

Irish Human Rights and Equality Commission

Submission to the Citizens'
Assembly in its consideration of
'How we respond to the
challenges and opportunities of an
ageing population'

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**Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas**
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Purpose and Outline of this Submission

The Irish Human Rights and Equality Commission ('the Commission') is both the national human rights institution and the national equality body for Ireland, established under the *Irish Human Rights and Equality Commission Act 2014*.

The Commission welcomes the opportunity to make its second submission to the Citizens' Assembly.¹ In particular, the Commission is encouraged by the Assembly's focus on the opportunities as well as the challenges presented by an ageing population.

The question of an ageing population gives rise to matters of equality and human rights and, in accordance with its statutory mandate and bearing in mind that the Citizens' Assembly is comprised of 99 individual members of the public, the primary purpose of this submission is to provide information on human rights and equality relevant to equality and the rights of older persons. While this submission will draw primarily on the Commission's work since its establishment in 2014, the Assembly may find the work of the former Equality Authority and the Irish Human Rights Commission to be of interest.² It is hoped that the information provided in relation to the domestic and international human rights and equality framework will assist the Citizens' Assembly in devising recommendations on how we respond to the challenges and opportunities of an ageing population.

This submission is structured as follows:

- 1. Human rights and equality issues facing older persons in Ireland:** This section will provide a brief outline of some of the human rights and equality issues facing older persons in Ireland identified in the course of the Commission's work since its establishment in 2014.
- 2. National machinery for the advancement of equality and human rights:** This section provides an overview of the national machinery for the advancement of equality and human rights. The Citizens' Assembly may wish to bear the existing national machinery in mind and consider how it may be strengthened when developing its recommendations on 'how we respond to the challenges and opportunities of an ageing population'.
- 3. Regional and international human rights and equality developments:** This section provides an overview of some regional and international human rights and equality developments in relation to age equality and the human rights of older persons.

The Irish Human Rights and Equality Commission is available to meet with the Citizens' Assembly to expand on any of the matters raised in this submission.

¹ The Commission previously submitted to the Citizens' Assembly's consultation on Article 40.3.3 of the Constitution of Ireland. See: <https://www.ihrec.ie/app/uploads/2016/12/IHREC-Submission-to-the-Citizens-Assembly-December-2016.pdf>.

² For example, Equality Authority *Implementing Equality for Older People*, available: https://www.ihrec.ie/download/pdf/implementing_equality_for_older_people.pdf. All other publications of the former Equality Authority and Irish Human Rights Commission are available at: www.ihrec.ie.

Human Rights and Equality Issues Facing Older Persons in Ireland

The Census 2016 figures indicate the continued rise in the average age of the Irish population and the population aged over 65 has increased by 19.1 per cent since 2011.³ According to the Irish Longitudinal Study on Ageing (TILDA), this is a trend that Ireland shares with other developed countries and it is projected that this proportion will rise to 14 per cent by 2021.⁴ Evidence from TILDA published in 2017 reveals that adults aged 54 years and over are 'net contributors to their extended family and communities' providing contributions such as:

- Older adults in Ireland who have children are more likely to provide financial assistance to their children (48 per cent) than receive financial help from them (3 per cent)
- Half (47 per cent) of adults aged 54 to 64 years and 65 to 74 years (51 per cent) provide regular childcare for their grandchildren for an average of 36 hours per month.
- More than half (53 per cent) of older adults in Ireland volunteered at some time during the previous year with 17 per cent doing so at least once per week.⁵

According to TILDA, the provision of childcare enables parents to return to the labour market more readily given the high cost of childcare and the value of this social and economic contribution benefits the wider economy and society.⁶ It should be noted that migrants do not always enjoy the caring support provided by older persons to their families, particularly in light of immigration law restrictions. In its legislative observations on the General Scheme of the *International Protection Bill 2015* the Commission noted that the Bill did not recognise the relationship between grandparents and grandchildren for the purposes of family reunification, even though this has been recognised by the European Court of Human Rights.⁷

The TILDA research provides empirical evidence to support the contention that 'older adults continue to make valuable contributions to society, with many characterised by active citizenship and participation in the lives of their families and their communities'.⁸ The Commission is of the view that this evidence is in line with the vision set out in the National Positive Ageing Strategy⁹ which describes Ireland as 'a society for all ages that celebrates and prepares properly for individual and

³ In April 2016 the average age of the population was 37.4 years, up from 36.1 years in April 2011. See: <http://www.cso.ie/en/media/csoie/newsevents/documents/pressreleases/2017/prCensussummarypart1.pdf>

⁴ TILDA is a large-scale, nationally representative study of 8178 community living individuals aged 50 and over in Ireland. For further information see: <https://www.tcd.ie/medicine/medical-gerontology/overview/tilda.php>.

⁵ Mark Ward and Christine McGarrigle (2017) 'The Contribution of Older Adults to their Families and Communities' in TILDA (2017) *Health and Wellbeing: Active Ageing for Older Adults in Ireland: Evidence from The Irish Longitudinal Study on Ageing*, p. 16.

⁶ Mark Ward and Christine McGarrigle (2017) 'The Contribution of Older Adults to their Families and Communities' in TILDA (2017) *Health and Wellbeing: Active Ageing for Older Adults in Ireland: Evidence from The Irish Longitudinal Study on Ageing*, p. 42.

