

Submission to Consultation Process on New Human Rights and Equality Body

GLEN - Gay and Lesbian Equality Network

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1. Introduction

GLEN ~ Gay and Lesbian Equality Network ~ welcomes the call for submissions by the Working Group on the establishment of a new and enhanced Human Rights and Equality Commission. We particularly welcome the aims set out in the Terms of Reference of bringing about a culture of respect for human rights and equality and of ensuring that the structures and functions of the new body will be fit for this purpose.

The consultation process now being undertaken provides an important opportunity for further reflection on the broad impact of the Equality Authority and the Irish Human Rights Commission and the lessons learned in terms of the functions, approach and work undertaken by the two bodies. It also provides an opportunity to identify the impact of the respective bodies from the perspective of groups particularly affected by the human rights and equality infrastructure.

The following submission focuses on the specific impact of the bodies on lesbian, gay and bisexual (LGB) people and our assessment of the implications of this for the questions raised by the Working Group for the Consultation exercise. This is briefly set out in the following sections.

2. Equality Infrastructure and Lesbian, Gay and Bisexual (LGB) People

GLEN has played a significant role in the development of the equality infrastructure, working closely in the 1990s with the ICCL, the Campaign for Equality and the Labour Party in advancing multi-ground equality legislation that included sexual orientation as a protected ground.

The equality infrastructure in turn has been critically important for the major progress made by lesbian, gay and bisexual (LGB) people in Irish society over the past 20 years.

The Equality Authority in particular, working with a steering group that included a number of GLEN members, set out an ambitious and comprehensive programme for equality for LGB people with the publication in 2002 of its policy and research report *Implementing Equality for Lesbian, Gay and Bisexual People*. It then worked effectively and proactively on delivering on this programme. In particular:

- The Equality Authority was the first state body to call for equality for same sex couples in civil marriage and made a major contribution to advancing this goal through its participation on Working Group on Domestic Partnership (Colley Group) and the organisation and funding of an International Conference on Legal Recognition of a wide range of relationship. The Authority has welcomed the passage of civil partnership based on marriage but has continued to highlight marriage as the equality goal.
- The Authority has helped drive major initiatives to combat homophobic bullying in schools, including a major campaign in partnership with BeLonGTo (the national LGBT youth organisation) in 2006 and subsequent work with BeLonGTo and GLEN.

- In Partnership with the Equality Commission for Northern Ireland, the Authority funded and published a major study designed to enable LGB people to realise their rights and protection under the equality legislation.
- The Authority was also the first state agency to recognise the particular issues faced by transgender people with the publication in 2004 of its report on access to health care for transsexual people.
- The Authority has helped drive equality for LGB people in the workplace, including the provision of funding through the EU Progress Programme for GLEN to develop practical materials for LGB inclusion in the work place (ongoing) and funding for a joint project between GLEN and Dublin City Council to develop a consensus on the economic case for equality and diversity (also ongoing).

The Irish Human Rights Commission has also contributed to progress for LGB people through its publication in 2006 of the report the *Rights of De Facto Couples* and its publication in 2008 of a *Discussion Document on the Scheme of the Civil Partnership Bill* following a referral of the Scheme to the Commission by the Minister for Justice, Equality and Law Reform.

The Commission highlighted in particular the issues of children raised by same-sex couples, noting that “children raised within a civil partnership should be treated equally with other children raised within opposite-sex relationships.”

In the context of the questions set out in the Consultation note, GLEN makes the following proposals:

A Key Issues for LGB People in Context of New Body

Although major progress has been made for lesbian, gay and bisexual people in Ireland, action is necessary to address gaps across three significant and inter-related dimensions. While these are outlined with reference to LGB people, they are equally relevant dimensions of progress across other equality grounds.

1. **Overarching Law and Public Policy.** Although civil partnership is a radical step forward, there remain significant gaps in civil partnership legislation with respect to the rights of children being parented in same-sex headed families.

Moreover, the Irish Constitution has been interpreted in a way that has set limits on equality for lesbian and gay people, including the denial of equality in civil marriage.

Other legislative barriers include Section 37 of the Employment Equality Act which, while untested in the Courts, has created what the INTO has described as a “chill factor” for lesbian and gay teachers in the education sector.

2. **Building and Sustaining Positive Societal Culture.** There have been hugely positive changes in public perceptions of and support for lesbian and gay people in Ireland. The enactment of civil partnership legislation has extended and deepened this change as hundreds of lesbian and gay couples have held public partnership ceremonies across the country.

However, such cultural change cannot be taken for granted and is not universal. For example, research by GLEN and BeLonG To Youth services (*Supporting LGBT Lives*, 2009) shows that homophobic bullying remains a critical problem for

younger LGB and transgender people in schools. Despite the progress made by the Department of Education and Science on this issue (working with GLEN and BeLonG To) many younger lesbian and gay people are still 'coming out' in school environments where they are unsupported and where homophobic bullying is prevalent.

3. **Lived Experience of LGB People.** While legal and cultural change have a critical role in creating the conditions for equality and inclusion, specific and targeted actions will also be required to help translate these into concrete improvements in the lives of LGB people, especially the more vulnerable. For example, recent research by GLEN and Age & Opportunity (*Visible Lives*, 2011) found that older LGBT people grew up at a time of much deeper prejudice were more likely to be living alone and single than the general population and had fewer people to call on in the event of emergencies or when in need.

B and C: Features, Functions and Structures of New Body

The equality legislation and the work of the equality infrastructure have provided a critical catalyst for progress across the dimensions just outlined. It is arguable that more progress has been achieved through reference to the principle of equality set out in the equality legislation than has been achieved through reference to human rights. In this context, critical issues for GLEN are:

- That in a new merged body there will be a **leveling up of rights with respect to lesbian, gay and bisexual people**. In other words, that the agreed human rights of lesbian and gay people will be amplified by the principle of equality on the basis of sexual orientation. It would for example, be a considerable step backwards if the new commission did not support equality in civil marriage for same-sex couples as consistently highlighted by the Equality Authority.
- Conversely, GLEN would be **concerned if human rights and equality for lesbian and gay people were subordinated to those enumerated in international human rights conventions**, where reaching a consensus on the human rights of lesbian and gay people has been slow and difficult to achieve. In fact, over the past few years, Ireland has made important contributions to the expansion of lesbian and gay rights internationally and the new commission is well placed to contribute to this work.
- The new body should take a **proactive lead in ensuring that equality for LGB people is implemented** across legislative provisions, policy, statutory service provision and in the wider society.
- This would include, in the context of promoting a culture of respect for human rights and equality, that the right to express ordinary affection in public, **the right of LGB people to freedom of expression and to be safe in the public domain/spaces** is protected,
- As a general principle, we propose that the **promotional and development role of both bodies include the promotion of the culture and perception across wider society that equality and human rights are of interest to everyone and across all areas**.

With an overarching imperative for human rights and equality, we would propose that the functions of the new commission be expanded:

- The inclusion of a “**positive duty**” on the part of public bodies to promote equality and human rights in the context of their policies, programmes and services.

We would also suggest the following in relation to the new body:

- We agree that the new body should be **independent** in the exercise of its functions. We would also propose **that the new commission or the governance of the new body be ‘pluralistic’ in its makeup.**
- The new body should have **sufficient resources** to conduct its functions thoroughly.

Finally, given that the Working Group is likely to be recommending changes to the legislation governing the functions of the Equality Authority and the IHRC, we propose that **the Working Group recommend that the opportunity be used to clarify and/or restate the functions of Section 37.1 of the Employment Equality Act** to ensure compliance with best human rights and equality principles.