

# Submission from Mental Health Reform to the Review of the Equality Acts

8<sup>th</sup> December 2021

## Contents

<b>Some of the Key Recommendations</b>	2
Introduction	3
Disability	4
1) The functioning of the Acts and their effectiveness in combatting discrimination and promoting equality;	5
2) The degree to which those experiencing discrimination are aware of the legislation and whether there are obstacles which deter them from taking an action;	7
3) The scope of the current definitions of the nine equality grounds. This will include consideration of the gender ground, the disability ground and whether new grounds should be added, such as the ground of socio-economic discrimination;	11
4) Whether the legislation adequately addresses intersectionality or the intersection of discrimination across a number of grounds;	14
5) Whether existing exemptions in the legislation should be modified or removed;	16
6) Any other issues arising from the legislation;	18
Additional Comments	18
Conclusion	19



## Some of the Key Recommendations

- **The Review of the Equality Acts must be in compliance with the UNCRPD and should be cognisant of upcoming changes in national legislation.**
- **MHR calls for the updating of the wording of the definition of disability, whilst ensuring the breadth of variation is kept. This is vitally important.**
- **Mental Health Reform calls for a comprehensive and accessible communications campaign to ensure that people with psychosocial disabilities know their rights under the Equality Acts.**
- **MHR recommends that people be paid equally for equal work and that employees should not be discriminated against due to disabilities.**
- **MHR recommends that the Acts themselves should not contain any discriminatory measures towards people with psychosocial disabilities, such as allowing different rates of pay for people with disabilities; allowing under 18s to be treated differently; allowing discrimination or inequality to contribute to psychosocial disabilities.**
- **MHR recommends that further examination is required into the provision of insurance services to people with mental health difficulties.**
- **MHR recommends that provisions for legal aid for discrimination complaints be added to equality legislation.**
- **MHR recommends the establishment of free, accessible advocacy services for groups that come within the equality legislation. Required advocacy services should be further examined and then defined to meet the needs of those experiencing discrimination due to psychosocial disabilities.**
- **MHR calls for the inclusion of socio-economic status as one of the grounds for discrimination.**
- **MHR calls for the widening of the definition of the term ‘gender’ to include gender diverse, non-binary, intersex and gender non-conforming people**



## Introduction

Mental Health Reform (MHR) is Ireland's leading national coalition on mental health. Our vision is of an Ireland where everyone can access the support they need in their community, to achieve their best possible mental health. We drive the progressive reform of mental health services and supports, through coordination and policy development, research and innovation, accountability and collective advocacy. Together with our 77 member organisations and thousands of individual supporters, MHR provides a unified voice to the Government, its agencies, the Oireachtas and the general public on mental health issues.

MHR is delighted to submit to this public consultation on behalf of our 77 members. MHR would like to thank our members for their continued insight, input and work<sup>1</sup>. Further information on our members can be found on the MHR website.

MHR is a funded member of the Disability Participation and Consultation Network (DPCN). The role of DPCN members is to *“provide the views and opinions of people with disabilities living in Ireland on law, policy and other important issues. Working on specific issues, this could mean, for example, attending workshops and meetings (online, or in person, having discussions with other members, or completing questionnaires).”*<sup>2</sup>

To prepare for the consultation on the Review of the Equality Acts (Equal Status Acts 2000-2018 and the Employment Equality Acts 1998-2015), MHR took part in three online sessions with the DPCN. These sessions were open to people with disabilities, other NGOs and Disabled Persons' Organisations (DPOs). The sessions explored people's understanding of the Equality Acts, using the Equality Acts and making submissions to public consultations. Each session included the rich lived experience of people with disabilities. MHR was delighted to have assisted in the DPCN's sessions by way of facilitation, participation and note-taking. MHR is grateful to all participants of the DPCN sessions for sharing their knowledge.

---

<sup>1</sup> <https://www.mentalhealthreform.ie/membership/>

<sup>2</sup> <https://www.gov.ie/en/consultation/a3ef2-launch-of-disability-participation-and-consultation-network/>



In addition, MHR held an online briefing with members and liaised with them during the process. Significant work has been undertaken this year by MHR on the Draft State Report on the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). MHR undertook two public consultations and an information webinar as part of this process. All of these consultative and collaborative efforts inform the following submission.