⁷ IHREC (2015) *Recommendations on the General Scheme of the International Protection Bill 2015*, p. 16, available:

https://www.ihrec.ie/download/pdf/ihrec_recs_general_scheme_internation_protection_bill_26_june_2015.pdf

⁸ Mark Ward and Christine McGarrigle (2017) 'The Contribution of Older Adults to their Families and Communities' in TILDA (2017) *Health and Wellbeing: Active Ageing for Older Adults in Ireland: Evidence from The Irish Longitudinal Study on Ageing*, p. 43.

⁹ See most recent monitoring study: <http://health.gov.ie/wp-content/uploads/2016/11/Positive-Ageing-Report-Nov-2016.pdf>

population ageing' and suggests that the Citizens' Assembly reflect on the significant contribution of older persons to Irish society as one of the opportunities of an ageing population.

Age is an equality ground under Irish equality law, which means that, subject to statutory exemptions such as that related to insurance, age-related discrimination is prohibited in the context of employment and in accessing goods and services.¹⁰ Despite the legal framework, ageism, like many other forms of discrimination, persists. In a study published by the Equality Authority, ageism was described as involving 'an interlinked combination of institutional practices, individual attitudes and relationships'.¹¹ Institutional practices include the use of upper age limits in relation to health and motor insurance and it has been said that these 'contribute to the marginalisation of older people'.¹² In the course of its work the Commission has also received numerous representations from individuals and advocacy groups about the range of human rights and equality issues facing older persons in Ireland, including access information and transport.¹³

The Commission also recognises that age discrimination can be compounded by other factors including race, gender and disability¹⁴. This is known as multiple discrimination. For example, the gendered nature of ageing means that women tend to live longer than men, and that more older women than men live alone.¹⁵ Living alone can lead to social exclusion and isolation, particularly for women living in rural areas.¹⁶ Social exclusion in particular communities can also act as a barrier to realising old age. For example, the All Ireland Traveller Health Study revealed that Traveller men live on average 15 years fewer than the average Irish male and the infant mortality rate for Traveller children was 3.6 times that of the general population.¹⁷

In order to assist the Citizens' Assembly in its deliberations, the following sections provide further information on the types of equality and human rights issues facing older persons, in relation to the right to social protection and the right to health.

¹⁰ The *Employment Equality Acts 1998 to 2015* prohibit discrimination in work-related areas such as pay, vocational training, access to employment, work experience and promotion. The *Equal Status Acts 2000-2015*, prohibit discrimination in the provision of goods and services, the provision of accommodation and access to education. Administrative consolidations of these Acts are available here: <http://revisedacts.lawreform.ie/revacts/alpha#E>.

¹¹ https://www.ihrec.ie/download/pdf/implementing_equality_for_older_people.pdf p. 3-4

¹² Yvonne McGivern (ed) (2005) *From Ageism to Age Equality: Addressing the Challenges – Conference Proceedings*, p. 13, available: http://www.ncaop.ie/publications/research/reports/86_Ageism_Conf_Procs.pdf

¹³ Irish Human Rights and Equality Commission (2015) *Developing the Irish Human Rights and Equality Commission Strategy Statement 2016-2018 2015: Feedback report on the public consultation process 2015*, page 186, available:

https://www.ihrec.ie/download/pdf/ihrec_consultation_full_feedback_report.pdf See further: Irish Human Rights and Equality Commission (2017) *What is life like for women in Ireland in 2016? IHREC's Consultation on the Convention on the Elimination of All Forms of Discrimination Against Women*, p. 15, available: <https://www.ihrec.ie/app/uploads/2017/02/What-is-life-like-for-women-in-Ireland-in-2016.pdf>. See also IHREC (2016) *Annual Report 2015, Appendix 7 (queries)*

¹⁴ In relation to the policy implications of ageing and disability see: <http://nda.ie/Publications/Health/Health-Publications/Ageing-Disability-A-Discussion-Paper1.html#Chapter5>

¹⁵ See UN CEDAW, *General recommendation No. 27 on older women and protection of their human rights*, available: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/472/53/PDF/G1047253.pdf?OpenElement>

¹⁶ For further discussion of rural women's experiences see: IHREC (2017) *Ireland and the Convention on the Elimination of All Forms of Discrimination against Women*, section 13.3.

¹⁷ Kelleher et al (2010) *Our Geels, All Ireland Traveller Health Study*, Dublin: University College Dublin & Department of Health & Children.

Right to social protection

Pension rights are regulated primarily by the *Social Welfare Consolidation Act 2005* and the *Pensions Act 1990*.¹⁸ Under Irish law, it is unlawful to discriminate directly or indirectly in relation to occupational pensions on the grounds of age.¹⁹ Access to pensions in Ireland has given rise to equality and human rights issues, some of which are set out below.

Pension rates

Although the payment rates for both the State Pension (Contributory) and the State Pension (Non-Contributory) remained unchanged in the aftermath of the recession, the Commission has expressed concern that changes made to the following secondary payments have reduced the effectiveness of the State Pension:²⁰

- in 2012, the period of payment of the Fuel Allowance was reduced from 32 weeks to 26 weeks, resulting in a reduction of €120.00 per year;
- in 2013 the Telephone Allowance was reduced from €26.00 to €9.50 per month, resulting in a reduction of €234 that year;
- in January 2014 the Telephone Allowance was abolished, resulting in a reduction of €114 in each of the remaining years of the reporting period; and
- in January 2013 the Electricity allowance was changed to €35 per month, and the effect was a reduction of approximately €105 per year.²¹

Inequality and access to pensions

Access to pensions is regulated by a number of qualifying criteria, some of which give rise to equality and human rights concerns, namely the averaging system, the payment bands and the pensionable age.

