



**Embedding Access to Justice,
Equality & Human Rights in
the next *National Strategy for
Women and Girls***

Submission to the Department of Children,
Equality, Disability, Integration and Youth
October 2024

About FLAC

FLAC (Free Legal Advice Centres) is an independent human rights and equality organisation which exists to promote access to justice. Our vision is of a society where everyone can access fair and accountable mechanisms to assert and vindicate their rights.

FLAC operates a telephone information and referral line (from which approximately 12,000 people receive basic legal information each year) and phone advice clinics (from which over 3,300 people received basic legal advice in 2023).

As an Independent Law Centre, FLAC takes on a number of cases in the public interest each year. We also operate a Roma Legal Clinic, Traveller Legal Service and LGBTQI Legal Clinic.

FLAC undertakes policy and law reform work in relation to human rights and access to justice, and in areas where we frequently provide legal assistance such as housing/homelessness, social welfare and equality/discrimination law. FLAC was a member of the Irish Human Rights and Equality Commission's Advisory Committee on the Future of Equality Legislation. We are a member of the Review Group for the Department of Justice's current Review of the Civil Legal Aid Scheme

| Contents | Page |
|---|-------------|
| <i>Introduction</i> | 3 |
| <i>Recommendations</i> | 4 |
| 1. Effective Implementation of the New Strategy | 9 |
| 1.1. Positive Duties & Positive Action | 9 |
| 1.2. Equality Data | 10 |
| 2. Human Rights | 11 |
| 3. Equality/Non-Discrimination | 11 |
| 3.1. The Review of the Equality Acts | 12 |
| 3.2. Combatting Intersectional Discrimination | 14 |
| 3.3. Combatting Socio-Economic Disadvantage, Discrimination & Inequality | 15 |
| 3.4. Promoting Rights & Equality for Transgender Women | 17 |
| 4. Access to Justice | 17 |
| 4.1. Legal Information & Advice | 18 |
| 4.2. Legal Representation | 19 |
| 4.3. Access to the Courts | 20 |
| 5. Equality in the Constitution | 21 |

Introduction

FLAC welcomes the opportunity to make a submission to Department of Children, Equality, Disability, Integration and Youth's ("the Department") consultation to inform the next National Strategy for Women and Girls. We note the contents of the survey published by the Department and the potential "key areas" of focus for the new strategy which have been identified.¹

FLAC's submission is informed by our experience of promoting gender equality and access to justice for women and girls across various areas of our work. The majority of callers to FLAC's Telephone Information and Referral Line are women. FLAC provides thousands of women with early legal information and advice in the areas of family and employment law each year. However, we cannot meet the overwhelming demand for these service.²

Since 2015, equality/discrimination has consistently been one of the areas of law in which FLAC most often provides legal representation.³ We frequently represent women who have experienced intersectional discrimination (i.e. discrimination on two or more grounds where the discriminatory treatment is linked to the combination of grounds, rather than to each ground separately), including Roma women who wear traditional Roma attire and who experience discrimination on the basis of their ethnicity and gender.

We draw from our experience of providing legal assistance in our policy, research and law reform work:

- ▶ In 2017, the United Nations Committee on the Elimination of Discrimination against Women adopted several recommendations made by FLAC in its concluding observations on Ireland.⁴

¹ "Socio-economic equality between women and men (e.g. gender pay gap, gender pension gap, paid family leave, maternity and paternity leave)", "Gender equality in law and policy (ensure data collection/research on gender equality issues)", "Equal participation of women and men in leadership positions in politics, in public life and in the workplace (e.g. in the Oireachtas, on boards or in senior management of Irish companies, on sporting governing authorities)", "Visibility of women and girls (e.g. in sports, combatting gender stereotyping, encouraging women to study/work in STEM)", "Physical and mental health of women and girls (e.g. improve access to contraception, improve support for depression and anxiety, reduce smoking consumption)", and "Domestic, sexual and gender-based violence (e.g. improve access to refuge spaces, protect survivors against risk of homelessness)". See: Department of Children, Equality, Disability, Integration and Youth (August 2024), [Online Survey for the next National Strategy for Women and Girls](#).

² In 2023, FLAC's Legal Information & Referral Telephone Line answered 12,472 queries. However, FLAC only had the capacity to answer 21% of the over 50,000 calls received. See: FLAC (2024), [Annual Report 2023: Targeted Action, Transformative Outcomes](#), p.8.

³ For example, in 2023 over 60% of our Independent Law Centre's active casefiles related to discrimination/equality. See: FLAC (2024), [Annual Report 2023: Targeted Action, Transformative Outcomes](#), p.26.

⁴ CEDAW (2017), [Concluding observations on the combined sixth and seventh periodic reports of Ireland](#).

- ▶ In 2017, a campaign by FLAC led to the abolition of the financial contribution requirement for legal aid in domestic violence cases.⁵
- ▶ In 2021, on foot of a campaign by FLAC, the Minister for Children, Equality, Disability, Integration and Youth announced that his Department would review Ireland’s equality legislation “*as a whole*”.⁶
- ▶ From November 2022 and throughout 2023, FLAC undertook a significant amount of policy, research and advocacy work in relation to the proposals for constitutional reform in the areas of ‘equality’, ‘family’ and ‘care’ which emerged from the Citizens’ Assembly on Gender Equality.⁷

This submission focuses on human rights, equality/non-discrimination, and access to justice. In addition to looking at these areas individually, our recommendations also seek to strengthen the implementation of the new strategy and to embed human rights, equality and access to justice in all areas of the strategy and its implementation.

The submission also examines how the new strategy can effectively respond to the experience and outcomes of the ‘family’ and ‘care’ referendums by focussing on substantive legislative reform to promote gender equality and to lay the groundwork for successful future constitutional reform.

Recommendations

- ▶ **Equality/Non-Discrimination, Human Rights** and **Access to Justice** should each be pillars of the next Strategy for Women and Girls.

Effective Implementation of the Strategy

- ▶ The **Public Sector Equality and Human Rights Duty** and the **Positive Action** provisions in the equality legislation should play key roles in facilitating the implementation of the new Strategy and, more generally, in mainstreaming gender equality. The new Strategy should commit to strengthening and clarifying these provisions, including by amending the legislation underpinning the Public Sector Equality and Human Rights Duty to:

⁵ FLAC (28 December 2017), [Press Release: FLAC welcomes the decision of the Minister for Justice and Equality to abolish the financial contribution requirement for civil legal aid for people affected by domestic violence in the District Court](#).

⁶ The Review of the Equality Acts represents the first full re-examination of Ireland’s equality legislation since the enactment of the Employment Equality Act 1998 and the Equal Status Act 2000. The Minister announced the Review when he delivered the closing address at an equality law seminar series organised by FLAC in association with the Law School, Trinity College Dublin. See: FLAC (2021), [Status Check: 20 Years of the Equal Status Acts](#).

⁷ FLAC sought to ensure that any proposed constitutional amendments would contain the best and most effective wordings and require changes in law and policy which result in practical improvements in the lives of women, carers (who are mostly women), people with disabilities, diverse families and older people. See: FLAC (2024), [Annual Report 2023: Targeted Action, Transformative Outcomes](#), p.34.

