

Since this issue of FLAC News went to the printers there has been another milestone on the long road to achieving transgender rights. On 14<sup>th</sup> July, Minister for Social Protection Joan Burton published the long delayed report of the Government's Gender Recognition Group and pledged to bring in legislation by the end of this year.



*Pictured: Dr. Lydia Foy and FLAC's Catherine Hickey, Director of Funding and Development*

In a well-deserved gesture, Minister Burton invited FLAC client Dr Lydia Foy to share the platform at the launch of the report and paid tribute to Dr Foy's courage and tenacity in her long fight for recognition of her true gender identity. Without her struggle, they would not be there that day, said the Minister.

It was all a long way from the dogged resistance by the State that had made Lydia Foy go through a 13-year legal battle to get to this point. Gone now were the arguments that everyone was born (or created) irrevocably male or female and could never change, or that the Register of Births was a sacred text that could never be

tampered with. By any standards this was a significant breakthrough for the transgender community.

But there was controversy and some anger from transgender activists at the launch of the report. The Gender Recognition Group had no transgender persons on it and it suffered from lack of input from the very persons it was aiming to help. While there were good parts in the report, like not requiring gender reassignment surgery as a pre-condition for recognition, there were also bits that deeply disappointed the transgender community.

The report proposed that married transgender persons would have to divorce before they could get legal recognition, even if the couple desperately wanted to stay together. They could get a civil partnership, but in order to divorce, they would have to be separated for four years beforehand.

Transgender persons would need a diagnosis of Gender Identity Disorder, the insulting term used by the international psychiatric organisations, though there is a growing move in the profession to change it. Transgender people find this terminology hurtful, suggesting that they are mentally ill.

And the report rejected suggestions from FLAC and the Equality Authority that equality laws should be amended to specifically prohibit discrimination on the grounds of gender identity, something that is especially needed to protect people in the course of transition to the other gender.

The “forced divorce” issue was the most loudly criticised. The chair of the Gender Recognition Group, who spoke at the launch, was clearly unhappy about it. He acknowledged that it would put married trans people in the impossible position of having to choose between a loving relationship and recognition of their gender identity. And it would ignore the rights of the other partner in the marriage.

It seems the Group had been advised that anything else would be unconstitutional because it would amount to recognising a tiny handful of same-sex marriages. But it is equally arguable that to pressure people to break up a validly contracted and working marriage and force a couple to live apart would be a greater breach of the Constitution.

*FLAC's Submission to the Gender Recognition Group can be found on the FLAC website.*

So why should a new Gender Recognition Panel, tasked with determining whether someone should be recognised in their acquired gender, concern itself with whether the applicant is married or not? That is what the Austrian Constitutional Court held recently in a similar case. Why not grant the gender recognition certificate and let the Attorney General seek to challenge the marriage in the courts if it is such an important issue?

And the new legislation does not have to refer to “Gender Identity Disorder”. It could just provide for evidence to be furnished that the applicant genuinely believes that s/he really belongs to the other gender, as the law in Finland puts it. These are matters to be thrashed out in the run-up to drafting the legislation. Minister Burton, who has shown a welcome determination to bring in this legislation, said at the report launch that her door would be open for suggestions for changes in the Gender Recognition Group’s recommendations.

And Council of Europe Human Rights Commissioner Thomas Hammarberg, who has been in the forefront of promoting best practice in transgender legislation, might give some advice to the drafters as well.

The Gender Recognition Group’s report may have been cautious and somewhat disappointing, but at last the logjam over transgender rights has been broken and legislation is in sight. It is now up to transgender activists and everyone interested in equality and inclusion for a very marginalised community to work hard to ensure that the new law is humane, respectful and avoids some of the mistakes that have been made in other jurisdictions.