It has been reported that the averaging system for access to the State Pension (Contributory) system can place people with broken insurance records at a disadvantage including returning emigrants and missionaries who have worked in Ireland in their early life.²² It should also be noted that access to the State Pension (Non-Contributory) is subject to the habitual residence condition, which also applies to returning Irish emigrants. The Commission has previously expressed concerns about the impact of the habitual residence condition on access to social security rights.²³ The Commission has also highlighted how the averaging system gives rise to gender inequality, which is discussed in more detail below. In 2010 the National Pensions Framework recognised ‘the way in which eligibility for State Pension (Contributory) is calculated is complicated and can give rise to anomalies’²⁴. The Minister for Social Protection has confirmed that officials are currently developing proposals on a

¹⁸ Available at: <http://www.irishstatutebook.ie/eli/2005/act/26/enacted/en/html> and <http://www.irishstatutebook.ie/eli/1990/act/25/enacted/en/html>.

¹⁹ Part VII of the *Pensions Act 1990*, as amended by section 22 of the *Social Welfare (Miscellaneous Provisions) Act 2004*.

²⁰ IHREC (2017) *Comments on Ireland's 14th National Report on Implementation of the European Social Charter*, p. 27, available: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168070b755>

²¹ See: ‘2011 Income Scenarios: Pensioner Couple, Aged 66–69 – Urban’:

http://www.budgeting.ie/download/legacy/2011_Urban_folder/2011_urban_income_folder/Pensioner_Couple.pdf

²² Mel Cousins and Associates (2008) *Green Paper Consultation Report*, p. 107, available:

http://www.ebl.ie/Green_Paper_Consultation_Report_Final_Report.pdf

²³ IHREC (2015) *Ireland and the Ireland and the International Covenant on Economic, Social and Cultural Rights*, section 7.1, available: https://www.ihrec.ie/app/uploads/download/pdf/icescr_report.pdf

²⁴ http://www.welfare.ie/en/downloads/nationalpensionsframework_en.pdf

new “Total Contributions Approach” (TCA), as recommended by the National Pensions Framework, which should replace the yearly average approach for new pensioners from 2020.²⁵

From September 2012 the number of payment bands was increased from four to six (through the division of the second band into three bands), and reductions were made to the amount of payments made to new recipients in all the bands below the second band. Data on the impact of this change demonstrates that one-third of new recipients of the State Pension (Contributory) were affected.²⁶ The Commission has noted that these ‘reductions were imposed on those among the new recipients who were least able to take reductions in the levels of pension’.²⁷

In 2014 the age at which the State pensions are, in practice, paid was increased from 65 to 66, and it will increase to 67 in 2021 and 68 in 2028. The Commission has expressed concern that ‘the law does not adequately protect workers from compulsory retirement at an age before they are entitled to receive a State pension’.²⁸

Gender inequality

The gender pension gap is currently 38 per cent in Ireland.²⁹ According to a study published in 2017, a number of factors have contributed to this including the gender pay gap, women being overrepresented in precarious and part-time work and women are less likely to have occupational or private pensions than men or, if they have them, generally at lower rates.³⁰

Women are also less likely to be in receipt of either an occupational pension or a contributory State pension due to the increased likelihood of career interruptions.³¹ The statistics published by the Department of Social Protection show that the proportion of women who are in receipt of the State Pension (Contributory) was significantly lower than the number of men in recent years but that it has been rising.³² Therefore, women over the age of 65 are more likely to depend on the social security system as their primary source of income in the form of a non-contributory pension.³³ Interruptions to a woman’s career are often due to caring responsibilities. It has been reported that ‘the gendered division of care labour is deeply embedded in the legislative and policy fabric of Irish society’.³⁴ In addition, many women in Ireland experienced career interruptions due to the so-called

²⁵ Response to Parliamentary Question, 10 May 2017, available: <https://www.kildarestreet.com/wrans/?id=2017-05-10a.324>

²⁶ Maureen Bassett (2017) *Towards a Fair State Pension for Women Pensioners*, Dublin: Age Action, page 15, available https://www.ageaction.ie/sites/default/files/attachments/briefing_paper_3_reverse_the_2012_state_pension_cuts.pdf.

²⁷ IHREC (2017) *Comments on Ireland’s 14th National Report on Implementation of the European Social Charter*, p. 26.

²⁸ IHREC (2017) *Comments on Ireland’s 14th National Report on Implementation of the European Social Charter*, p. 25.

²⁹ See: IHREC (2017) *Ireland and the Convention on the Elimination of All Forms of Discrimination against Women*.

³⁰ Bassett, M. (2017) *Towards a Fair State Pension for Women Pensioners*. Dublin: Age Action, p. 6, available: https://www.ageaction.ie/sites/default/files/attachments/final_towards_a_fair_state_pension_for_women_pensioners.pdf

³¹ Organisation for Economic Cooperation and Development (OECD) (2014) *OECD Reviews of Pensions System: Ireland*, Paris OECD Publishing, available <http://www.welfare.ie/en/downloads/oecd-review-of-the-irish-pensions-system.pdf>

³² Department of Social Protection (2013) *Statistical Information on Social Welfare Services 2012*, at page 30, available at http://www.welfare.ie/en/downloads/Social%20Stats%20AR%202012_Final.pdf; Department of Social Protection (2014) *Statistical Information on Social Welfare Services 2013*, at page 34, available at