- ▶ allow for the introduction of ‘specific duties’ on State Bodies and Government Departments,
 - ▶ grant the Irish Human Rights and Equality Commission (“**IHREC**”) stronger enforcement powers, and
 - ▶ ensure that failures to comply with the duty may, of themselves, give rise to a cause of action (i.e. a legal complaint or case).
- ▶ The actions assigned to Government Departments and State Bodies under the new Strategy should be expressed as part of their legal obligations under the Public Sector Equality and Human Rights Duty.
 - ▶ **Equality Data** should be collected and monitored in order to assess the effectiveness of the new Strategy. The Irish Human Rights and Equality Commission Act 2014 should be amended to mandate the collection of equality data by State Bodies and Government Departments and IHREC should be given enforcement powers in this regard.

Human Rights

- ▶ The new Strategy should explicitly commit to implementing the law reform and policy recommendations made by the **United Nations Committee on the Elimination of Discrimination against Women** (CEDAW).

Equality/Non-Discrimination

- ▶ The new Strategy should commit to comprehensive law reform on foot of **Review of the Equality Acts**. Bodies such as FLAC and IHREC have provided the Department with detailed recommendations which should be implemented in a new piece of **consolidating and reforming equality legislation** which ensures fair procedures, adequate redress and just outcomes for all women and girls who experience discrimination and which promotes full equality in practice. That legislation should:
 - ▶ Expand the ‘family status’ ground to be more **inclusive of carers**.
 - ▶ Strengthen the obligations to provide **reasonable accommodation to people with disabilities**, including by removing the ‘nominal cost’ exemption in the Equal Status Acts (in line with the United Nations Convention on the Rights of Persons with Disabilities).
 - ▶ **Remove the compensation caps** for discrimination claims brought to the Workplace Relations Commission (at present, gender claims must be initiated in the Circuit Court in order to access higher levels of compensation).
 - ▶ The two-month ‘notification requirement’ for complaints under the Equal Status Acts and other **procedural barriers should be removed**.

- ▶ Provide for a **civil remedy for discriminatory hate speech** (including hate speech directed at women) under the equality legislation.
- ▶ The Strategy should commit to amending the equality legislation to **explicitly prohibit intersectional discrimination**.
- ▶ With a view to **promoting socio-economic equality and combatting socio-economic disadvantage and discrimination**, the new Strategy should commit to:
 - ▶ adding a **‘disadvantaged socio-economic status’ ground** to the equality legislation.
 - ▶ bringing key areas for the promotion of socio-economic equality - such as **social housing, healthcare, social welfare and education** – clearly within the scope of the equality legislation by amending the definition of ‘services’ in the Equal Status Acts to include the general functions of public bodies and by ensuring that there is access to an effective remedy for discrimination with a legislative basis (as recommended by CEDAW).
- ▶ Like its predecessor, the new Strategy should be explicitly concerned with **human rights and equality for transgender women**. The Strategy should reaffirm the Programme for Government commitment to *“[a]mend the gender ground in equality legislation, to ensure that someone discriminated against on the basis of their gender identity is able to avail of this legislation.”*

Access to Justice

- ▶ The new Strategy should commit to expanding **access to public legal assistance for women and girls**, including:
 - ▶ **Access to early legal information, advice and advocacy**, in areas such as family law and employment law (where independent bodies such as FLAC cannot meet the existing levels of demand) and in areas which are particularly relevant to combatting discrimination and disadvantage (such as social welfare, housing, employment and discrimination law). The Legal Aid Board has no legal information, advocacy or awareness-raising functions at present.
 - ▶ **Access to legal representation** in areas such as employment, discrimination, social welfare and social housing law (which are not covered by the existing scheme of civil legal aid). This should include **cases heard by the Workplace Relations Commission**, for example gender discrimination (including discrimination based on pregnancy), harassment, sexual harassment, equal pay and maternity protection cases.

- ▶ **Access to legal assistance for parties to mediation in family law cases.** This is particularly important in light of the emphasis on mediation in the Family Courts Bill 2022.
- ▶ The Strategy should respond to CEDAW's concerns around the "*restrictive financial eligibility criteria*" for access to legal aid. It should commit to the **removal of the means test in cases concerning domestic violence** and the **introduction of a 'passporting' system for those in receipt of social assistance payments (including payments for one parent families) which would allow them to access legal aid without undergoing a means test or paying financial contributions.**
- ▶ The Strategy should commit to a structured and participatory process for the **reform and simplification of court rules, forms and procedures** which involves relevant civil society organisations (including, for example, those working with women, families and victims of domestic violence).
- ▶ The Strategy should commit to the introduction of a publicly-available **Equal Treatment Bench Book** which covers areas such as safe participation in family law proceedings and criminal law proceedings concerning sexual offences, adjustments for those who are pregnant or in menopause to support their participation in court proceedings, and the treatment of transgender people in court.

Gender Equality in the Constitution

- ▶ The Strategy should respond to the demand for **clear rights-based reforms and enforceable social rights that impose meaningful obligations on the State** which emerged from the 2024 'family' and 'care' referendums. The Strategy should set out **policy and law reform programmes which give effect to rights and equality for women, diverse families, carers and those who may require care - such as older people, people with disabilities and children.** Those policy and law reform programmes should build on other initiatives and ongoing work in relevant areas:
 - ▶ Legislation which draws distinctions between married and unmarried couples and families (which has already been comprehensively mapped out in advance of the 'family' referendum) should be reviewed to ensure that any differences in treatment in legislation are rationale and do not compound or create disadvantage, discrimination or inequality. This work should be guided by the need to **promote rights and equality for diverse families** (including single parent families, families based on co-habitation and families where multiple generations live as one unit). It should also distinguish between the needs of different groups of families. For example, one parent families clearly require specific supports and the Strategy should **commit to the expansion of**

access to Jobseeker's Transitional Payment and the final reversal of social welfare 'austerity' measures.

- ▶ Work to implement Ireland's commitment under the United Nations' Sustainable Development Goals to "*recognise and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate*" should be developed into the creation of **a new social contract for care and carers**. That programme explicitly concerned with **the rights of the care-receiver (be it the child, the older person or the person with a disability), the unpaid caregiver and the often low-paid care worker**.
- ▶ The new Cabinet Committee on Children and Education and Disability should oversee the development and **implementation of a disability rights law reform programme**. The development of that programme should involve people with disabilities, Disabled Persons Organisations, IHREC, the National Disability Authority and leading academics such as those from the Centre for Disability Law and Policy and the Irish Centre for Human Rights at the University of Galway.
- ▶ The Strategy should **commit to an 'equality' referendum**. In light of our practical experience, FLAC has repeatedly emphasised the need for reform of the Constitution's 'equality guarantee' and has provided Government with draft wording for **an amended article 40.1 which includes a gender ground (as part of a non-exhaustive list of grounds) and strong positive action provisions**. CEDAW have also expressed concerns about the current provisions and the Citizens' Assembly recommended reform in this area. The work undertaken in the context of the Review of the Equality Acts should be built upon to identify the constitutional barriers to the necessary reform of the equality legislation and how those issues could be addressed through an enhanced constitutional equality guarantee.

