97)36 (Strasbourg: European Commission against Racism and Intolerance).