<http://www.welfare.ie/en/downloads/Social-Stats-AR-2013.pdf>; Department of Social Protection (2015) *Statistical Information on Social Welfare Services 2014*, at page 61, available at <http://www.welfare.ie/en/downloads/Statistical-Information-on-Social-Welfare-Services-2014.pdf>; Department of Social Protection (2016) ‘Number of Recipients of State Pensions by Age and Sex, 2015’ [online spreadsheet] at sheet B4, available at www.welfare.ie/en/downloads/Statistical_Reports/Section_B_Pensions_V1.0.xlsx

³³ Central Statistics Office (CSO) (2013) *Survey on Income and Living Conditions (SILC): Thematic Report on the Elderly 2004, 2009, 2010 (revised) and 2011*, Cork: CSO, p. 6, available:

<http://www.cso.ie/en/media/csoie/releasespublications/documents/silc/2011/elderly040910and11.pdf>

³⁴ TASC (2016) *Cherishing All equally*: http://www.tasc.ie/download/pdf/tasc_inequalityreport_2016_web.pdf

‘marriage bar’ which required women in public service jobs to leave their employment upon marriage.³⁵

In 1994, the State introduced the Homemaker’s Scheme which allows up to twenty years out of the workforce to be discounted from the pension assessment. While this scheme has benefitted women who may have had career interruptions in order to care for families, it has not been of equal benefit to all as only those who took career breaks after 6 April 1994 are covered by this scheme. The Commission has recommended that the Homemaker’s Scheme be applied retrospectively by the State immediately, in order to ensure equitable access to the contributory State pension.³⁶

Right to health

Care Needs of Older Persons

Research has demonstrated that home and community-care services remain under-developed in some Western European countries, including Ireland.³⁷ Noting research findings that older people’s preferences for receiving care and support in their home and community is not being realised,³⁸ the Commission has raised concerns about the ‘level of provision, the absence of standards, or inadequate standards in the States’ social welfare services’.³⁹ The Commission has recommended that ‘the State improve supports for care services for older people’.⁴⁰

Comparative European research on long-term care (LTC) needs has found that while many European countries have increased expenditure in this area, Ireland has ‘slowed or even cut back on spending and coverage in response to the rising costs of care’.⁴¹ It has been suggested that investment in the LTC sector could enhance labour opportunities.⁴² In order to ensure that the rights of older persons seeking and in receipt of LTC are fully respected, the European Network of National Human Rights Institutions (ENNHRI) recommends the following:

1. Policy-makers and service providers should integrate a human rights-based approach to the design and delivery of LTC.
2. Policy makers and service providers should take steps to ensure the participation of older persons in the design and delivery of LTC.
3. Older persons in LTC must be provided with the means to access justice and effective remedy.
4. European states should invest in LTC, as an investment in our society and in Europe’s future.
5. European states should facilitate the ongoing monitoring of the human rights situation of older persons in LTC.

³⁵ The marriage bar ended in 1973 when Ireland joined the European Union (then the European Economic Community).

³⁶ IHREC (2017) *Ireland and the Convention on the Elimination of All Forms of Discrimination against Women*, p. 93.

³⁷ C Ranci and E Pavolini (Eds) (2013) *Reforms in LTC Policies in Europe*. Springer: London, New York in ENNHRI (2017) “We have the same rights:” *The Human Rights of Older Persons in Long-term Care in Europe*, p. 25, available: http://ennhri.org/IMG/pdf/ennhri_ltc_pilot_monitoring_report_feb_2017.pdf

³⁸ Sarah Donnelly, Marita O’Brien, Emer Begley and John Brennan (2016) *‘I’d Prefer to Stay at Home but I Don’t Have a Choice’ – Meeting Older People’s Preference for Care: Policy, But What About Practice?*, Dublin: University College Dublin available:

http://researchrepository.ucd.ie/bitstream/handle/10197/7670/IASW.AGE_ACTION.ASI.UCD_Research_Report_on_Care_of_Older_People_2016.pdf

³⁹ IHREC (2017) *Comments on Ireland’s 14th National Report on Implementation of the European Social Charter*, p. 24.

⁴⁰ IHREC (2017) *Ireland and the Convention on the Elimination of All Forms of Discrimination against Women*, p. 95.

⁴¹ C Ranci and E Pavolini (Eds) (2013) *Reforms in LTC Policies in Europe*. Springer: London, New York in ENNHRI (2017) “We have the same rights:” *The Human Rights of Older Persons in Long-term Care in Europe*, p. 26.

⁴² ENNHRI (2017) “We have the same rights:” *The Human Rights of Older Persons in Long-term Care in Europe*, p. 12.

6. Regional mechanisms, European states and local authorities should provide awareness raising and training on human rights of older person in LTC.
7. European states and the EU are encouraged to support a stronger protection framework for older persons in LTC, including the implementation of existing human rights standards, and a convention on the rights of older persons to address the gaps and fragmentation in current texts.⁴³

Deprivation of liberty in nursing homes and other care and residential accommodation

The Commission has expressed concerns about legislative clarity related to the deprivation of liberty in nursing homes and other care and residential accommodation.⁴⁴ In the explanatory memorandum to the *Equality (Miscellaneous Provisions) Bill 2016* it was stated that ‘legislative clarity is needed, in relation to residential care facilities, on who has statutory responsibility for a decision that a patient should not leave for health and safety reasons, and what appeals process should be in place’.⁴⁵ While the Department of Health is working on proposals to address this issue, the Commission has expressed concern that the introduction of amendments at a late stage in the legislative process will have the effect of limiting the time available to the Commission and to civil society to analyse the proposed wording and to adequately respond to it before it proceeds through the legislative process in the Irish parliament.⁴⁶

