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**Clare Public Participation Network submission
to the
Department of Children, Equality, Disability, Integration and Youth
as part of the public consultation on
The Review of the Equality Acts**

Submission made via email to equalitypolicy@equality.gov.ie on 6th December 2021

Clare PPN (CPPN) is a network of 331 community, voluntary, environmental and social inclusion groups from Clare. It exists to facilitate the formal participation by the community sector in Clare County Council's policy making structures and to support communication and information sharing in the community and voluntary sector in Clare. It is funded jointly by the Department of Rural and Community Development and Clare County Council but is autonomous and its activities are directed by its members through an elected secretariat. Clare PPN's website is www.clareppn.ie and we are on twitter @clare_ppn and <https://facebook.com/clareppn/>

Clare Public Participation Network welcomes public consultation on the review of the existing Equality Acts. This submission is made on behalf of Clare PPN's social inclusion college member groups and is based on our ongoing work and consultations with them. Clare PPN staff have also had the opportunity to attend webinars held by Community Workers Ireland & the Irish Traveller Movement and have engaged with FLAC's 'Equality Acts review' and their submission to the Review of the Gender Recognition Act 2015, The ESRI's 'Disability and Discrimination in Ireland', The Equality and Rights Alliance's (2011) 'A Roadmap to A Strengthened Equality and Human Rights Infrastructure in Ireland' and the initial desktop research findings of 'Developing a 5 Year Anti-Poverty Strategy for Clare' the IHREC funded project which is currently under way in Clare.

The equality legislation, in particular the Employment Equality Acts and the Equal Status Acts, set 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.

This submission is set out under the headings provided by the Department:

The functioning of the Acts and their effectiveness in combatting discrimination and promoting equality

Historically, Ireland has relied on an ideology of charity to address injustice and inequality. This ideology sees the managing of poverty and injustice as something voluntary, a personal choice and steeped in morality. The Equality Acts must seek to overturn this mindset into one of justiciable, enforceable rights and remedies accessible to those who need them. As of 2021, this is not fully the case as can be demonstrated by many people, particularly minority groups who report instances of discrimination and the ensuing difficulty in seeking justice.

Example: The findings of 'Disability and Discrimination in Ireland' published by the ESRI in October 2018 illustrated that people with disabilities experience higher rates of discrimination than people without disabilities. Descriptive analysis showed that discrimination for people with disabilities is mostly experienced in the health services followed by the private sector (e.g. financial institutions, shops, pubs and restaurants). The findings also showed that when people with disabilities are looking for work, or in the workplace, the odds of experiencing work-related discrimination was twice as high compared to those without disabilities. Focusing on discrimination in public services (such as education, health, transport), the findings also showed that people with disabilities were three times more likely to experience discrimination compared to those without disabilities.

This shows a significant failure of implementation of Section 42 of the Irish Human Rights and Equality Act 2014 which provides for the Public Sector Equality and Human Rights Duty.

Clare PPN also notes that discrimination cases are not treated as criminal offences and believe that proportionate legislation that gives the victim the option to pursue a criminal conviction for the perpetrator would have a significant deterrent effect and would in some cases remove the responsibility for court proceedings from the victim. Clare PPN recognizes that in many cases discrimination can be institutional and that identifying single responsible individuals for the practice in any organisation could in fact sidestep more systemic issues. However on balance Clare PPN suggests that it is necessary to ensure that those who experience discrimination do not unduly bear the burden of addressing it and so the available remedies may need to be expanded to include a variety of levels and/or methods of sanction.

The degree to which those experiencing discrimination are aware of the legislation and whether there are obstacles which deter them from taking an action;

Since 2003 a person who has been discriminated against by a licensed premises must bring a claim to the District Court rather than the more accessible Workplace Relations Commission. We recommend that discrimination cases be heard in the less adversarial WRC.

Currently cases can only be taken on a combination of two grounds of discrimination even where multiple are present. We recommend that all grounds leading to an occurrence of discrimination be included and considered.

Clare PPN recognises the need for targeted outreach information campaigns about Equality Rights to the groups most affected by inequality.

Clare PPN recommends that HAP payments are not included in means testing for free legal aid.

Clare PPN requests that the current time limit of two-months for reporting of discrimination be reassessed, given the potential mental health or post-traumatic stress effect of an incidence of discrimination.

