

## CONGRESS SUBMISSION to the CONSULTATION PROCESS ON NEW HUMAN RIGHTS AND EQUALITY BODY

**Introduction:** Congress and many affiliate trade unions are active members of the Equality and Rights Alliance and we would like to associate ourselves with the ERA submission at:

<http://www.eracampaign.org/uploads/Equality & Rights Alliance-Submission to merger working group.pdf>

**In addition,** we would like to emphasise the following points:

Congress is concerned that this exercise is not just a further example of our failed austerity policies and that the merger reflects **real commitment** to the necessary renewal of our equality and human rights infrastructure. References to the need for a 'streamlined' body and a merger presented as a means to save public money on two bodies deemed to have 'overlapping functions' do not augur well in that regard.

When this merger was first mooted by the Minister in September, concern was raised that the roles foreseen for the merged body made no reference to **providing legal support** to those taking cases of discrimination or cases in relation to human rights abuses. The capacity of the Equality Authority and the Irish Human Rights Commission to provide such support in recent times has been adversely affected by budget cutbacks and the public sector employment embargo. The Authority's power to provide assistance at its discretion to individuals who believe they have been discriminated against has been an important lever in tackling discrimination. It is therefore a vital function for the effectiveness of the infrastructure and must be a major function of the new Body. The absence of such a function would leave individuals, particularly non trade union members, to progress complex employment cases. Additionally, there is a need for a facility other than individual complaints. If an issue involves 400 trade union members, 400 individual complaint forms have to be solicited. Ultimately, the complaints will be dealt with collectively and that being the case there should be a facility for collective complaints to be made by representative bodies such as Trade Unions.

The announcement of the working group states that the new merged body will retain the **statutory powers** and duties of the existing bodies. This is a welcome statement. However, it is undermined when the terms of reference ask the working group to offer a view whether greater use of codes of practice or strategic

court cases might achieve the best outcome. The terms of reference disturbingly note that 'court cases tend to involve the State in one way or another'. Indeed some of the powers afforded to the existing bodies have never been fully used e.g. Congress requests for two enquiries into possible discrimination in relation to the terms and conditions afforded to people with disabilities working in sheltered workshops and in relation to discrimination against agency workers, were not granted. Both organisations have such critical, strategic powers that are up to now under-developed. If the merger is to result in an enhanced infrastructure, the new body must be in a position to use these powers.

An issue of particular concern to Congress is the **composition** of the working group and the signals that may send in terms of the makeup of any new body. It is confined to members of the Boards of the two Bodies and officials from the Department. There are no trade union representatives included, while one of the IBEC reps from the EA board is (quite rightly) included. Congress General Secretary David Begg's correspondence with Minister Shatter points out that this is a disturbing break from the long established practice of ensuring balanced representation between both social partners. It is also worth noting that all of the equal treatment directives – gender, race, and framework – under the heading of Social Dialogue- require the member states 'in accordance with their national traditions and practice' to take adequate measures to promote dialogue between the social partners with a view to fostering equal treatment. They cite how this can be done, including: monitoring of work place practices, collective agreements, codes of conduct, research or exchange of experience and good practices. The restructuring of the equality infrastructure would appear to be one place where the promotion of dialogue between the social partners would be crucial. Questions of human rights also affect workers not just as citizens but also in the employment relationship and also obviously on major issues such as the right to collective bargaining. It is a source of much dismay to us that a group to advise the minister on the setting up of a body that will have amongst its objectives to protect people's human rights, promote workplace equality and to combat workplace discrimination does not include trade union representation. Any new body must redress this balance immediately and ensure an active role for trade unions.

Both organisations have a **development, education and research** role - three critical roles in developing equality and human rights. The research role builds evidence of the scale and nature of discrimination and rights while the development function is central to preventing discrimination and human rights abuses.

Public sector education is a specific project of the IHRC. Congress and our affiliate trade unions have built our equality capacity greatly by participating in many projects supported by the development function and it is very important that any new body has such a function.

The Equality Authority is currently charged with providing information to workers on their rights under the **Maternity, Adoptive and Parental Leave** Acts. There is an argument that workers in these situations need as much assistance with securing their rights under these Acts as they do under other employment rights acts. Congress believes that NERA could be given a role in this regard. Of course where the complaint refers to discrimination then assistance (and advocacy in strategic cases) would remain with the new body. This points to the need for communication between this merger process and the parallel process of reform of the State's Employment Rights and Industrial Relations Structures and Procedures.

An apparent lowering of ambition from the Government is evident in the envisaged role for the new body 'encouraging' public bodies to put respect for human rights and equality at the heart of their policies and practices. This is a considerable dilution of the commitment in the Programme for Government to '**require' public bodies to have due regard to equality and human rights** in carrying out their functions. It is also counter to the provisions of the Good Friday agreement and our obligation under that to have equivalence of standards in terms of human rights and equality. Our current legislation now falls behind that of Northern Ireland and steps should be taken to redress this.

Others have pointed to lessons from mergers of equality and human rights bodies in other jurisdictions. Those designed to facilitate financial savings potentially turn into turf wars between two traditions that are significantly different. It is hoped that this merger will genuinely seek to create a body that has effective powers to promote equality and protect human rights. Such a renewal would be characterized by:

- i. Retention of the current powers of both bodies, as stated, alongside a leveling up of the powers that relate to the promotion of equality and to the protection of human rights.
- ii. Broadening of the remit for the bodies such that socio-economic status and ex-prisoner are

protected grounds for discrimination and a focus for promoting equality and human rights.

- iii. Introduction of a positive duty on public sector bodies to have due regard to human rights and equality in carrying out their functions.
- iv. A commitment to independence in Board appointment, staff recruitment and the body's accountability.
- v. Allocation of adequate resources.

The "Paris principles" require that the body responsible for the promotion of equality & human rights "shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding." It is apparent to Congress that the current funding levels for the Equality Authority and the Human Rights Commission do not meet this criteria and it was perfectly plain that the decision taken by the last Government to significantly curtail their budgetary allocation damaged their ability to properly fulfil their mandates in a manner consistent with this principle. Any new infrastructure needs to be structured in such a way as to ensure that the principle related to "adequate funding" cannot be ignored in an arbitrary manner which effectively neutralises the ability of the body to fulfil its mandate.

During a period in which Ireland is seeking to be elected to the UN Human Rights Council, it would greatly damage our international reputation in this regard were the merger not to deliver on the stated purpose of the merger for an intention to establish "a new enhanced Human Rights and Equality Commission". Otherwise, statements to the effect that "Ireland has a strong, independent and active national human rights institution" will ring hollow.