Reporting of Elder Abuse

In 2014 a policy on safeguarding vulnerable persons at risk of abuse⁴⁷ was published and the National Safeguarding Committee was established in December 2015.⁴⁸ In 2013 the National Positive Ageing Strategy reported that the prevalence of elder abuse in Ireland was 2.2 per cent but that the prevalence of elder abuse in other developed countries is between 3 and 5 per cent, and that the number of people experiencing elder abuse may be greater than reported.⁴⁹

The Commission has recommended that ‘research should be commissioned by the government to establish the reasons for the significant lower reported rate of elder abuse in Ireland compared with other developed countries’.⁵⁰ The Commission has also expressed concern that ‘the changes in the structures on the provision of services on elder abuse and in the reporting of indicators, data and statistics on elder abuse have resulted in reduced transparency on the levels of abuse and on the steps that the State has taken to combat elder abuse’.⁵¹

⁴³ ENNHRI (2017) “We have the same rights:” *The Human Rights of Older Persons in Long-term Care in Europe*, p. 13-14, available: http://ennhri.org/IMG/pdf/ennhri_ltc_pilot_monitoring_report_feb_2017.pdf

⁴⁴ IHREC (2016) *Observations on the General Scheme of the Equality/Disability (Miscellaneous Provisions) Bill*, p. 26-38, available: <https://www.ihrec.ie/app/uploads/2016/11/Observations-on-the-General-Scheme-Equality-Disability-Miscellaneous-Provisions-Bill.pdf>

⁴⁵ *Disability (Miscellaneous Provisions) Bill 2016: Explanatory Memorandum*, p. 2-3, available: <https://www.oireachtas.ie/documents/bills28/bills/2016/11916/b11916d-memo.pdf>

⁴⁶ IHREC (2017) *Supplementary Observations on the Disability (Miscellaneous Provisions) Bill 2016*, p. 3, available: <https://www.ihrec.ie/documents/18229/>

⁴⁷ Health Service Executive (2014) *Safeguarding Vulnerable Persons at Risk of Abuse: National Policy & Procedures – Incorporating Services for Elder Abuse and for Persons with a Disability*. Dublin: Health Service Executive, available: <http://www.hse.ie/eng/services/publications/corporate/personsatriskofabuse.pdf>

⁴⁸ Patricia T Rickard-Clarke (2016) ‘Foreword’ in: *National Safeguarding Committee Strategic Plan 2017–2021*, Limerick: National Safeguarding Committee, p. 4, available: <http://safeguardingcommittee.ie/wp-content/uploads/2016/12/NSC-Strategic-Plan-2017-2021-2.pdf>

⁴⁹ Department of Health (2013) *Positive Ageing Starts Now! The National Positive Ageing Strategy*, Dublin: Department of Health, p. 38, available: <http://health.gov.ie/healthy-ireland/national-positive-ageing-strategy/>

⁵⁰ IHREC (2017) *Comments on Ireland’s 14th National Report on Implementation of the European Social Charter*, p. 28.

⁵¹ IHREC (2017) *Comments on Ireland’s 14th National Report on Implementation of the European Social Charter*, p. 28.

National Machinery for the Advancement of Equality and Human Rights

This section provides an overview of the national machinery for the advancement of equality and human rights. The Citizens' Assembly may wish to bear the existing national machinery in mind and consider how it may be strengthened when developing its recommendations on 'how we respond to the challenges and opportunities of an ageing population'.

National Positive Ageing Strategy

The Commission notes that the National Positive Ageing Strategy was published in 2013. The Commission has previously noted the importance of robust implementation of strategies.⁵² The Commission welcomes efforts to implement the National Positive Ageing Strategy. For example, the Age Friendly City and County Programmes aim to create the kinds of communities in which older people live autonomous and valued lives.⁵³ This initiative recognises that 'physical environments that are age-friendly can make the difference between independence and dependence, ... [and] older people who live in an unsafe environment, or in areas with many physical barriers, are less likely to get out, and therefore can be more prone to isolation, depression, reduced fitness and increased mobility problems'.⁵⁴ The Dublin City report of the Age Friendly City and County Programmes revealed that adults aged 55 and over in Dublin City were most positive about adapting their house to their needs and were least positive about moving in with a relative other than their children and in light of this, perhaps this could be considered by the Department of Housing Planning, Community and Local Government in the development of building regulations.⁵⁵

The Commission is of the view that the national indicators developed by the Healthy and Positive Ageing Initiative (HaPAI) have the potential to be utilised to measure the advancement age equality and the human rights of older persons in Ireland.⁵⁶ The Commission also welcomes the establishment of the National Positive Ageing Forum given that participation is a core value of the human rights and equality framework.⁵⁷ The Commission suggests that the National Positive Ageing Strategy should be viewed as a living document that may be added to, particularly by the members of the National Positive Ageing Forum.⁵⁸

⁵² IHREC (2017) *Ireland and the Convention on the Elimination of All Forms of Discrimination against Women*, p. 48-49.

⁵³ For further information see: <http://agefriendlyireland.ie/cities-and-counties-programme/>

⁵⁴ World Health Organisation (WHO) (2002) *Active Ageing: A Policy Framework*, p. 27, available: http://apps.who.int/iris/bitstream/10665/67215/1/WHO_NMH_NPH_02.8.pdf

⁵⁵ Healthy and Positive Ageing Initiative (2016) *Positive Ageing In Ireland: Dublin City Report*.