1. Effective Implementation of the New Strategy

In 2022, the Department commissioned “*an independent evaluation of the processes used by government to implement three national equality strategies*” including the last strategy for women and girls.⁸ The evaluation, which was published in 2023, identified significant issues with the implementation of the strategies including the absence of “*monitoring information*”⁹ and “*indicators of progress*”¹⁰. While the Department itself played a coordination role in the implementation of the strategies, “*most actions came under the operational responsibility of other departments and agencies*”.¹¹ The review found that there was a lack of “*buy-in from government departments and state agencies assigned responsibility for implementing [equality strategy] actions*”.¹²

The previous National Strategy for Women and Girls noted the “*introduction in the Irish Human Rights and Equality Commission Act 2014 of a positive duty which requires public bodies to have due regard to equality and human rights has provided a mechanism to apply a gender lens to decision-making*.”¹³ However, it did not clearly articulate the actions assigned to Government Departments and State bodies under the strategy as expressions of their legal obligations under the Public Sector Equality and Human Rights Duty.¹⁴ The new strategy should do so.

The new strategy should also commit to addressing the weaknesses which have been identified in the existing legislation underpinning the Public Sector Equality and Human Rights Duty, the issues with the existing ‘positive action’ provisions in the equality legislation and the absence of legislation mandating the collection of equality data. Addressing these issues is relevant to the implementation of the new strategy, and the promotion of gender equality and the rights of women and girls more generally.

1.1. Positive Duties & Positive Action

The Public Sector Equality and Human Rights Duty has now been in effect for almost a decade. However, there is limited evidence to date of the duty having delivered on its potential

⁸ The Centre for Effective Services for the Department of Children, Equality, Disability, Integration and Youth (2024), [Realising the promise of national equality policy: An evaluation of the processes of implementation of three national equality strategies](#), p.ix.

⁹ Ibid at p.xviii.

¹⁰ Ibid at p.xv.

¹¹ Ibid at p.xvi.

¹² Ibid at p.xv.

¹³ Department of Justice and Equality (2017), [National Strategy for Women and Girls 2017-2020](#), p.16.

¹⁴ Under its objective to “*Embed Gender Equality in Decision-making*”, the plan stated that: “*All public bodies will assess and identify the human rights of women and girls and the gender equality issues that are relevant to their functions and address these in their strategic planning, policies and practices, and annual reports, in line with the public sector duty under section 42 of the Irish Human Rights and Equality Commission Act 2014*”. See: Department of Justice and Equality (2017), [National Strategy for Women and Girls 2017-2020](#), p.70.

to create a shift in culture within public bodies and the delivery of public services. For many public bodies, the process of implementation and engagement with the Public Sector Equality and Human Rights Duty remains at the very early stages and the implications of the duty for the work of those bodies are largely unexplored.

FLAC's submission to the Review of the Equality Acts made a number of law reform recommendations for clarifying and strengthening the Public Sector Equality and Human Rights Duty including by:

- ▶ amending it to allow for the introduction of 'specific duties' on State Bodies and Government Departments,
- ▶ granting IHREC stronger enforcement powers, and
- ▶ ensuring that failures to comply with the duty may, of themselves, give rise to a cause of action (i.e. a legal complaint or case).¹⁵

IHREC have also made a number of specific recommendations for strengthening the duty.¹⁶

FLAC and IHREC have both also called for the equality legislation's 'positive action' provisions to be strengthened and clarified to empower public and private bodies to undertake actions and initiatives to promote full equality in practice.¹⁷

1.2. Equality Data

FLAC's submission to the Review of the Equality Acts also highlighted that the "*absence of equality data [in Ireland] undermines the effectiveness of equality legislation and policy.*"¹⁸ The European Union Agency for Fundamental Rights has emphasised the importance of equality data in "*developing proactive policies of social inclusion*" and "*assessing the extent of inequality in different sectors*".¹⁹

FLAC has recommended that the "*Irish Human Rights and Equality Commission Act 2014 should be amended to mandate the collection of equality data by public bodies (including local authorities, Government Departments and An Garda Síochána) and IHREC should be given enforcement powers in this regard.*"²⁰

¹⁵ FLAC (2021), [Submission to the Consultation on the Review of the Equality Acts](#), chapter 9.

¹⁶ IHREC (2023), [Submission on the Review of the Equality Acts](#), p.71.

¹⁷ FLAC (2021), [Submission to the Consultation on the Review of the Equality Acts](#), p.92 & IHREC (2023), [Submission on the Review of the Equality Acts](#), p.77.

¹⁸ FLAC (2021), [Submission to the Consultation on the Review of the Equality Acts](#), p.125.

¹⁹ European Union Agency for Fundamental Rights (2011), [The Racial Equality Directive: Application and Challenges](#), p.23.

²⁰ FLAC (2021), [Submission to the Consultation on the Review of the Equality Acts](#), p.127.

IHREC has recommended "*urgent action by the State to develop and roll out disaggregated data collection, processing and communication systems across relevant public bodies in order to monitor the effectiveness and impact of equality legislation in Ireland, and that the relevant complaints mechanisms publish statistics and*

2. Human Rights

The rights of women and girls and the principles of gender equality are reflected in national, European and international legal and human rights instruments. These were referenced in the previous national strategy for women and girls as part of the “*European and international context*” section.²¹

The United Nations Committee on the Elimination of Discrimination against Women (“**CEDAW**”) monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (which Ireland has ratified). CEDAW made its most recent recommendations to Ireland in March 2017.²² The previous national strategy for women and girls was published in May 2017. It referred to the CEDAW recommendations and stated that its “*observations are being considered by the relevant Government bodies.*”²³ Regrettably, it did not contain an explicit commitment to implementing CEDAW’s recommendations.

In September 2023, IHREC reported that there has not been “*sufficient progress*” in implementing CEDAW’s 2017 recommendations.²⁴ IHREC also highlighted that “*while the State publishes numerous strategies and action plans, they do not adequately improve rights protections for communities in practice, due to insufficient monitoring and implementation.*”²⁵

The new national strategy for women and girls will coincide with Ireland’s next review by CEDAW. In November 2023, CEDAW issued a “*list issues and questions prior to the submission of the 8th periodic report of Ireland.*”²⁶ The next strategy should be explicitly concerned with implementing CEDAW’s recommendations for ensuring compliance with the main international human rights instrument concerning the rights of women and girls.

3. Equality/Non-Discrimination

Combatting discrimination and promoting equality for women and girls should be a key priority of the next strategy. Updating and enhancing the legal equality framework is vitally necessary to achieving progress in this area, and is also required to:

- ▶ combat intersectional discrimination,

analysis on an annual basis”, and “the development of existing data such as administrative datasets in a way that allows for intersectional analysis, data linkages and data harmonisation”. See: IHREC (2021), [Submission on the Review of the Equality Acts](#), pp.67-8.

