

## TERMS OF REFERENCE

# A Critical Review of Anti-Discrimination Law in Ireland

An Irish Council for Civil Liberties (ICCL) project

### 1. Overview

The right to equality and to be free from discrimination is a central feature of all major international human rights treaties. In the case of Ireland, legal protections from discrimination are found in the Irish Constitution, under EU law and in domestic statutes. In particular, the Employment Equality Acts (EEA) 1998-2004 and the Equal Status Acts (ESA) 2000-2004 are the principal pieces of anti-discrimination law in Ireland (referred to herein as the “equality acts”).

The EEA prohibits discrimination in relation to employment on the basis of: gender, family status, marital status, age, disability, sexual orientation, religious belief, race, and membership of the Traveller community. The ESA outlaws discrimination on the same grounds with regard to goods, services and education.

Through ‘A Critical Review of Anti-Discrimination Law in Ireland,’ the Irish Council for Civil Liberties (ICCL) wishes to conduct an examination of these laws, with a view to evaluating their effectiveness in combating discrimination and prejudice in Ireland.

### 2. Background

While Irish anti-discrimination law has been operational for a decade, very little critical research has been conducted on its operation or its ability to combat discrimination and prejudice. Most studies in this field focus on specific grounds of discrimination or on particular issues. In fact, the only real indication of how equality laws are actually working in Ireland is received through the Annual Reports of the two state-funded institutions which were established to enforce and uphold anti-discrimination laws in Ireland: the Equality Authority and the Equality Tribunal (Office of the Director of Equality Investigations).

The Equality Authority is an independent body involved in a broad range of activities, including: working towards eliminating discrimination in employment, promoting equality of opportunity, providing information to members of the public, assisting persons to take discrimination cases, preparing submissions for Ministers and inviting businesses to carry out equality reviews. The Equality Tribunal is a statutory institution which primarily investigates and mediates in complaints of discrimination in relation to employment and access to goods, services and education.

While funding has been a continuous concern for the Equality Authority and Equality Tribunal since their inception, the situation worsened dramatically as a result of the current economic climate, with the annual budget of the Equality Authority slashed by 43% for 2009. The situation is also precarious for the Equality Tribunal, where there is currently a two to three year waiting list for new cases. Moreover, the Government has amended the legislation three times to include new exemptions allowing for inequality and to transfer jurisdiction from the Tribunal to the District Court for complaints in relation to publicans and hoteliers. As a result, it can be more difficult for vulnerable people to challenge discrimination. Finally, the Acts do not cover all state functions, activities and controlling duties and this has been acknowledged by the UN Committee Against Racism (CERD) in Ireland's last examination. CERD recommended that the Equal Status Acts should be amended to include government functions.

All of these issues, from funding cuts to changes in the legal system and process, need critical review in order to determine whether they have had an adverse effect on the ability of the EEA and ESA to combat discrimination and prejudice. Because of the direct role which the statutory bodies have in the process, it is not possible, nor is it entirely appropriate for reviews to be carried out by the Equality Tribunal and Equality Authority themselves. Hence the need for independent examination and analysis.

The project is funded by a grant from Atlantic Philanthropies.

### **3. Key Aspects of Research**

Decisions from the Equality Tribunal, District Court, Labour Court and Circuit Court will be reviewed, in addition to key Irish Supreme Court and High Court cases where relevant. In order to include a comprehensive picture of the state of equality in Ireland, semi-structured interviews with key stakeholders and legal practitioners will take place. Focus groups will be held, involving individuals protected under the criteria in the Acts, as well as select groups that are not, e.g. according to socio-economic status, political opinion, etc.. A number of individuals who have utilised the Acts will be case-tracked from start to finish.

### **4. Areas of Concern**

It is proposed that the Review will:

- Identify the strengths and weaknesses of the relevant legislation, recognising any gaps
- Identify the difficulties in implementing existing legislation
- Review the scope and impact of exemptions
- Assess the extent to which EU anti-discrimination directives are upheld in Ireland
- Recommend positive changes
- Examine equality proofing duties, particularly in light of the equivalence commitment contained in the Good Friday/Belfast Agreement

## 5. Equality Institutions and Advisory Group

As this research discusses the workings of the Equality Authority and the Equality Tribunal, staff members of these institutions will be consulted from the onset of the project, encouraging their participation and input.

