



LGBT
IRELAND

For Inclusion
For Equality
For Everyone

Submission to the Inter-Departmental Committee on
the **Referendums on Family, Care and Gender Equality**

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Contents

- About LGBT Ireland Page 3
- Introduction Page 4
- Concerns Page 5
- Recommendations Page 6
- Annex 1: ICCL wording Page 7
- Annex 2: FLAC wording Page 8

About LGBT Ireland

LGBT Ireland is a national charitable organisation working to improve the visibility, inclusion, and rights of LGBTI+ people living in Ireland. Through our national helpline, online, and face-to-face services, we provide confidential support and information to thousands of LGBTI+ people and their family members each year. Informed by the issues and experiences raised through our frontline services, we also work extensively in the area of policy and legislative reform to ensure that LGBTI+ people's voices are heard in the policy and practice developments that affect their lives. The submission below is informed by the issues and experiences of the LGBTI+ community and their family members who contact us. As a network organisation with seven regional LGBTI+ member services, we also have a strong regional focus, and the recommendations outlined below are deeply rooted in the knowledge and experience of our members working across the country.

Introduction

LGBT Ireland welcomes the proposed referendums on family, care, and equality. These referendums represent a once-in-a-lifetime opportunity to strengthen human rights, promote equality and reduce discrimination. This opportunity must be seized. We welcome the opportunity to enhance the equality architecture, to remove the offensive references to women's place in the home and recognition of diverse family forms. However, we have several concerns that we would like to see addressed through the recommendations provided. This submission has been informed by legal work undertaken by both FLAC and ICCL, whom we thank for their support and partnership.

Background

The Citizens' Assembly on Gender Equality recommended three changes to the Constitution.

1. To replace the reference to a woman's place in the home in Article 41.2 with a provision on the importance of care at home and in the community.
2. To expand the definition of family in Article 41 beyond the family based on marriage.
3. To provide an explicit reference to gender equality and non-discrimination in Article 40.1.

This third recommendation is of relevance to the work of LGBT Ireland. The current text of Article 40.1 reads:

All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.

The Joint Oireachtas Committee on Gender Equality have recommended that this provision be replaced with the following:

All citizens shall, as human persons without distinction as to sex, be held equal before the law. The State shall in its enactments have due regard to the principles of equality and non-discrimination.

Concerns

LGBT Ireland has a number of concerns with this proposed wording:

1. There are currently no explicit constitutional protections for LGBTQI+ people. The proposed wording fails to rectify this gap. We would like to see the explicit inclusion of sexual orientation, gender identity and sex characteristics as protected grounds within the Constitution as well as explicit protections for other groups, including but not limited to Travellers, people of colour and people with disabilities.
2. The elevation of sex above all other equality grounds in the proposed wording is problematic and fails to recognise the intersectional nature of discrimination and oppression.
3. The proposed wording refers to citizens. Constitutional equality protections should be extended to all people in the State regardless of their citizenship status. Therefore, the reference to citizenship should be removed.
4. The proposed wording includes the words “as human persons”. According to FLAC, “These words have been interpreted by the courts to mean that the constitution is especially concerned with discrimination on the basis of *‘matters that can be said to be intrinsic to the human sense of self’*. As a result, it is much more difficult to challenge economic and social discrimination and inequalities.” Therefore we think this reference should be removed.
5. The proposed changes to the equality provisions are not in line with international human rights standards and could be strengthened. In particular, there should be a constitutional mandate that the State legislates to promote equality.

Recommendations

We recommend that:

1. The proposed wording for the equality provision is expanded to include a full range of grounds, including but not limited to gender, sexual orientation and sex characteristics.
2. To reach a new agreed wording, a special conference should be held this summer that includes legal academics, NGOs, affected communities and international experts.
3. In the absence of such a process, we support the suggested wordings by FLAC and ICCL, both of which expand the discrimination grounds and strengthen the equality protections (see below).

Annex 1

Proposed wording from ICCL

All persons are equal before and under the law and are entitled without any discrimination, to the equal protection and equal benefit of the law.

The state may not discriminate directly or indirectly against anyone on one or more grounds, including but not limited to race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation, gender, civil status, family status, membership of the Traveller community and sex characteristics.

To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

Annex 2

Proposed wording from FLAC

1° The State recognises that, in a democratic society, the principles of equality and non-discrimination are fundamental to the common good.

2° All persons shall be held equal before the law and shall enjoy the equal benefit and protection of the law without discrimination, save only for measures which constitute a proportionate means of achieving a legitimate aim.

3° Discrimination includes direct discrimination, indirect discrimination and discrimination by association, on the ground of sex, gender, race, colour, nationality, ethnicity (including membership of the Traveller community), disadvantaged socio-economic status, sexual orientation, language, religion or belief, political opinion, disability, age, family status, civil status, other such status, or a combination of grounds.

4° With a view to ensuring full equality in practice, the Oireachtas may take legislative and other measures to promote equality and to prevent and compensate for discrimination, disadvantage and social exclusion.

5° In order to promote equality and eliminate discrimination, the State shall take all appropriate steps to ensure that reasonable accommodation is provided to people with disabilities.