²¹ Department of Justice and Equality (2017), [National Strategy for Women and Girls 2017-2020](#), p.8.

²² CEDAW (2017), [Concluding observations on the combined sixth and seventh periodic reports of Ireland](#).

²³ Department of Justice and Equality (2017), [National Strategy for Women and Girls 2017-2020](#), p.11.

²⁴ IHREC (2023), [Ireland and the Convention on the Elimination of All Forms of Discrimination against Women: Submission to the Committee on the Elimination of Discrimination against Women for the List of Issues Prior to Reporting on Ireland’s 8th periodic cycle](#), p.16.

²⁵ Ibid.

²⁶ CEDAW (2023), [List of issues and questions prior to the submission of the 8th periodic report of Ireland](#).

- ▶ tackle socio-economic disadvantage, discrimination and inequality, and
- ▶ to ensure transgender women are protected by the equality legislation.

As discussed above, law reform in the areas of positive duties, positive action and equality data could support the effective implementation of the next strategy.

While there has been a proliferation of “*national strategies aimed at addressing inequalities in Ireland*”²⁷ in recent years, there have been no substantive amendments to national equality/anti-discrimination law during the lifetime of the present Government. Effectively, the development of equality *law* is badly out of sync with the development and implementation of equality *policy*. These two processes should proceed in tandem and complement each other.

3.1. The Review of the Equality Acts

The Equality Acts prohibit discrimination, harassment, sexual harassment and victimisation in employment (including access to employment), the provision of goods and services, accommodation and education. They cover the nine grounds of gender, marital status, family status, age, disability, sexual orientation, race, religion, and membership of the Traveller community.²⁸ The Equality Acts give effect to European Union Gender Equality Directives.²⁹

Ireland’s equality legislation is increasingly out of date and ineffective. The acknowledgement of this fact spurred the Minister to initiate a comprehensive Review of the Equality Acts in 2021. FLAC has engaged with and supported that review to the greatest degree possible.³⁰ By any objective measure, law reform on foot of that review process is now overdue. In its list of questions for Ireland published in 2023, CEDAW sought “*an update on the review of the Equality Acts, including the timeline for the publication of legislative proposals*” and a description of the State’s efforts to “*introduce legislative provisions that underline the obligation of the State to pursue actively the achievement of substantive equality between women and men*”.³¹

²⁷ The Centre for Effective Services for the Department of Children, Equality, Disability, Integration and Youth (2024), [Realising the promise of national equality policy: An evaluation of the processes of implementation of three national equality strategies](#), p.ix.

²⁸ See: The Employment Equality Acts 1998-2021 and the Equal Status Acts 2000-2018. The Equal Status Acts were amended in 2016 to prohibit discrimination against people who are in receipt of certain housing assistance payments in the provision of accommodation services (the ‘HAP ground’). See: Equality (Miscellaneous Provisions) Act 2015.

²⁹ Directive 2004/113 (the ‘Gender Goods and Services Directive’) prohibits discrimination based on gender in “*access to and supply of goods and services*”. Directive 2006/54 (the ‘Recast Directive’) prohibits gender discrimination in employment.

³⁰ In November 2021, FLAC and the Irish Human Rights and Equality Commission launched *Equality Action*, a joint project aiming to strengthen civil society engagement with the Review. We also published an accessible guide on making a submission to the Review. See: FLAC (2021), [FLAC Guide: The Review of the Equality Acts, Making a Submission to the Review, & The Key Issues Under Review](#)

³¹ CEDAW (2023), [List of issues and questions prior to the submission of the 8th periodic report of Ireland](#), p.2.

FLAC's detailed submission to the Review of the Equality Acts provides a blueprint for a next generation equality framework which promotes full equality in practice and which achieves transformative change.³² FLAC was a member of IHREC's Advisory Committee on the Future of Equality Legislation (an expert group established to support IHREC's engagement with the Review). The report to arise from the work of that group adopted FLAC's recommendations on access to justice for victims of discrimination.³³ We have since provided the Department with draft legislative amendments to give effect to those recommendations.

The Review of the Equality Acts must ensure that:

▶ ***The Equality Acts are clear and effective.***

A new piece of reforming and consolidating equality legislation should be accessible to the groups it is designed to protect.

▶ ***The legislation reflects the experience of discrimination.***

New grounds should be added and existing grounds should be updated and broadened. For example, the 'family status' ground should be amended to be more inclusive of carers. As is discussed in further detail below, law reform is needed to explicitly prohibit intersectional discrimination, discrimination against transgender and non-binary people, and discrimination based on 'disadvantaged socio-economic status'.

▶ ***The current broad exceptions to the prohibition of discrimination are removed.***

At present, areas such as social housing, healthcare, social welfare and education are not clearly covered by the equality legislation. State and public bodies (and the general functions of those bodies) should be explicitly brought within the scope of the Equal Status Acts. This is also discussed in further detail below.

▶ ***The obligations to provide reasonable accommodation to people with disabilities are strengthened.***

The provisions must be brought in line with the United Nations Convention on the Rights of Persons with Disabilities. The 'nominal cost' exemption in the Equal Status Act must be removed.

▶ ***The Equality Acts ensure access to justice and effective, deterrent remedies.***

At present, gender discrimination claims may be brought to the Circuit Court in order to access higher levels of compensation (as required by EU law). The compensation caps for claims brought to the Workplace Relations Commission should be removed so that all claims may be heard by that tribunal in the first instance. The two-month

³² FLAC (2021), [FLAC Submission to the Consultation on the Review of the Equality Acts](#).

³³ IHREC (2023), [Submission on the Review of the Equality Acts](#).

'notification requirement' for complaints under the Equal Status Acts is a procedural barrier which should be removed.

- ▶ ***IHREC, the National Equality Body, is resourced and empowered to fulfil a comprehensive and ambitious equality mandate.***

FLAC has previously highlighted that the Review should also examine the potential for a civil remedy for discriminatory hate speech (including hate speech directed at women) under the equality legislation.³⁴ There is a new urgency to this recommendation, given the recent Government decision to remove the provisions concerning hate speech from the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022.³⁵

3.2. Combatting Intersectional Discrimination

Intersectional discrimination refers to discrimination on two or more grounds where the discriminatory treatment is linked to the combination of grounds (rather than to each ground separately). In cases arising from our Roma Legal Clinic, Traveller Legal Service and LGBTQI Legal Clinic, FLAC frequently acts for women who have experienced this form of discrimination. For example, we have repeatedly highlighted the extent of the discrimination faced by Roma women (particular those who wear traditional Roma attire) on the basis of their gender *and* ethnicity.³⁶ Older women, women with disabilities and single mothers also experience intersectional discrimination.

The review of national equality strategies commissioned by the Department highlighted the need for “[f]urther research... to explore how an intersectional approach can be effectively incorporated into various phases of the policy cycle.”³⁷ The review noted the “[c]hallenges to addressing intersectionality in public policy in Ireland... including a lack of available data and awareness among decision-makers about its importance.”³⁸

FLAC would submit that the “*challenges*” this area are linked to the absence of a clear or full prohibition of intersectional discrimination in the equality legislation.³⁹ This limits the extent to

³⁴ FLAC (2021), [FLAC Submission to the Consultation on the Review of the Equality Acts](#), p.85.