It is envisaged that an advisory group will be established, comprising lawyers, NGOs, as well as local and community groups, to ensure the participation of disadvantaged community members.

## 6. Timeline

The research is scheduled to take place over period of 12-18 months depending on the number of consultants involved in this project.

## 7. Methodology

The research methodology for this project will contain the following key elements:

- A review of relevant research and the preparation of a theoretical framework to analyse and benchmark the effectiveness of Ireland's equality legislation
- A review of relevant contextual research and statistical data on the main causes of inequality in Ireland
- A review of the Employment Equality Acts, Equal Status Acts, the Intoxicating Liquor Act and relevant EU law
- A review of procedures and relevant jurisprudence emanating from the Supreme Court, High Court, Labour Court, Equality Tribunal and other relevant enforcement bodies
- Analysis of key parliamentary debates
- An analysis of financial and other resources provided to the Equality Authority
- An analysis of financial and other resources provided to the enforcement bodies. In the case of the District Court, resources specifically designated for equality cases
- A review of annual reports and case statistics from the Equality Authority and the enforcement bodies
- Interval case-tracking of at least ten claimants who have taken cases under the equality acts
- At least six focus groups and/or a series of public hearings to be organised throughout Ireland where members of the public can voice the impact of the equality acts on their lives
- Structured/semi-structured interviews with: (1) the Department of Justice, Equality and Law Reform; (2) key members of parliament; (3) the Equality Authority; (4) the Equality Tribunal; (5) the Labour Court; (6) President of the District Court; (7) the Judicial Studies Institute; (8) the professional legal bodies; (9) the Kings Inns; (10) individuals from NGO and community groups working with groups affected covered by the legislation, together with some groups which are not covered
- An international study visit to the United Kingdom (UK)

## **8. Research Consultant(s) Specification**

In order to carry out the above research methodology, a Research Consultant(s) will be recruited with the following key competencies, experience, knowledge, skills and abilities:

Essential skills:

- A proven track record in managing and conducting complex research projects
- A proven track record in reporting research findings to management committees and meeting contractual deadlines
- A proven track record in producing reports which demonstrate critical thinking and impartiality with assessing research findings
- In-depth knowledge of qualitative research methods and experience of working with marginalised and vulnerable groups
- In-depth and proven knowledge of equality concepts, the equality acts and statutory infrastructure
- A proven ability to clearly communicate research findings together with strong drafting skills
- Proven capacity to analyse legislation and jurisprudence from a range of enforcement bodies

Desirable skills:

- Experience of conducting equality-related research for international bodies
- Experience of working with marginalised and vulnerable groups
- Belonging to a member of a group experiencing inequality in Irish society and/or belonging to a discriminated group which is protected by the equality acts

## **9. Tender for Research**

The tender for this research project should be succinct and cover the following headings:

- Report outline
- Research methodology
- Time-frame
- Project costing

## **10. Assessment of Tenders**

Tenders will be assessed by a review committee. The overall assessment will be concerned with value for money taking into account the quality and cost of the contractor's proposals. In particular, the assessment will focus on the criteria set down in the Research Consultant(s) specification together with the timetable for the production of the research, arrangements for the research management and the proposed costs/distribution of resources.

## **11. Contract of Agreement**

A written agreement will be drafted between the chosen researcher/consultant and the ICCL. Payment of fees will be linked to deliverables.

## **12. Funding**

Funding has been secured at a level commensurate with the high quality of the research work required. Tenderers are invited to submit their best prices.

## **13. Deadline for Tender**

The deadline for this tender process is Friday, 27 August 2010. Tenders can be sent by email or post to:

Joanne Garvey  
Administrator  
Irish Council for Civil Liberties  
9-13 Blackhall Place  
Dublin 7  
Tel: ++ 353 (01) 799 4504  
Email: [joanne.garvey@iccl.ie](mailto:joanne.garvey@iccl.ie)

Any queries should be forwarded to Joanne Garvey.