



Working collectively to support and promote community work as a means of addressing poverty, social exclusion and inequality and advancing human rights

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Review of the Equality Legislation 2021

Ensuring Effective Equality Legislation

CWI Submission

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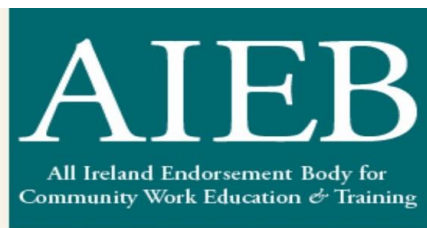
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The All Ireland Endorsement Body for Community Work Education and Training



PAVEE POINT
TRAVELLERS CENTRE

National Traveller Partnership

Pavee Point, National Traveller and Roma Centre



The National Traveller Partnership, a national network of 19 Traveller Community Development Projects

Galway City Partnership, a Local Development Company in Galway City



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Introduction

Community Work Ireland is a national membership organisation that promotes and supports community work as a means of addressing poverty, social exclusion and inequality, promoting, protecting and advancing human rights, and ultimately achieving social change that will contribute to the creation of a just, sustainable and equal society.

Community Work Ireland works to create the conditions for community work to develop by advocating for policies, programmes and resources to enable the growth and sustainability of a strong autonomous community development sector in Ireland.

The equality legislation, in particular the Employment Equality Acts and the Equal Status Acts, sets vital standards for organisations and institutions. It serves as a guiding norm for society. The legislation offers a key lever for communities experiencing inequality and discrimination in seeking to change their situation and to exercise their rights. It is for these reasons that we have worked with our members to develop this submission.

Community Work Ireland welcomes the current review of the equality legislation and looks forward to an impactful response by Government to the review in an ambitious renewal of the equality legislations.

Starting Point

We know from our members who work in diverse communities across the country, that the equality legislation needs to be strengthened if it is to achieve its laudable and much-needed intentions. Discrimination and inequality remain embedded in our society. Discrimination is a daily reality for the communities that our members work with, a reality that impacts on all aspects of their lives and places them at considerable disadvantage.

The experience of the COVID 19 pandemic further highlighted the Inequalities faced by these communities in very sharp ways. Equality should have been, and still needs to be, more central to the policy responses to the pandemic. Strong equality legislation would have assisted in this, and yet this legislation was hardly referenced in, and remained irrelevant to, many of the responses developed to respond to and manage the pandemic.

This reality on the ground identified by our members was reflected in the analysis of the CSO 2014 Quarterly National Household Survey equality module by the ESRI and IHREC. That work identified a significant 12% of the population aged over 18 had reported experiencing some form of discrimination in the previous two years. It found that discrimination rates were highest in relation to seeking work (reported by 7% of the population aged over 18), followed by the workplace (reported by 5%), private services (reported by 5%), and public services (reported by 3%). These figures had changed little from the previous QNHS equality module in 2010.

It is clear, therefore, that the equality legislation is not making its necessary impact, and inclusion and equality will not be achieved if this reality is not more effectively addressed. The dreams and aspirations of so many will remain thwarted if the equality legislation is not rendered more effective through this review.

Equality legislation needs energy, without which it falls into disrepair.

Energy comes first from its implementation, in terms of a sustained critical mass of casework under the Acts. Rights holders can drive change in their situation and experience this way, provided adequate legal and moral support is made available to them.

Energy comes also from evolution of the legislation, in terms of new and ambitious provisions. Such provisions give new relevance to the equality legislation, bring equality back onto the agenda of the state, employers, and service providers, and drive new systems and practices across organisations in all sectors.

Our equality legislation had significant energy in the decade of the 2000s with the introduction of the Employment Equality Acts and the Equal Status Acts. This was on foot of significant reform of the equality legislation at that point, and a high level of subsequent enforcement. This is no longer the case. As such, this review and an ambitious reform of our equality legislation is both timely and urgent.

Ensure Comprehensive Equality Legislation

The first step for this current review and reform process should be to ensure that the equality legislation addresses the discrimination experienced across all groups in our society. This is not the case currently. The analysis of the CSO 2014 QNHS equality module found that the equality legislation is not adequately comprehensive. It identified that 29.6% of those who reported discrimination stated that it was on grounds other than those covered by the current equality legislation. In the work domain, this figure was 22.7% of those who reported discrimination, reaching 34.5% in the field of service provision. The analysis suggests that some of this discrimination is co-related with educational disadvantage, low income, and location.

This is a situation that leaves groups in our society disadvantaged and excluded. It breeds frustration within communities that are not covered, and enables division between groups that are covered and those that are not.

The work of our members includes action to respond to discrimination experienced by communities that have no formal redress under the equality legislation. This action principally relates to discrimination and harassment on the basis of socio-economic status. People are being discriminated against on the basis of their address or location, housing tenure, educational status, and social welfare dependency, and on the basis of the stereotypes that surround people living in poverty. This is happening when seeking employment, in their experience of policing, when seeking housing, in their interactions with schools, and when they seek to access services in both the public and the private sectors.