³⁵ Irish Times (21 September 2024), [Plan to introduce hate speech laws has been dropped, Minister for Justice confirms](#).

³⁶ FLAC acted in the first cases where an Irish court found that members of the Roma community (both women) had been subject to discrimination on the ground of race in a retail setting. See: See: FLAC (2024), [Annual Report 2023: Targeted Action, Transformative Outcomes](#), p.27.

³⁷ The Centre for Effective Services for the Department of Children, Equality, Disability, Integration and Youth (2024), [Realising the promise of national equality policy: An evaluation of the processes of implementation of three national equality strategies](#), p.xvii.

³⁸ *Ibid* at p.xiii.

³⁹ Discrimination complaints may be made under multiple grounds. This allows for complaints about ‘compound’ or ‘additive’ discrimination i.e. where discrimination occurs on multiple grounds and the role of each ground can be differentiated and considered separately. However, the Equality Acts do not explicitly prohibit discrimination on multiple grounds in circumstances where the grounds interact with each other in an inseparable manner

which an intersectional approach informs positive action and the fulfilment of public bodies' obligations under the Public Sector Equality and Human Rights Duty. It also limits the extent to which women with more than one protected characteristics are protected against discrimination.

State Parties to the Convention on the Elimination of All Forms of Discrimination against Women, such as Ireland, are required to “*adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women (emphasis added).*”⁴⁰ CEDAW has stated that this requires State Parties to “*legally recognize... intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences...*”⁴¹

FLAC has recommended amending the equality legislation to explicitly prohibit intersectional discrimination⁴² and IHREC has published proposed legislative amendments to achieve this⁴³.

3.3. Combatting Socio-Economic Disadvantage, Discrimination & Inequality

“*Socio-economic equality between women and men*” has been identified as a key area of focus for the new strategy.⁴⁴ However, there are significant limitations on the extent to which the legal equality framework can promote socio-economic equality and combat socio-economic disadvantage and discrimination.

First, ‘disadvantaged socio-economic status’ is not a protected characteristic in the equality legislation. This means that people who experience discrimination on the basis of their socio-economic status may not seek redress under the equality legislation. It also means that the Public Sector Equality and Human Rights Duty does not require public bodies to have regard to the need to eliminate socio-economic discrimination in the performance of their functions. FLAC has recommended the introduction of a ‘disadvantaged socio-economic status’ ground, and both FLAC and IHREC have made detailed recommendations on how the new ground should be defined.⁴⁵ The Programme for Government contains a commitment to “*examine the*

(such that an individual complaint on either ground may not succeed). See: FLAC (2021), [FLAC Submission to the Consultation on the Review of the Equality Acts](#), pp.48-9.

⁴⁰ Article 2(b) of the [Convention on the Elimination of All Forms of Discrimination against Women](#).

⁴¹ CEDAW (2010), [General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women](#), para.18.

⁴² FLAC (2021), [FLAC Submission to the Consultation on the Review of the Equality Acts](#), p.51.

⁴³ IHREC (2023), [Submission on the Review of the Equality Acts](#), p.69.

⁴⁴ Department of Children, Equality, Disability, Integration and Youth (August 2024), [Online Survey for the next National Strategy for Women and Girls](#).

⁴⁵ FLAC (2021), [FLAC Submission to the Consultation on the Review of the Equality Acts](#), p.40 & IHREC (2024), [Policy Statement on Socio-Economic Status as a ground of discrimination under the Equality Acts](#).

introduction of a new ground of discrimination, based on socio-economic disadvantaged status to the Employment Equality and Equal Status Acts."⁴⁶

Second, due to a combination of factors, many key areas for the promotion of socio-economic equality - such as social housing, healthcare, social welfare and education – are not clearly covered by the equality legislation:

- ▶ The definition of “services” in sections 2 and 5 of the Equal Status Acts does not explicitly extend to the performance of the general functions of public bodies, which are not regarded as constituting services within the meaning of the legislation.⁴⁷
- ▶ Section 14(1)(a) of the Equal Status Acts excludes from challenge “*the taking of any action that is required by or under—(i) any enactment*”. This exemption is very broad in scope and, in effect, covers any action that is brought about as a consequence of a provision in any legislation, including secondary legislation.⁴⁸
- ▶ Section 14(1)(aa) of the Equal Status Acts contains another broad exemption, which means the legislation does not apply to certain actions by public authorities “*in relation to a non-national*”.⁴⁹

In 2017, CEDAW expressed its concerns “*that section 14 of the Equal Status Acts... precludes the use of the equality framework to challenge discriminatory laws*” and that “*legislation which discriminates against women, or has a disproportionately negative impact on women, falls outside the scope of the Equal Status Acts*”. The Committee therefore adopted FLAC’s recommendation for Ireland to “*amend section 14 of the Equal Status Acts... to ensure that an effective remedy is available for discrimination that has a legislative basis.*”⁵⁰

IHREC have since called for section 14 to “*be repealed in its entirety, as it is inconsistent with EU law and the Public Sector Equality and Human Rights Duty*”.⁵¹ FLAC have stated that the

⁴⁶ Department of the Taoiseach (2021), [Programme for Government: Our Shared Future](#), p.77.

⁴⁷ The definition is broad enough to include the services provided by public bodies like healthcare and social welfare.

⁴⁸ A recent High Court judgment has adopted an even more expansive interpretation of this provision and implies that any policy or guidance adopted by a public body which is derived from a piece of legislation is exempted from challenge. See: *AB v Road Safety Authority* [2021] IEHC 217.

⁴⁹ 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*”. See: David Fennelly and Clíodhna Murphy (2021), [Racial Discrimination and Nationality and Migration Exceptions: Reconciling CERD and the Race Equality Directive](#), Netherlands Quarterly of Human Rights (1/21).

⁵⁰ CEDAW (2017), [Concluding observations on the combined sixth and seventh periodic reports of Ireland](#), p.3.

⁵¹ IHREC (2023), [Ireland and the Convention on the Elimination of All Forms of Discrimination against Women: Submission to the Committee on the Elimination of Discrimination against Women for the List of Issues Prior to Reporting on Ireland’s 8th periodic cycle](#), p.20.