## Disability

MHR presents the following submission as an umbrella organisation with member organisations who represent people with psychosocial disabilities. At the outset, MHR notes that this submission is given through the lens of the disability grounds for discrimination. MHR intends to set out “recommendations for legislative changes, recommendations for policy development or recommendations for changes to the practical operation of the Workplace Relations Commission (WRC)” as requested. There are intersections and the need for recognition of these intersections is key.

MHR notes that discrimination of any kind can be detrimental to people’s mental health and urges the updating of not only the legislation, but also the operation and implementation of the legislation. At the outset, it should be noted that under the current regimes there are exhaustive, emotional and psychological burdens experienced by anyone with disabilities who takes a case under the Equality Act. Issues around the burden of proof, accessing the relevant information and forms all create barriers for people with disabilities.

The consultation is also to “*include a review of current definitions, including in relation to disability.*” MHR will also make recommendations in this area.

The term “psychosocial disability” has been adopted by the UN to include people who have lived experience of mental health issues or who self-identify with this term. Ireland ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2018. The CRPD clearly states that the protections and rights set out extend to those with psychosocial disabilities. In Ireland’s updated national mental health policy, *Sharing the Vision*, ‘mental health difficulties’ is the term used. MHR uses these terms interchangeably throughout this submission, whilst acknowledging that “it is an



individual choice to self-identify with certain expressions or concepts, but human rights still apply to everyone, everywhere<sup>3</sup>.

The broad definition of disability in the Equal Status Acts includes mental health difficulties/psychosocial disabilities.

**Recommendation:**

**The Review of the Equality Acts must be in compliance with the UNCRPD and should be cognisant of upcoming changes in national legislation. This recommendation excludes the definition of disability (see below).**

## **1) The functioning of the Acts and their effectiveness in combatting discrimination and promoting equality;**

It is the opinion of MHR that the Acts have not been functioning for people with mental health difficulties and/or psychosocial disabilities. Article 27 of the CRPD relates to work and employment and states:

*“States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities<sup>4</sup>”*

People with a mental health disability are nine times more likely to be out of the labour force than those of working age without a disability, the highest rate for any disability group in Ireland<sup>5</sup>. The Department of Employment Affairs and Social Protection’s (DEASP) 2015 survey of Disability Allowance (DA) recipients, found that 50% of participants reported mental health difficulties as the primary reason for being on DA<sup>6</sup>. However, it further identified significant levels of interest among individuals on DA in taking up employment (including both part-time and full-time work). Among those

<sup>3</sup> <https://www.mentalhealthreform.ie/wp-content/uploads/2021/11/Legal-analysis-MH-Act-28-October-1.pdf>

<sup>4</sup> <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-27-work-and-employment.html>

<sup>5</sup> Watson, D., Kingston, G. and McGinnity, F. (2012). Disability in the Irish Labour Market: Evidence from the QNHS Equality Module, Dublin: Equality Authority/Economic and Social Research Institute, p. 19.

<sup>6</sup> Judge, C., Rossi, E., Hardiman, S. and Oman, C. (2016). Department of Social Protection Report on Disability Allowance Survey 2015, Dublin: Department of Social Protection



who were not currently working, 35% expressed an interest in working part-time, while a further 8% expressed an interest in full-time employment, given the right supports<sup>7</sup>.

Due to delays relating to COVID-19, the most recent Census data available is from Census 2016. At that time, the Central Statistics Office (CSO) reported that 13.5% of the population had a disability (a total of 643,131 people). A 2019 European Commission country Report for Ireland showed that Ireland has one of the lowest employment rates for people with disabilities in the EU at just 26.2 %, in comparison to 48.1 % in the EU<sup>8</sup>. In 2017, an ESRI report found that around 35,600 people with a disability would join the active workforce, if Government policy facilitated their access to employment<sup>9</sup>.

Further examination is required into the provision of insurance services to people with mental health difficulties, e.g. access to mortgage protection; supporting the right to independent living.