Many of our members are involved in youth work and identify young people as another group that experience high levels of stereotyping and associated discrimination. This is evident particularly when seeking to access services, employment and in their experience of policing. Currently people under 18 are not covered by the Equal Status Acts and cannot take claims for age-based discrimination under this Act.

Two other groups emerge as being vulnerable to harassment and discrimination while not being adequately covered or covered at all by the equality legislation.

Trans people experience high levels of stigma and isolation which encompasses discrimination and harassment both in work, in seeking work, and in accessing services. Trans people are not named in or adequately covered by the equality legislation.

People with previous criminal convictions are also excluded from the provisions of the legislation. despite experiencing significant difficulties in reintegrating into society and into their communities, with discrimination playing a role in these difficulties.

Another reality evident from the work of our members is that of diversity within the groups exposed to discrimination, and the particular experience of discrimination for those whose identity rest at the intersections of the grounds, a reality for most people. Discrimination experienced on one or more grounds has a cumulative and profound effect on those affected and is not adequately addressed in our equality legislation.

CWI calls for:

- Inclusion of a new socio-economic status ground, defined in terms of situations of socio-economic disadvantage (Employment Equality Acts and Equal Status Acts);
- Inclusion of a new 'previous criminal conviction' ground (Employment Equality Acts and Equal Status Acts);
- Expansion of the gender ground to explicitly reference transgender, non-binary and intersex people in covering gender identity, gender expression and sex characteristics (Employment Equality Acts and Equal Status Acts); and
- Expansion of the age ground to remove the current age limit and to cover those under 18 years of age (Equal Status Acts).
- Explicit prohibition of intersectional discrimination, with an associated definition, and attracting additional sanctions for its cumulative impact on complainants.

Address Deficits in the Equality Legislation

The provisions in the equality legislation requiring employers and service providers to make reasonable accommodation to enable access and participation by disabled people are an important recognition of and response to the nature and scale of exclusion and inequality experienced by disabled people. Ireland has ratified the UN Convention on the Rights of Persons with Disabilities since the introduction of these provisions in our equality legislation, another important and welcome development. However, the provisions of the UN Convention are stronger than those in the equality legislation, just as, within the equality legislation, the provisions in relation to employment are stronger than those in relation to service provision. There needs to be a levelling up of these provisions to the standard set in the UN Convention in all the appropriate legislation if progress is to be made on the exclusion and inequality experienced by disabled people.

As noted above in relation to the experiences of discrimination of people living in socio-economic disadvantage and young people, the issue of their experience of policing arises. This is an issue that pertains for other grounds that are covered by the equality legislation. It is of concern that this area is not covered by the Equal Status Acts given the manner in which services are defined in the Acts to exclude the performance of the general functions of public bodies. This is an issue, in the experience of our members, that extends beyond policing in excluding other areas where discrimination can arise, such as the prison services and immigration services.

Section 14 of the Equal Status Acts introduces an exemption that, in effect, permits the state to discriminate if any such action is based on a legislative provision. This exemption further allows the state to legislate in order to discriminate. This exemption has weakened the implementation and efficacy of the equality legislation and, essentially, sets a lower bar for the public sector than the private sector in this area.

Another exemption that has been found by our members to diminish the efficacy of the equality legislation relates to Section 14(1) (aa) of the Equal Status Acts which exempts certain actions by public authorities in relation to 'non-nationals'. This diminishes the

protections available to groups that can already be subject to particular forms of discrimination and exclusion due to their legal status.

CWI calls for:

- Levelling up of the provisions in relation to reasonable accommodation on the disability ground to the standard set by the UN Convention on the Rights of Persons with Disabilities, requiring employers and service providers to make reasonable accommodation to secure access for and participation by disabled people, unless it can be demonstrated that this would impose a disproportionate burden.
- Expansion of the definition of services to include the performance of their general functions by public bodies.
- Deletion of the exemption for actions carried out on foot of legislative provision, Section 14 of the Equal Status Acts.
- Deletion of the exemption of certain actions by public authorities relating to ‘non-nationals’, Section 14(1) (aa) of the Equal Status Acts.

Strengthen the Equality Legislation

Community work emphasises both task and process in responding to inequality and exclusion. Process plays an important part in the work of our members in seeking to reach, be accessible to, and be relevant for the communities they work with. In this, our members respond to the reality that diversity, and how people seek to live out their identities, has practical implications for the workplace and its organisation, and for the provision of services and their design and delivery.

This is valuably recognised in the equality legislation in the provisions made for and requirements in relation to reasonable accommodation on the disability ground. This reasonable accommodation approach, and its associated requirements, would be important on the other grounds covered under the equality legislation, in order to ensure account is taken of the practical implications of diversity in a manner that enables their access to employment and to service provision. This would address the challenge that same treatment is not always equal treatment, and any ambition for equality requires a reasonable accommodation of diversity.