Equal Status Acts’ “definition of ‘services’ should be amended to expressly include the general functions of public bodies.”⁵²

3.4. Promoting Rights & Equality for Transgender Women

The previous strategy for women and girls was explicitly inclusive of transgender women: “*In promoting equal treatment and the empowerment of women and girls, this Strategy is inclusive of individuals whose sex characteristics, gender identity or gender expression is female.*”⁵³

The enactment of the Gender Recognition Act 2015 (which “*provides for a person to apply for a Gender Recognition Certificate to have their preferred gender recognised by the State*”) was recognised as part of the context in which the previous strategy was introduced.⁵⁴ The strategy recognised transgender women as a group of “[w]omen with particular disadvantages” whose “[needs] are less well understood, with less evolved policy responses as a result” and that “[p]ositive action measures are needed where specific categories of women experience particular disadvantages.”⁵⁵

We would highlight that, in addition a “*less evolved policy [response]*”, the equality legislation does not explicitly prohibit discrimination on the basis of gender identity, gender expression or sex characteristics. As a result, some transgender, non-binary and intersex people may not come within the scope of the existing gender ground and the protections it affords.⁵⁶

FLAC and IHREC’s submissions to the Review of the Equality Acts both recommend amending the gender ground in the equality legislation to explicitly encompass discrimination on the basis of gender identity, gender expression, and sex characteristics alongside the existing protections.⁵⁷ The Programme for Government contains a commitment to “[a]mend the gender ground in equality legislation, to ensure that someone discriminated against on the basis of their gender identity is able to avail of this legislation.”⁵⁸

4. Access to Justice

Access to justice is a right of itself, it also vital for the realisation of other rights and to ensure that they are effective in practice.⁵⁹ FLAC understands access to justice as a continuum which

⁵² FLAC (2021), [FLAC Submission to the Consultation on the Review of the Equality Acts](#), p.72.

⁵³ Department of Justice and Equality (2017), [National Strategy for Women and Girls 2017-2020](#), p.20

⁵⁴ Ibid at p.16.

⁵⁵ Ibid at pp.19-20.

⁵⁶ For a detailed discussion, see: FLAC (2021), [FLAC Submission to the Consultation on the Review of the Equality Acts](#), pp.25-36.

⁵⁷ FLAC (2021), [FLAC Submission to the Consultation on the Review of the Equality Acts](#), p.50 & IHREC (2023), [Submission on the Review of the Equality Acts](#), p.61.

⁵⁸ Department of the Taoiseach (2021), [Programme for Government: Our Shared Future](#), p.77.

⁵⁹ Access to justice is reflected in the Irish constitutional system of justice where access to the courts is guaranteed. Access to justice is an element of the right to fair procedures under the International Covenant on

encompasses access to legal information, advice and advocacy, access to the legal aid/legal representation, access to the courts and tribunals, fair procedures, effective remedies, just outcomes, and fair and just laws.

The Convention on the Elimination of All Forms of Discrimination against Women recognises the importance of access to justice for achieving gender equality by requiring State Parties to “accord to women equality with men before the law” and “a legal capacity identical to that of men and the same opportunities to exercise that capacity.”⁶⁰ In 2017, CEDAW recommended that Ireland “increase funding for civil legal aid services, review the financial eligibility criteria and end the requirement for victims of domestic violence to make financial contributions for civil legal aid when seeking court protection under domestic violence legislation so as to ensure access to justice for all women without sufficient means.”⁶¹ As discussed in the introduction submission, the latter recommendation implemented by the Government on foot of a campaign by FLAC. However, the “restrictive financial eligibility criteria”⁶² otherwise remain unchanged. A ‘means test’ remains in place for access to legal aid, regardless of whether the applicant is fully reliant on social welfare as their source of income and regardless of the seriousness or complexity of their case (including domestic violence cases).⁶³

In 2021, the Minister for Justice announced an independent review of the civil legal aid scheme which is currently underway.⁶⁴

4.1. Legal Information & Advice

Access to justice requires more than just the provision of legal representation; people must know their rights and be able to assert them in the first instance. This requires access to legal information, advice and advocacy. Under the present scheme of civil legal aid, the Legal Aid Board has no mandate to promote awareness of legal rights and no information or advocacy functions. FLAC’s telephone information and referral line is massively oversubscribed and cannot meet the demand for early legal information. The majority of calls it receives are from women and most calls are in the areas of family and employment law.⁶⁵

There are significant benefits to ‘early and preventive’ forms of legal assistance. They can prevent legal problems from arising to begin with and they can prevent them from escalating or resulting in litigation. This means that the ‘knock-on’ effects of experiencing a legal problem

Civil and Political Rights, the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union.

⁶⁰ Article 15 of the [Convention on the Elimination of All Forms of Discrimination against Women](#).

⁶¹ CEDAW (2017), [Concluding observations on the combined sixth and seventh periodic reports of Ireland](#), p.8.

⁶² Ibid at pp.7-8.

⁶³ FLAC (2023), [Stakeholder Submission to the Review of the Civil Legal Aid Scheme](#), section 5.

⁶⁴ Department of Justice (June 2022), [Minister announces review of Civil Legal Aid Scheme](#).

⁶⁵ FLAC (2024), [Annual Report 2023: Targeted Action, Transformative Outcomes](#), p.8.

(which can include financial difficulty, debt, stress and other health issues) may be avoided. These services also generate a saving for the State as these forms of legal assistance are less costly to provide than legal representation. FLAC's submission to the review of the civil legal aid scheme highlighted the significant unmet need for early and preventative forms of legal assistance in Ireland and made recommendations for addressing this.⁶⁶

The Family Courts Bill 2022 places a significant emphasis on the resolution of family law proceedings through mediation.⁶⁷ FLAC has highlighted the need to ensure *“that parties to mediation have access to information and advice regarding their rights before and during the mediation process... Parties should also have legal advice available to them in relation to any proposed mediation settlement, including advice on the likely outcome if the matter was to proceed to court.”*⁶⁸

Family law cases may deal with issues which have significant implications for the rights of women and children including access, maintenance, pensions and ownership of the family home. It is vitally important that parties to such proceedings are aware of and able to assert their rights, regardless of whether the case is heard by a court or resolved through mediation.

4.2. Legal Representation

Legal representation is not available under the current civil legal aid scheme for cases heard by tribunals such as the Workplace Relations Commission (which deals with employment rights and discrimination cases), the Residential Tenancies Board and the Social Welfare Appeals Office.⁶⁹ The limited scope of the current scheme is contrary to European human rights law.⁷⁰ The exclusions apply in areas of law which are particularly relevant to combatting discrimination and disadvantage. For example, the Legal Aid Board cannot provide legal representation in cases heard by the Workplace Relations Commission in relation to gender discrimination (including discrimination based on pregnancy), harassment, sexual harassment, equal pay or maternity protection.

In 2015 (in its third periodic report on Ireland), the United Nations' Committee on Economic, Social and Cultural Rights (“CESCR”) stated:

“The Committee is concerned at the lack of free legal aid services, which prevents especially disadvantaged and marginalized individuals and groups from claiming their

⁶⁶ FLAC (2023), [Stakeholder Submission to the Review of the Civil Legal Aid Scheme](#), section 9.

⁶⁷ Houses of the Oireachtas (2022), [Family Courts Bill 2022](#).

⁶⁸ FLAC (2023), [Stakeholder Submission to the Review of the Civil Legal Aid Scheme](#), p.131.

⁶⁹ Ibid at section 4.

⁷⁰ The European Court of Human Rights and the Court of Justice of the European Union have held that the question of whether legal aid is necessary for a fair hearing should be determined by reference to the specific circumstances of an applicant under a number of established factors. See: FLAC (2023), [Stakeholder Submission to the Review of the Civil Legal Aid Scheme](#), section 3.

rights and obtaining appropriate remedies, particularly in the areas of employment, housing and forced evictions, and social welfare benefits.