⁵⁶ Healthy and Positive Ageing Initiative (2016) *Positive Ageing 2016: National Indicators Report*. Dublin: HaPAI, available: <http://health.gov.ie/wp-content/uploads/2016/11/National-Indicators-Report-Single-W.pdf>.

⁵⁷ Department of Health, 'First ever National Positive Ageing Forum allows older people play a meaningful role in shaping their own communities and leading change [press release] 30.3.2017 available: <http://health.gov.ie/blog/press-release/first-ever-national-positive-ageing-forum-allows-older-people-play-a-meaningful-role-in-shaping-their-own-communities-and-leading-change/>

⁵⁸ This is provided for in the *National Strategy for Women and Girls 2017-2020: creating a better society for all*, available: http://www.justice.ie/en/JELR/National_Strategy_for_Women_and_Girls_2017-2020.pdf/Files/National_Strategy_for_Women_and_Girls_2017-2020.pdf

Equality and human rights legal framework

Article 40.1 of the Constitution of Ireland provides that ‘all citizens shall, as human persons, be held equal before the law’. With respect to statutory law, it has already been mentioned above that age-related discrimination is prohibited in employment contexts as well as in relation to access to goods and services. In addition, the Council of Europe’s European Convention on Human Rights has been indirectly incorporated into Irish law via the *European Convention on Human Rights Act 2003*.

While remedies for age-related discrimination and breaches of older persons’ rights are available both at common law and in statute, the Commission has previously expressed concerns about the effectiveness and accessibility of such remedies.⁵⁹ In its report to the United Nations Committee on the Elimination of Discrimination Against Women, the Commission recommended that section 82(4) of the *Employment Equality Acts 1998 – 2015* and section 27(2) of the *Equal Status Acts 2000 – 2015* be amended to ensure that the amount of compensation that may be awarded by a court is not limited and that section 14 of the *Equal Status Acts 2000 – 2015* be amended to allow equality legislation to be used to challenge other potentially discriminatory laws.⁶⁰ In light of this, the Citizen’s Assembly may wish to consider the effectiveness of the *Equal Status Acts 2000 – 2015*, *Employment Equality Acts 1998–2015* and the *European Convention on Human Rights Act 2003* in the prevention of age-related discrimination and promotion of the rights of older persons.

Public Sector Duty (Section 42 of the *Irish Human Rights and Equality Commission Act 2014*)

The Public Sector Duty, as set out in section 42 of the *Irish Human Rights and Equality Commission Act 2014* requires all public bodies in the performance of their functions, including budgetary functions, to eliminate discrimination, promote equality of opportunity and treatment, and protect human rights.⁶¹ Public bodies are required to assess human rights and equality issues relevant to their functions in their strategy statements and are required to provide an update on their activities in each annual report.

Equality and Human Rights Budgeting

The Commission has expressed concern about the impact of the State’s austerity measures on groups at risk of poverty and social exclusion.⁶² As mentioned above, in 2012 the Government introduced changes to the eligibility criteria for the State Pension (Contributory). New bands were introduced and in some cases new reduced payment rates related to these bands. A recent age action analysis of the gender impacts of such changes demonstrates the case for proofing.⁶³

The Commission has welcomed the *Programme for a Partnership Government* commitment to put institutional arrangements in place to support equality and human rights proofing at both

⁵⁹ See: IHREC (2017) *Ireland and the Convention on the Elimination of All Forms of Discrimination against Women*, p. 35-39.

⁶⁰ IHREC (2017) *Ireland and the Convention on the Elimination of All Forms of Discrimination against Women*, p. 37.

⁶¹ Section 42(1) of the *Irish Human Rights and Equality Commission Act 2014*. The duty came into effect on 1 November 2014 when the legislation was commenced. See also:

https://www.ihrec.ie/app/uploads/2016/09/ihrec_public_duty_booklet.pdf

⁶² IHREC (2015) *Submission to the Committee on Economic, Social and Cultural Rights*, section 3.1. See also: F. McGinnity, H. Russell, D. Watson et al (2014) *Winners and Losers? The Equality Impact of the Great Recession in Ireland*, Equality Authority and ESRI, p. 5, available: <https://www.ihrec.ie/download/pdf/20141109163348.pdf>.

⁶³ Bassett, M. (2017) *Towards a Fair State Pension for Women Pensioners*. Dublin: Age Action.

governmental and parliamentary level.⁶⁴ In June 2016, the Commission appeared before the Select Committee on Arrangements for Budget Scrutiny, where it advised parliament the recommendations of the UN Committee on Economic, Social and Cultural Rights to Ireland in 2015 in relation to ensuring that the State uses its maximum available resources for the protection of human rights and equality.⁶⁵ The Commission has noted the Government's commitment to reform of budgetary practices,⁶⁶ noting in particular the publication of a social impact assessment (SIA) of Budget 2017.⁶⁷

Public procurement and business and human rights

The Commission has expressed concerns about the State's practice of subcontracting its functions to non-state actors and has stated that public bodies must fulfil their Public Sector Duty obligations, regardless of whether the service is provided directly by the State, or through a non-state actor.⁶⁸ Various studies have raised concerns about the impact of privatisation and outsourcing of elder care, home care and palliative care and in the elder care sector on human rights and equality, particularly in relation to workers' rights⁶⁹.