In addition to the above points, it was noted at the Equality Acts review consultation by the Irish Traveller Movement on 1st December 2021 that solicitors are not turning up to court dates and when they do they often lack the legislative knowledge around discrimination. Traveller families are often hesitant to take a case because of negative publicity and the fear that accommodation will be refused to them in the town as a result. Travellers are also subjected to ethnic profiling and as a result feel that the justice system is biased against them. In light of this, Clare PPN supports the Council of Europe's recommendation of establishing an Independent Law Centre for Travellers to address the issues raised above and we also recommend that those working in the justice system are required to attend Traveller Culture training in order to minimise misunderstanding and prejudice.

Clare PPN welcomes the current review of the Liquor Licensing Act and hopes that it is congruent with the Equality Acts review on aspects around discrimination on licensed premises.

The scope of the current definitions of the nine equality grounds. This will include consideration of the gender ground, the disability ground and whether new grounds should be added, such as the ground of socio-economic discrimination;

'Socio-economic status'- the Tenth Ground

The nine grounds in the Equal Status Acts do not fully cover how inequality is experienced in 2021. The Acts do not prohibit discrimination based on socio-

economic status even though poverty and inequality are closely linked. Clare PPN urges that 'socio-economic status' be included as the tenth ground for discrimination, specifying the following under these grounds; educational disadvantage, unemployment, homelessness, lone parents and ex-prisoners.

The definition on 'gender'

The gender ground, as currently defined, does not reference transgender, non-binary and intersex people. However, the definition has been interpreted in a way which includes transgender people. This is required by EU law. IHREC has stated that the Equality legislation "should explicitly prohibit discrimination against transgender, non-binary and intersex people".

Whether the legislation adequately addresses intersectionality or the intersection of discrimination across a number of grounds;

The legislation does not explicitly allow for claims of intersectional discrimination and Clare PPN calls for this to be rectified. Currently Cases must only be taken on a combination of no more than two grounds. Intersectional discrimination is the complex cumulative way in which multiple forms of discrimination combine and overlap, especially in the experiences of individuals who belong to marginalised groups, for example, Traveller Women or LGBTQIA persons with disabilities. The Equal Status Acts should ensure that all grounds upon which a person has experienced discrimination can be included in any case taken.

Clare PPN suggests that it would be timely as part of this review to consider whether and how the inclusion of Citizenship/residency/immigration status as a ground under which discrimination is prohibited might be progressed in all matters that relate to any individual's basic indivisible human rights. In this consideration matters such as habitual residency conditions might be revisited in a way that seeks to include all individuals within the state under the protections the state offers. Clare PPN understands that this would entail a fundamental shift in current practices but considers that it is the duty of any state to attempt to ensure that no one within it exists without rights. Our experiences in this regard have involved

Whether existing exemptions in the legislation should be modified or removed;

Exemption for the Functions of Public Bodies

The definition of "services" in section 2 of the Equal Status Acts is broad enough to include services provided by public bodies. However, the definition does not extend to the performance of the general functions of public bodies, which cannot be

described as services. As a result, it is unclear to what extent the Equal Status Acts apply to public authorities performing public functions which may not come within the definition of “services” but which may nonetheless have a great impact on lives. For example, areas like immigration, taxation, and the prison service. It has been established that the “controlling functions” of An Garda Síochána, including the investigation and prosecution of crimes, do not come within the scope of the Equal Status Acts. Clare PPN calls for the explicit inclusion of all public bodies including An Garda Síochána, staff of all immigration related functions such as IPAS and INIS under the Equal Status Acts.

Exemption for Legislation which Discriminates

Section 14 of the Equal Status Acts excludes from challenge any action that is required by legislation. In practical terms, this means that any legislation, or the provisions of any legislation, which discriminates on one of the nine grounds or which has a disproportionately negative impact on certain groups falls outside the scope of the Equal Status Acts and cannot be challenged under the equality legislation.

Direct Provision and Immigration and Asylum Applications Exemption

Section 14(1)(aa) of the Equal Status Acts contains another broad exemption to the Equal Status Acts, which means it does not apply to certain actions by public authorities “in relation to a non-national”. This exemption appears to have been inserted “to ensure that asylum and immigration applications, and the non-statutory direct provision system for international protection applicants, would not be open to challenge under the Equal Status Act” Clare PPN calls for the removal of these exemptions which in many cases ensure that those who most need their rights protected are left instead outside of the protection from discrimination offered by the equal status acts. They find themselves not in fact equal.