The Committee recommends that the State party ensure the provision of free legal aid services in a wide range of areas, including by expanding the remit of the Civil Legal Aid Scheme.”⁷¹

In 2024, CESCR called on Ireland to “[e]nsure that redress for violations of rights covered by the Covenant can be sought through the State party’s varied recourse mechanisms, including through the provision of free legal aid services in areas of economic, social and cultural rights.”⁷²

4.3. Access to the Courts

FLAC has made a number of recent recommendation on access to the courts which are relevant to the promotion of access to justice for women and girls. In a submission to the Courts Service in March 2024, FLAC called for a structured and participatory process for the reform and simplification of court rules, forms and procedures which involves relevant civil society organisations (including, for example, those working with women, families and victims of domestic violence).⁷³

We also reiterated our recommendation for the introduction of a publicly-available Equal Treatment Bench Book.⁷⁴ In the UK, an Equal Treatment Bench Book provides detailed guidance on equal treatment in the courts.⁷⁵ The Bench Book is intended for use by the judiciary but it is also an important reference point for the legal profession, litigants and members of the public. It provides guidance on:

- ▶ *“[Ensuring] women can feel safe in participating in the justice process and are protected against unjustified, intrusive questioning” and the measures which may be taken to ensure safe participation in family law proceedings.*⁷⁶
- ▶ *“[A]ccommodating pregnant women and new and breastfeeding mothers in any proceedings.”*⁷⁷
- ▶ *“Adjustments for those in menopause.”*⁷⁸
- ▶ *“Treatment of trans people in court”*⁷⁹

⁷¹ CESCR (July 2015), [Concluding observations on the third periodic report of Ireland](#), p.2.

⁷² CESCR (March 2024), [Concluding observations on the fourth periodic report of Ireland](#), p.2.

⁷³ FLAC (2024), [Submission to the Courts Service on their Strategic Plan 2024-2027](#), p.ii.

⁷⁴ Ibid at pp.5-6.

⁷⁵ Courts and Tribunals Judiciary (July 2024), [Equal Treatment Bench Book](#).

⁷⁶ Ibid at pp.127-8.

⁷⁷ Ibid at p.118.

⁷⁸ Ibid at p.119.

⁷⁹ Ibid at p.211.

5. Gender Equality in the Constitution

In 2021, a Citizens' Assembly found that three constitutional amendments - in relation to 'family', 'care' and 'equality' - are necessary in order to “*advance gender equality*”.⁸⁰ Those recommendations arose from issues with the existing constitutional text, some of which have also been highlighted by international human rights bodies such as CEDAW:

- ▶ The constitutional protection of “*the Family*” under article 41 is limited to families based on marriage alone.⁸¹ Other families, such as those based on co-habitation or single parent families, do not enjoy the same level of constitutional protection.
- ▶ In 2017, CEDAW criticised “*the existing discriminatory provision contained in article 41.2 of the Constitution, which perpetuates traditional stereotypical views of the social roles and responsibilities of women and men in the family and in society at large...*” The Committee called for that provision to be amended “*to remove the stereotypical language on the role of women in the home*”.⁸²
- ▶ CEDAW has also highlighted that the “*interpretation of article 40.1 of the Constitution [the ‘equality guarantee’] is focused on procedural rather than substantive equality*”.⁸³

In December 2023, the Government “*approved proposals for two referendums*”⁸⁴ (in relation to 'family' and 'care') and Referendum Bills were published.⁸⁵ The referendum proposals were profoundly flawed:

- ▶ The 'care' amendment would have removed the so-called 'women in the provision' and added a new provision symbolically recognising 'family care' (without creating any enforceable obligation on the State to support care). That amendment was “*implicitly sexist*”, contrary to the principles enshrined in the United Nations Convention on the Rights of Persons with Disabilities⁸⁶ and “*seemed to have been carefully worded to ensure that it would have the most minimal of legal consequences*”⁸⁷. The proposal

⁸⁰ The Citizens' Assembly (June 2021), [Report of the Citizens' Assembly on Gender Equality](#), p.12.

⁸¹ Ibid at p.51.

⁸² CEDAW (2017), [Concluding observations on the combined sixth and seventh periodic reports of Ireland](#), p.3.

⁸³ Ibid.

⁸⁴ Department of the Taoiseach (6 December 2023), [Government approves proposals for referendums on family and care](#).

⁸⁵ Houses of the Oireachtas (8 December 2023), [Thirty-ninth Amendment of the Constitution \(The Family\) Bill 2023 & Fortieth Amendment of the Constitution \(Care\) Bill 2023](#).

⁸⁶ “*Like the explicitly sexist ‘women in the home’ provision, the proposed Article 42B endorses a status quo where women undertake the bulk of unpaid care work and places no obligation whatsoever on the State to redress this gender imbalance*”. See: FLAC (19 February 2024), [FLAC Legal and Human Rights Analysis of the Proposed Family & Care Constitutional Amendments](#).

⁸⁷ Irish Times (18 March 2024), [Éilís Barry: Failed referendums can be the starting point for real reform](#).

was strongly criticised by IHREC⁸⁸, independent human rights organisations⁸⁹ and Disabled Persons' Organisations⁹⁰.

- ▶ The 'family' amendment would have significantly expanded the constitutional definition of 'the family' beyond the marital family. However, the referendum proposal was not accompanied by any draft legislation to define who would come within the new definition of 'the family' in the first instance or to set out the amendment's legal and practical consequences in areas such as family, taxation, succession and social welfare law.⁹¹
- ▶ The decision not proceed with an 'equality' referendum (as recommended by the Citizens' Assembly) was highly regrettable given the urgent need for reform in this area (which is discussed in further detail below).⁹²

On 8 March 2024, the 'family' and 'care' referendums were both comprehensively defeated.⁹³ Both referendums suffered from a lack of clarity around their wording, the rationale for those wordings and their intended effects in terms of law and policy (and, by extension, how they would impact people's lives and rights). Polling conducted for the Electoral Commission has shown that the top reasons for voting 'No' in the referendums were "[d]issatisfaction with wording/[vagueness]" (in the case of the 'family' referendum) and "[l]ack of clarity/not enough information" (in the case of the 'care' referendum).⁹⁴

The results of the referendums may be seen, in part, as "*an expression of the unmet demand for clear rights-based reforms and for enforceable social rights that impose meaningful obligations on the State*".⁹⁵ There is a clear role for the new Strategy in responding to this demand for practical improvements in law and policy. The Strategy should set out policy and law reform programmes which give effect to rights and equality for women, diverse families,

⁸⁸ IHREC (January 2024), [Ireland and the International Covenant on Economic, Social and Cultural Rights: Submission to the Committee on Economic, Social and Cultural Rights on Ireland's fourth periodic report](#), pp.14 & 55.

⁸⁹ Law Society Gazette (2024), [ICCL backs FLAC stance on referendums](#).