In 2016, the United Nations Committee on the Rights of the Child recommended that Ireland 'establish and implement regulations to ensure that the business sector, including in the context of public procurement, complies with international and national human rights'.⁷⁰ European Union law also requires non-state actors to comply with international agreements in the performance of a public contract.⁷¹ The Commission has suggested this should be addressed in the finalisation of the State's forthcoming National Action Plan on Business and Human Rights.⁷²

⁶⁴ *Programme for a Partnership Government*, p. 6, available:

http://www.merrionstreet.ie/merrionstreet/en/imagegallery/programme_for_partnership_government.pdf

⁶⁵ Select Committee on Arrangements for Budget Scrutiny,

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/CAB201606210002?opendocument#A00100>. See also: 'IHREC attends Select Committee on Arrangements for Budgetary Scrutiny' [press release] 21/06/2016, available: <https://www.ihrec.ie/ihrec-attends-select-committee-on-arrangements-for-budgetary-scrutiny/>

⁶⁶ IHREC (2016) *Statement from the Irish Human Rights and Equality Commission on Budget 2017*, available:

<https://www.ihrec.ie/statement-irish-human-rights-equality-commission-budget-2017/>

⁶⁷ Department of Social Protection (2016) *Social impact assessment of the welfare and income tax measures in Budget 2017*, available: <https://www.welfare.ie/en/downloads/SocialImpact2017.pdf>. See also: Department of Public Expenditure and Reform (2015) *Staff Paper 2016 Social Impact Assessment Framework*, p. 5, available:

<http://budget.gov.ie/Budgets/2017/Documents/1.%20Social%20Impact%20Assessment%20Framework.pdf>

⁶⁸ See for example, oral statement of the Commission's Chief Commissioner, Emily Logan, to the UN Committee on

Economic, Social and Cultural Rights, June 2015, available: <https://www.ihrec.ie/oral-statement-ms-emily-logan-to-the-un-committee-on-economic-social-and-cultural-rights/>

⁶⁹ See for example, Lolich, L. & Lynch, K. (2016) Control and Care at the end of life: Performing the 'good death' in palliative care, an Irish perspective. *Irish Journal of Anthropology*, Vol.19 (1) pp. 100-108; MRCI (2015) *Migrant Workers in the Home Care Sector: Preparing for the Elder Boom in Ireland*, Dublin, MRCI.

⁷⁰ UN Committee on the Rights of the Child (2016) *Concluding Observations on the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/CO/3-4, para. 24, available: <https://documents-ddsny.un.org/doc/UNDOC/GEN/G16/039/97/PDF/G1603997.pdf?OpenElement>

⁷¹ Regulation 18(4)(a) provides: 'In the performance of a public contract, an economic operator shall comply with applicable obligations in the fields of environmental, social and labour law ... established by European Union law, national law, collective agreements or by international, environmental, social and labour law'. Available:

<http://www.irishstatutebook.ie/eli/2016/si/284/made/en/pdf>. These regulations have been in force since 18 April 2016.

⁷² Department of Foreign Affairs and Trade (2015) *Working Outline of Ireland's National Plan on Business and Human Rights 2016–2019*, available:

<https://businesshumanrightsireland.files.wordpress.com/2015/12/working-outline-of-irelands-national-plan-on-business-and-human-rights-10-dec-20151.pdf>

Regional and International Human Rights and Equality Developments

Age equality and the rights of older persons are protected by regional and international human rights and equality frameworks. This section provides a brief outline of some developments at regional and international level over the last number of years which may be of interest to members of the Citizens' Assembly.

European Union

Article 2 of the Treaty on the European Union (TEU) identifies equality as one of the values on which the European Union is founded. The objectives of the European Union, as set out in Article 3(3) TEU, includes the combating of social exclusion and discrimination as well as solidarity between generations. Articles 8 and 10 of the Treaty on the Functioning of the European Union (TFEU) also requires non-discrimination on the basis of age to be mainstreamed within all EU policies. The Court of Justice of the European Union has also held that the general principle of non-discrimination on the grounds of age imposes obligations on private parties.⁷³

Article 21 of the EU Charter for Fundamental Rights contains a general provision on the prohibition of age discrimination and Article 25 recognises the rights of older persons 'to lead a life of dignity and independence and to participate in social and cultural life'. However, the Charter only applies to EU Institutions and when Member States are implementing EU law, which therefore excludes key policy areas such as health and employment.

In relation to EU policy initiatives, 2012 was designated the European Year of Active Ageing and Solidarity between Generations. According to the European Commission the year 'has helped convey a more positive image of population ageing by highlighting the potentials of older people and promoting their active participation in society and the economy'.⁷⁴ Active ageing has also been recognised as 'an important area of social investment' in the European Commission's Europe 2020 Strategy.⁷⁵

Council of Europe

While not explicitly recognised in the European Convention of Human Rights, the European Court of Human Rights has considered the rights of older persons in a number of scenarios including hospital conditions and treatment in care homes.⁷⁶ Article 23 of the European Social Charter (Revised) recognises the rights of older persons to social protection, which includes enabling older persons to: remain full members of society for as long as possible; choose their lifestyle freely and to lead independent lives in their familiar surroundings for as long as they wish and are able; guarantee elderly persons living in institutions appropriate support.⁷⁷

⁷³ Case C-144/04 *Mangold* and Case C-555/07 *Kücükdeveci v Swedex GmbH & Co KG*.

