



Irish Council for
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30 September 2010

The Secretary
Gender Recognition Advisory Group
Department of Social Protection
Áras Mhic Dhiarmada
Store Street
Dublin 1

Dear Madam or Sir,

The Irish Council for Civil Liberties (ICCL) is the longest-established independent human rights organisation on the island of Ireland. Founded in 1976 by Mary Robinson and others, the organisation has played a leading role in some of Ireland's most successful human rights campaigns. These have included campaigns leading to the establishment of an independent Garda Ombudsman Commission, legalisation of the right to divorce, more effective protection of children's rights, decriminalisation of homosexuality and the introduction of enhanced equality legislation.

The ICCL greatly welcomes the establishment of the Gender Recognition Advisory Group and the prospect that the legal status of transgendered persons is to become appropriately recognised in Irish law.

This brief submission sets out the ICCL's position on a limited number of the specific issues raised by the Advisory Group. An ICCL representative could be made available to make a more detailed presentation to the Group should that be considered helpful.

The ICCL fully endorses the guiding principles suggested by the Group. First and foremost amongst these is the requirement that the new process to be introduced should "*fully respect the rights and dignity of the applicant*". As the Government has now accepted, the absence of a process to recognise the acquired gender of transgendered people is a denial of their rights and dignity. Particular care will be required to ensure that the process introduced to rectify this legal shortcoming imposes no further indignities upon people seeking recognition of their changed gender. Having for so long fallen behind European standards in this area, Ireland now has an opportunity to become an example of best practice.

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In the United Kingdom, after the House of Lords found that British law on this subject was incompatible with the European Convention on Human Rights, the British Government introduced the Gender Recognition Act 2004. Many aspects of that legislation are excellent and the ICCL commends it to the Group as a model from which inspiration could be drawn when drafting proposals for new gender recognition procedures in this jurisdiction.


One particularly commendable aspect of the 2004 Act is it does not require that a transgendered person undergo gender reassignment surgery as a precondition to recognition of her/his acquired gender. To legally oblige a transgendered person who does not wish to do so to submit to painful and invasive surgery would constitute a further assault upon their dignity. Consequently, **the ICCL strongly recommends that the recognition process adopted in Ireland should not include a compulsory surgery requirement.**

However, in certain other respects, the Gender Recognition Act 2004 falls short of best practice. Most notably, the 2004 Act requires that persons who married in their previous gender must end their marriage before their acquired gender will be recognised, even if neither spouse wishes to divorce. The transgendered persons concerned are placed in the invidious position of having to choose between their marriage and their acquired gender. In Article 41.3 of the Constitution of Ireland, the "State pledges itself to guard with special care the institution of Marriage, on which the family is founded, and to protect it against attack". Although the ICCL has some reservations about the manner in which this provision of the Constitution has been interpreted by the courts, there is no doubt that it is part of our law. For the State to legally oblige persons who have lawfully married to divorce would fail to respect their dignity and run counter to the spirit of Article 41.3. **The ICCL considers that married transgendered persons should not be required to divorce as a precondition to recognition of their acquired gender.**

Lastly, as the Group has recognised, other changes will be required "consequent upon" the main provisions of a gender recognition bill. In order to counter discrimination against transgendered people, and to ensure that their rights and dignity are protected in Ireland to a far greater extent in the future, **the ICCL recommends that the gender identity or transgender status of a person should be expressly included in the prohibited grounds of discrimination under the Equality Acts.**

After decades of neglect of the rights of transgendered people, the work of the Advisory Group offers the State an opportunity to restore its international reputation and to become an example of best practice. The Irish Council for Civil Liberties wishes the Group well in its work, and remains at its entire disposal in the event that it can be of further assistance.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Mark Kelly', written in a cursive style. The signature is positioned above the printed name and title.

Mark Kelly
Director