#### **Recommendations:**

**MHR calls for a comprehensive and accessible communications campaign to ensure that people with psychosocial disabilities know their rights under the Equality Acts.**

**MHR calls for this information to be disseminated as widely as possible, in as many languages and formats as possible, to ensure that the most marginalised and vulnerable to discrimination are aware of their rights.**

**MHR calls for improved data collection and identifiers used in data collection to ensure that a fuller picture of the non-functioning of the Acts be available for analysis.**

**MHR urges the removal of any legislative provisions that are discriminatory and stigmatising for people with mental health difficulties.**

---

<sup>7</sup> Judge, C., Rossi, E., Hardiman, S. and Oman, C. (2016). Department of Social Protection report on. Disability Allowance Survey 2015. Dublin: Department of Social Protection

<sup>8</sup> [2019-european-semester-country-report-ireland\\_en.pdf \(europa.eu\)](https://ec.europa.eu/economy_finance/2019-european-semester-country-report-ireland_en.pdf)

<sup>9</sup> <https://www.esri.ie/system/files?file=media/file-uploads/2017-03/RS58.pdf>



**MHR calls on the Department to introduce person-centred updates to the Equality Acts that prohibit ableism and promote equality for people with mental health difficulties.**

**MHR recommends that people be paid equally for equal work and that employees should not be discriminated against due to disabilities.**

**MHR recommends that further examination is required into the provision of insurance services to people with mental health difficulties, e.g. access to mortgage protection; supporting the right to independent living.**

**MHR recommends that section (5) of the Act relating to Defence Forces be repealed, especially given the newly opened Personnel Support Service for military and their families.**

**MHR recommends that the Acts themselves should not contain any discriminatory measures towards people with psychosocial disabilities, such as allowing different rates of pay for people with disabilities; allowing under 18s to be treated differently; allowing discrimination or inequality to contribute to psychosocial disabilities.**

## **2) The degree to which those experiencing discrimination are aware of the legislation and whether there are obstacles which deter them from taking an action;**

During MHR's consultations, it was clear that many people with disabilities were aware that they should not experience discrimination, but that there are many obstacles that deter them from taking action. The inaccessibility of the WRC's website was highlighted, as well as the fact that the complaints form only makes references to employment issues. Forms are not available in braille or in easy-to-read formats, and overall the WRC and process itself were reported as obstacles.

Research in the areas of equality legislation, employment law, and MHR's own consultations, highlight the practical barriers for those seeking to invoke such protections. The consultations demonstrated a chilling effect that discouraged people



from accessing these protections. Accounts given during the MHR consultation on the UNCRPD and Work, highlighted a range of issues connected with safeguarding legislation.

### *Fear of discrimination*<sup>10</sup>

People living with psychosocial disabilities experience lower levels of workforce participation compared with the overall population (22% compared with 53%). Those who do report workforce participation are more likely to experience either discrimination or harmful effects from discrimination in occupational settings<sup>11</sup>. In a See Change public attitudes survey published this year, 70% of respondents felt that a diagnosis of mental health difficulties would have a negative effect on their job and career prospects. 60% said that they were not aware that mental health difficulties were covered under the nine grounds of discrimination<sup>12</sup>. The See Change findings relating to stigma are consistent with research conducted by the National Disability Authority into the disclosure of disabilities in workplace settings<sup>13</sup>, which found, inter alia, that the experience of those with 'invisible disabilities' was complex regarding whether to disclose a disability or not.

Workers or prospective workers living with psychosocial disabilities were reluctant to disclose the nature and existence of their psychosocial disability for fear of:

1. Being rejected in the application process.
2. Being unable to link such rejection to the disclosure made at recruitment stage.
3. Having their role diminished under the pretext of 'duty of care' being exercised.
4. Being 'managed out' of a role by placement on extended leave etc.
5. Stigma relating to the ability to continue performing their role.

---

<sup>10</sup> <https://www.mentalhealthreform.ie/wp-content/uploads/2021/06/MHR2021SubmissiononUNCRPDDraftStateReportConsultation.pdf>

<sup>11</sup> Banks, J., Grotti, R., Fahey, E. and Watson, D., (2018). Disability and Discrimination in Ireland, pp. 5

<sup>12</sup> <https://seechange.ie/wp-content/uploads/2018/02/Mental-Health-Matters-web.pdf>

<sup>13</sup> Millward Brown Lansdowne, Public Attitudes towards Mental Illness: A Benchmark Study for See Change (unpublished).