⁷⁴ European Commission (2014) *Report on the implementation, results and overall assessment of the 2012 European Year for Active Ageing and Solidarity between Generations*, p. 9, available: <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2129>

⁷⁵ European Commission (2013) *Towards Social Investment for Growth and Cohesion – including implementing the European Social Fund 2014-2020*, COM(2013) 83 final, available: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52013DC0083&from=EN>

⁷⁶ See further: European Court of Human Rights Press Unit (2016) *Factsheet – Elderly People and the ECHR*, available: http://www.echr.coe.int/Documents/FS_Elderly_ENG.pdf

⁷⁷ Available: <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cf93>

United Nations

In 1991 the United Nations General Assembly published its Principles for Older Persons⁷⁸ and in 2002, the Madrid International Plan of Action on Ageing⁷⁹ was developed. United Nations human rights treaty monitoring bodies have also specifically addressed the rights of older persons, notably the Committee on Economic, Social and Cultural Rights⁸⁰ and the Committee on the Elimination of Discrimination Against Women.⁸¹ However, it has been argued that the case can be made that older persons too should be recognised as a distinct group who deserve special attention.⁸²

In 2010 the United Nations General Assembly established the Open-Ended Working Group on Ageing to consider the existing international framework of the human rights of older persons and identify possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures.⁸³ Since its establishment the Open-Ended Working Group on Ageing has considered a range of human rights issues facing older persons.⁸⁴ At its forthcoming eighth session in July 2017, the Working Group will consider equality and non-discrimination and neglect, violence and abuse.⁸⁵ The Commission has contributed to this session through its participation in the European Network of National Human Rights Institutions.

In 2013 the Human Rights Council appointed Ms. Rosa Kornfeld-Matte as the first Independent Expert on the enjoyment of all human rights by older persons. In 2016 the Independent Expert concluded that the existing framework, the Madrid Plan of Action, is 'not sufficient to ensure the full enjoyment of their human rights by older persons' and recommended that 'existing divergences must urgently be overcome, given the millions of older persons waiting for their human rights to become a reality'.⁸⁶

⁷⁸ Available: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OlderPersons.aspx>

⁷⁹ Available: http://www.un.org/en/events/pastevents/pdfs/Madrid_plan.pdf

⁸⁰ CESCR (1995) *General Comment No. 6 on the Economic, Social and Cultural Rights of Older Persons*, available: http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/1_Global/INT_CESCR_GEC_6429_E.pdf

⁸¹ CEDAW (2010) *General Recommendation No. 27 on older women and protection of their human rights*, available: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/472/53/PDF/G1047253.pdf?OpenElement>

⁸² Marthe Fredvang and Simon Biggs (2012) *The rights of older persons: protection and gaps under human rights law*, available: <https://social.un.org/ageing-working-group/documents/fourth/Rightsfolderpersons.pdf>

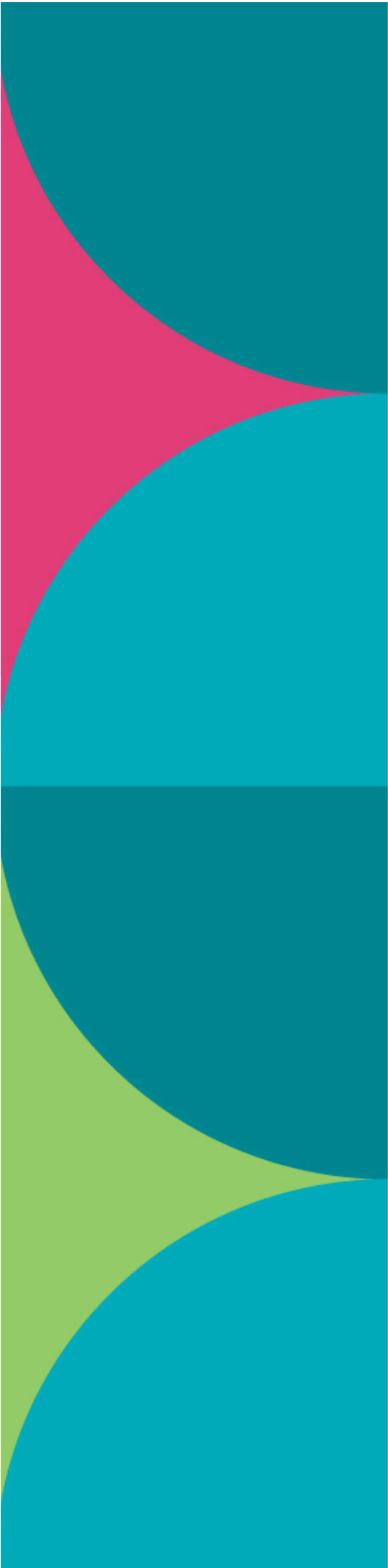
⁸³ Resolution adopted by the General Assembly on 21 December 2010 on Follow-up to the Second World Assembly on Ageing, A/RES/65/182, available:

http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/182&referer=/english/&Lang=E.

⁸⁴ For further information see: <https://social.un.org/ageing-working-group/index.shtml>


⁸⁵ See further: <https://social.un.org/ageing-working-group/eighthsession.shtml>

⁸⁶ Human Rights Council (2016) *Report of the Independent Expert on the enjoyment of all human rights by older persons*, para. 125, A/HRC/33/44, available: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/147/83/PDF/G1614783.pdf?OpenElement>



**16-22 Sráid na Faiche,
Baile Átha Cliath 7, D07 CR20**
16-22 Green Street,
Dublin 7, D07 CR20

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