The Effect of the Exemptions to the Equal Status Acts - A Barrier to Combatting Structural Disadvantage and Discrimination

These exemptions to the scope of the Equal Status Act largely leave even those who are a member of a “protected group” under the Equality Acts, largely unable to challenge discrimination by public bodies, and discrimination in key areas of State activity such as housing, healthcare and social welfare. Combatting discrimination in these areas is vital to tackling socio-economic disadvantage and to upholding socio-economic rights.

For example, FLAC has previously highlighted the discriminatory effect of the so-called “criminal trespass” legislation on Travellers. Other groups have highlighted the discriminatory effects (for Travellers and other groups) of the law in relation to

school-admission policies. FLAC has also expressed concern at instances of institutional discrimination against Travellers by local authorities and An Garda Síochána. However, these matters cannot currently be challenged under national equality law. Clare PPN calls for this situation to be rectified under this review of the acts.

In 2019, the *UN Committee on the Elimination of Racial Discrimination (UNCERD)* highlighted a range of deficiencies in the “legislative framework for the elimination of racial discrimination”, including:

- “The unclear definition of “services” in section 5 of the Equal Status Acts, which may exclude the provision of services provided by public authorities such as the police, the prison service and the immigration service”
- “Preclusion of complaints against legislative provisions in Section 14 of the Equal Status Acts”

The *UN Committee on the Elimination of Discrimination against Women (UNCEDAW)* have also called on Ireland to “ensure that an effective remedy is available for discrimination that has a legislative basis”.

The Equal Status Acts should be amended so that the definition of “services” includes the functions of public bodies, and the blanket exemptions for the State under section 14 of the Equal Status Acts should be removed.

People Working in other People’s Homes

The Definition of Employee (section 2 of the Employment Equality Acts) contains an exemption to who is considered an “employee”. As a result, “so far as regards access to employment”, the Acts do not apply to “a person employed in another person’s home for the provision of personal services for persons residing in that home where the services affect the private or family life of those persons”. The result is that people who do domestic or childcare work may not be fully protected against discrimination. Clare PPN recommends the removal of this exemption and the explicit inclusion of domestic and care workers under the protection of the acts.

Equal Pay for People with Disabilities

The Employment Equality Acts contain important “Equal Pay” provisions. However, section 35(1) of the Employment Equality Acts states that it not discriminatory to pay a person with a disability a lesser rate of pay if their output is less than that of a person without a disability. IHREC have previously called for this exemption to be removed, with a report of the Equality Authority (one of IHREC’s predecessor bodies)

stating that section 35(1) undermines the positive provisions of the Acts such as Reasonable Accommodation. This exemption should be removed.

Exemptions based on age

There is a significant exemption to the age ground under section 3(3)(a) of the Equal Status Acts, which means that people under 18 cannot take a claim of discrimination on the basis of their age. This exemption is “unduly broad in that it also exempts discrimination as between children of different ages. The age ground, without age limits, must be redefined to include people under eighteen

Vocational Training

Section 12(2) of the Employment Equality Acts contains an unnecessarily narrow definition of “vocational training”. This means not everyone engaged in such training is protected by the Employment Equality Acts. It is likely that Ireland is not complying with our equality obligations under EU law in relation to vocational training.

The definition of vocational training in the Employment Equality Acts should be amended in line with EU law.

Any other issues arising from the legislation

In relation to reasonable accommodation, Clare PPN would like to see a comprehensive definition for ‘nominal cost’ in the case of the provision of goods & services and ‘disproportionate burden’ in the case of access to employment. The current obligation towards people with disabilities is minimal and does not compel employers or providers of goods and services to ensure the full participation of people with disabilities. Public and private bodies must have access to resources financial or otherwise to implement reasonable accommodation at every level.

‘The European Court of Human Rights (ECtHR) has profound experience with claims related to the rights of persons with disabilities. The Court considers a refusal of reasonable accommodation to be discrimination under Article 14 of the ECHR’ - Reasonable Accommodation Disability Discussion Paper - European Network of Equality Bodies

Clare PPN thanks you for the opportunity to make this submission and we welcome any enquiries in respect of any aspect of it.

Yours Sincerely,
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