The consequences of this reluctance can be harmful in a range of ways, including that such persons cannot avail of supports and reasonable accommodations that may be due to them under Irish employment and equality law<sup>14</sup>.

### *Alleged Breaches of Employment Law*

Some UNCRPD consultation participants also reported that they felt compelled to endure alleged breaches of employment law, in exchange for remaining in employment. These included:

1. Being paid below minimum wage.
2. Having their role diminished in a form of de facto demotion.
3. Failure on the part of the employer to make reasonable accommodation for the needs of employees living with psychosocial disabilities.
4. Being forced out of their position through encouragement to take extended leave, with little effort being made to encourage or facilitate a return to working.

Finally, we received feedback that those who investigated their legal options to address<sup>15</sup> breaches of employment law or equality legislation, found the process prohibitive. This related to a range of factors, including:

1. The prospect of being liable for costs in the event a claim was not upheld.
2. The length of time a claim would take to reach a tribunal or court setting.
3. The anxiety caused by engagement with such an adversarial process.
4. A feeling that statutes of limitations were too restrictive for those struggling to manage a psychosocial disability. There is a requirement that complaints be lodged within 6 months of an alleged breach being committed. An extension of this was cited as necessary to accommodate the needs of some.

MHR notes the significance of reasonable accommodations as they relate to mental health difficulties, and a need for greater understanding and awareness about this for

---

<sup>14</sup> National Disability Authority of Ireland (2009). *Disclosing Disability in the Workplace a Review of Literature and Practice in the Irish Public Sector*. Dublin

<sup>15</sup> <https://www.mentalhealthreform.ie/wp-content/uploads/2021/04/MHR2021SubmissiononUNCRPDDraftStateReportConsultation.pdf>



both employees and employers. The impact of ratification of the UNCRPD in 2018 appears to have had a positive impact on how the application of this provision is understood (i.e. in the Nano Nagle supreme court ruling).

**Recommendations:**

**MHR recommends targeted outreach information campaigns about Equality Rights in multiple languages, formats and through many platforms.**

**MHR recommends that provisions for legal aid for discrimination complaints be added to equality legislation. Furthermore, MHR recommends the establishment of dedicated legal services for groups that come within the equality legislation.**

**MHR recommends the establishment of free, accessible advocacy services for groups that come within the equality legislation. Required advocacy services should be further examined and then defined to meet the needs of those experiencing discrimination due to psychosocial disabilities. E.g. it may be professional advocacy, peer advocacy etc. that each group requires. This could be indicated through expressed preference for emotional / social / support or expert / legal / advisory support.**

**MHR recommends that the strict time limits for discrimination complaints be extended, as well as extending the two month written notification requirement in the Equal Status Act.**

**MHR recommends that as part of this consultative process, new and accessible forms of submissions, e.g. videos, oral submissions, focus groups, and roundtables should be included.**

**MHR recommends acknowledging that some people don't recognise the discrimination they experience. This may be due to long-standing institutional bias, racism, ableism, sexism, homophobia, transphobia and all other stereotypes that exist in society, particularly where people have experience inter-generational discrimination.**



**3) The scope of the current definitions of the nine equality grounds. This will include consideration of the gender ground, the disability ground and whether new grounds should be added, such as the ground of socio-economic discrimination;**

MHR notes that changes are required to the definitions of the nine equality grounds and that new grounds should be added. MHR supports FLAC's recommendations around the inclusion of 'Criminal Convictions' as an equality ground, due to the intersection of the criminal justice system and those with mental health difficulties.

*Disability Definition*

Equal Status Act 2000 - Section 2 - Interpretation

“disability”  
means—

- (a) the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body,
- (b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,
- (c) the malfunction, malformation or disfigurement of a part of a person's body,
- (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
- (e) a condition, disease or illness which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour;

DPCN and IHREC consultations highlighted that while the definition of disability in the Equal Status Act 2000 is overly medicalised, stigmatising, and in some opinions “insulting”, it is broad.

There were many discussions around the updating of this definition. There were serious concerns that the narrowing of the definition would exclude the many myriads of disability. It was agreed across all consultations attended by MHR that the definition should not be narrowed to the UNCRPD definition of disability. This requires further consultation and discussion to ensure that there are no unintended consequences to changing this definition.