The work of our members involves a significant targeting of initiative and resources on the communities and groups that experience exclusion and inequality. The reference to, and enabling of, positive action under the equality legislation is, therefore, vital in underpinning this work. In engaging in such work our members seek substantive equality in securing new outcomes for these communities and groups, the achievement of full equality in practice. The definition of positive action in the legislation is important in ensuring there are no barriers put in the way of such initiatives. As such, it is of concern that the Acts contain a range of definitions and understandings of positive action, some of which are more helpful than others in being more attuned to the needs of groups experiencing inequality and its associated accumulated disadvantages.

CWI calls for:

- Extension of the provisions for, and requirements in relation to, reasonable accommodation in relation to the disability ground, to all grounds covered under the equality legislation.

- Application of a single definition of positive action which would apply to all grounds and all contexts, set out in terms of initiatives and measures to ensure full equality in practice.

Build on Recent Improvements to the Equality Legislation

The Irish Human Rights and Equality Commission Act 2014 held the promise of new energy for the equality legislation with its provision for a statutory duty on public bodies to have due regard to the need to eliminate discrimination, promote equality of opportunity, and protect human rights in the implementation of all of their functions.

Positive duties of such a nature have a central role to play in addressing discrimination in contexts of high levels of under-reporting and given the reality that it is never easy for someone to take on a legal case. Positive duties are also valuable in enabling organisations to give expression to their commitment to and ambition for equality and non-discrimination. It was for these reasons that CWI welcomed the introduction of such provisions in the equality legislation.

Our members have participated with and supported a small number of public bodies in their implementation of participative approaches to this public sector equality and human rights duty. Overall, however, we have been disappointed by the low level of implementation of this statutory duty across the public sector. The promise in this provision has yet to be met after seven years in place. It is clear that a more effective enforcement regime is required.

The private sector has a key role to play in advancing equality and eliminating discrimination, alongside the public sector. It would be important that the private sector is also proactive in responding to the challenge of eliminating discrimination and promoting equality. In this, there are models of equality duties on the private sector, of varying levels of ambition, in the European Union Member States which could usefully be required in the Irish context. In Croatia, Czech Republic, Estonia and Slovak Republic equal treatment legislation includes duties on the private sector to take steps to create the conditions for an effective protection against discrimination. In Belgium, Estonia, Finland, Sweden equal treatment legislation includes duties on the private sector to plan for equality outcomes.

CWI calls for:

- Introduction of dissuasive sanctions for public bodies that fail to implement the public sector equality and human rights duty or to implement it to the standard set by the Irish Human Rights and Equality Commission.
- Provision for a statutory duty on private sector organisations to take action to inform employees and service users of their rights under equality legislation, to put in place and implement an equality policy, and to prepare and implement an equality action plan.

Ensure Access to the Rights Enshrined in Equality Legislation

Under-reporting of discrimination undermines the efficacy of equality legislation. The levels of under-reporting found in the 2014 QNHS equality module indicate that almost two thirds (64%) of people who experienced discrimination in the two years prior did not take any action in response to their experience and only 10% stated that they had made an official complaint or taken legal action. This reflects the experience of our members in their work within communities experiencing inequality and discrimination.

Low levels of resources are an immediate barrier faced in seeking to access justice under the equality legislation. People face well-resourced employers or service providers with strong legal teams when they seek to take a case. Very specifically, the venue where the case is heard influences people's decision, with the more formal setting of a Court and its more combative approach proving a significant barrier in relation to cases in the District Court. Overall, a false common sense takes hold within communities that change is not possible or the experience of discrimination is not important enough to merit attention and access to justice is effectively denied.

In this regard, the transfer of jurisdiction for cases of discrimination in relation to licensed premises to the District Court from the then Equality Tribunal, is of particular concern. This had a significant and well-recorded chilling effect in such cases being taken.

Of further concern is that Legal Aid is not available to people in taking discrimination cases, and the Irish Human Rights and Equality Commission cannot respond to the scale of demand for support from people who experience discrimination. A low level of casework results and remedies to discrimination remain ineffective.

It is yet further clear that the change of jurisdiction from the Equality Tribunal with its amalgamation under the Workplace Relations Commission has had a chilling effect on the level of casework. The shift from a specialist Equality Tribunal has resulted in a loss of profile for the venue and a loss of specialist expertise in its functioning, that has been deleterious to the levels of reporting and to effective casework under the equality legislation.

CWI calls for:

- The provision of free Legal Aid in discrimination cases, with the Legal Aid Board empowered to provide for representation for complainants before the Workplace Relations Commission in such cases.
- Reversal of the jurisdictional change for discrimination cases against licenced premises, with jurisdiction for such cases being accorded to the Workplace Relations Commission.
- Reinstatement of the specialist Equality Tribunal.