⁹⁰ Irish Times (20 February 2024), [Care amendment criticised by two more bodies in further blow to Yes Yes referendum campaign](#).

⁹¹ FLAC (19 February 2024), [FLAC Legal and Human Rights Analysis of the Proposed Family & Care Constitutional Amendments](#).

⁹² This decision was apparently based on legal advice to the effect that adding a reference to gender equality "*could weaken the all-encompassing commitment to equality within the Constitution at present*" and "*unwittingly downgrade others*". See: Irish Times (6 December 2023), [Women in the home referendum: what exactly does the Government want to change and why?](#)

⁹³ Referendum Returning Officer, [Referendum on the Thirty-ninth Amendment of the Constitution \(The Family\) Bill 2023](#) & [Referendum on the Fortieth Amendment of the Constitution \(Care\) Bill 2023](#).

⁹⁴ National Election and Democracy Study (March 2024), [Family & Care Referendums Voter Survey: A Review of Findings](#), pp.15-6.

⁹⁵ Irish Times (18 March 2024), [Éilís Barry: Failed referendums can be the starting point for real reform](#).

carers and those who may receive care - such as older people, people with disabilities and children.

As well as being an appropriate response to the experience of the referendums, such an approach would greatly enhance the likelihood of successful constitutional reform in the future. For example, the failure of the first divorce referendum in 1986 was followed by an urgently needed and radical transformation of the family law system. By the time the successful divorce referendum was held in 1995, the uncertainties and fear which undermined the original proposal had largely been assuaged by the new legislative provisions.⁹⁶ A divorce amendment could no longer be characterised as a ‘leap in the dark’, instead it represented the short final step in an ongoing process of law reform.

CEDAW has previously recognised the role of “*legislative provisions that underline the obligation of the State to pursue actively the achievement of substantive equality*” in responding to the weaknesses in the existing constitutional framework.⁹⁷ Advancing constitutional reform to promote gender equality remains a recent concern of that Committee.⁹⁸

The policy and law reform programmes for inclusion in the new Strategy should build on other initiatives and ongoing work in relevant areas:

- ▶ The Inter-Departmental Committee which was established to prepare for the 2024 referendums undertook an extensive mapping exercise of the legislation which draws a distinction between married and unmarried couples and families in areas such as social welfare, taxation and family law. The judgment of the Chief Justice in *O’Meara* also includes a similar list of the “*more significant provisions*” which make distinctions between married and unmarried people.⁹⁹ These lists should be reviewed to ensure that any differences in treatment in legislation are rationale and do not compound or create disadvantage, discrimination or inequality. This work should be guided by the need to promote rights and equality for diverse families (including single parent families, families based on co-habitation and families where multiple generations live as one unit).
- ▶ Under Goal 5 of the United Nations’ Sustainable Development Goals (“*Achieve gender equality and empower all women and girls*”), Ireland has committed to “*recognise and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility*”

⁹⁶ Ibid.

⁹⁷ CEDAW (2017), [Concluding observations on the combined sixth and seventh periodic reports of Ireland](#), p.3.

⁹⁸ CEDAW (2023), [List of issues and questions prior to the submission of the 8th periodic report of Ireland](#), p.2.

⁹⁹ [O’Meara & Ors v The Minister for Social Protection](#) [2024] IESC 1 at para.149.

*within the household and the family as nationally appropriate.*¹⁰⁰ Legal and policy changes in this area should reflect this commitment and should be explicitly concerned with the rights of the care-receiver (be it the child, the older person or the person with a disability), the unpaid caregiver and the often low-paid care worker. Dr Gerard Quinn, the Irish former UN Special Rapporteur on the Rights of Persons with Disabilities, has highlighted the need for “*a new social contract for care and carers*”.¹⁰¹

- ▶ Following the referendums, a new Cabinet Committee on Children and Education and Disability was formed.¹⁰² That Committee should oversee the development and implementation of a disability rights law reform programme. The development of that programme should involve people with disabilities, Disabled Persons Organisations, IHREC, the National Disability Authority and leading academics such as those from the Centre for Disability Law and Policy and the Irish Centre for Human Rights at the University of Galway.

Finally, FLAC has repeatedly emphasised the need for reform of the Constitution’s ‘equality guarantee’. Drawing from our practical experience¹⁰³, we have highlighted the significant issues with how article 40.1 has been interpreted to date¹⁰⁴. As discussed above, CEDAW has also expressed concerns about the narrow interpretation of article 40.1 and the Citizens’ Assembly recommended the reform of that provision. FLAC has provided Government with draft wording for a new constitutional equality guarantee with a gender ground (as part of a non-exhaustive list of grounds) and strong positive action provisions.¹⁰⁵

The existing equality guarantee (and the manner in which it has been interpreted) has reduced the impact and potential of Ireland’s equality and anti-discrimination legislation.¹⁰⁶ The review

¹⁰⁰ [Goal 5](#) of the United Nations Sustainable Development Goals.

¹⁰¹ Irish Times (20 February 2024), [Letters: The Constitution, family and care](#).

¹⁰² Department of the Taoiseach, [Cabinet Committees of the 34th Government](#).

¹⁰³ In our casework, FLAC has sought to rely on the Constitution and, in particular, the equality guarantee and the provisions concerning the family, in cases concerning discrimination, housing and homelessness, and social welfare (including in respect of non-marital families). As a result, we are keenly aware of the limitations of the current constitutional provisions.

¹⁰⁴ As a result of the current wording (and how it has been interpreted by the courts), “*Irish constitutional law has rarely been beneficial for disadvantaged groups*”. The wording has also constrained the ability of the Oireachtas to give effect to Ireland’s international human rights obligations concerning equality through legislation. See: FLAC (November 2022), [Submission to the Joint Committee on Gender Equality: Constitutional Change & Gender Equality](#), sections 1.1 & 1.3, FLAC (May 2023), [Submission to the Inter-Departmental Committee: Referendums on Family, Care and Equality](#), Introduction, & FLAC (September 2023), [Standards & Suggested Wording for Constitutional Amendments in relation to the Equality Guarantee, replacing the ‘Women in the Home’ Provision & the Non-Marital Family](#), pp.4-5.

¹⁰⁵ FLAC (May 2023), [Submission to the Inter-Departmental Committee: Referendums on Family, Care and Equality](#), p.x.

¹⁰⁶ The Court’s extremely restrictive approach to equality has (in a number of ways) limited the extent to which the equality legislation may be used to combat systemic and structural forms of discrimination. It has also meant that national equality legislation contains only minimal provisions relating to reasonable

of that legislation is at an advanced stage and, as discussed above, should lead to the introduction of legislation to promote full equality in practice for women, girls, carers, older people, diverse families and people with disabilities. However, to achieve this a commitment to constitutional reform is also necessary. The work of the review should be built upon to identify the constitutional barriers to the necessary reform of the equality legislation and how those issues could be addressed through an enhanced constitutional equality guarantee.

accommodation for people with disabilities. See: FLAC (November 2022), [Submission to the Joint Committee on Gender Equality: Constitutional Change & Gender Equality](#), section 1.3.