**Recommendation:**

**MHR calls for the updating of the wording of the definition of disability, whilst ensuring the breadth of variation is kept. This is vitally important.**

### *Gender*

MHR notes the progress that has been made in the understanding of gender in the last two decades. The gender ground as currently defined in legislation, makes no reference to transgender, non-binary and intersex people; instead mentioning only two genders – males and female. While the definition of gender has been interpreted to transgender people as is required by EU law, MHR believes that our equality legislation should explicitly prohibit discrimination against transgender, non-binary and intersex people.

On the 1<sup>st</sup> of June 2021, the Joint Sub-Committee on Mental Health discussed “Services for LGBTI+ Communities and Covid-19 Lockdown<sup>16</sup>”. MHR recognises the high level of mental health difficulties in the LGBTIQ+ communities.

**Recommendation:**

**MHR urges the expansion of the definition of gender from male and female to include transgender, non-binary people ensuring that the definition is broad enough to include any and all gender diverse and gender non-conforming people.**

### *Socio-economic status*

Earlier in this submission we highlighted the high rates of unemployment for disabled people in Ireland. MHR would also like to note the barriers around access to secure, affordable, safe housing for people with psychosocial disabilities. In MHR’s Pre-Budget Submission 2022, one of our asks was for greater investment in Tenancy Sustainment Officers to work with those at risk of losing their tenancies and help prevent homelessness.

In January 2021, the European Human Rights Report 2020: Poverty and Social Exclusion<sup>17</sup> was published.

<sup>16</sup> [https://www.oireachtas.ie/en/debates/debate/joint\\_sub\\_committee\\_on\\_mental\\_health/2021-06-01/2/](https://www.oireachtas.ie/en/debates/debate/joint_sub_committee_on_mental_health/2021-06-01/2/)

<sup>17</sup> <https://www.edf-feph.org/publications/european-human-rights-report/>



*“The fourth edition of the European Disability Forum’s Human Rights Report aims to present the true extent of how poverty and social exclusion affects persons with disabilities in the EU. It highlights how EU countries have largely failed at reducing poverty faced by persons with disabilities, especially in the wake of the financial crisis (from 2008): 28.7% of persons with disabilities living in the EU are at risk of poverty. This report shows that the situation has worsened since 2010 in 11 EU countries: Estonia, Luxembourg, Germany, Sweden, **Ireland**, Czechia, Lithuania, Italy, Netherlands, Malta and Spain.”*

***Persons with disabilities are shown to face a higher risk of poverty and social exclusion than the general population in all 28 Member States and even more so if you are a woman with disabilities.***

Based on data from 2017, the percentage of persons with disabilities at risk of poverty in Ireland is 38.1%, one of the worst in the EU states. The study also found that there are significant extra costs for households with a disabled person.

On the 7<sup>th</sup> of December 2021, the Indecon Cost of Disability Report<sup>18</sup> was finally published. MHR welcomes that the report will be considered by the National Disability Inclusion Strategy Steering Group in a meeting with Indecon consultants on December 15<sup>th</sup>. The report confirmed what those of us working in the area already knew, that the cost of living is higher for people with disabilities. The report estimated that the overall average annual costs of disability in Ireland ranges between €9,482 per annum to €11,734.

Since the onset of the Covid-19 pandemic in early 2019, it was noted that the Pandemic Unemployment Payment (PUP), while welcome, was set at a significantly higher rate than those in receipt of social protection payments due to psychosocial disabilities. This disparity has not been addressed for families with children or parents with disabilities.

In 2017, Samaritans published a report, *Dying from Inequality*<sup>19</sup>. It showed that financial instability and poverty can increase suicide risk.

***Suicide is a major inequality issue.***

---

<sup>18</sup> <https://www.gov.ie/en/publication/1d84e-the-cost-of-disability-in-ireland-research-report/>

<sup>19</sup> <https://www.samaritans.org/ireland/about-samaritans/research-policy/inequality-suicide/>



The report by Samaritans found that “areas of higher socioeconomic deprivation tend to have higher rates of suicide. Men are more vulnerable to the adverse effects of economic recession, including suicide risk, than women. People who are unemployed are two to three times more likely to die by suicide than those in employment. Increases in suicide rates are linked to economic recessions. The greater the level of deprivation experienced by an individual, the higher their risk of suicidal behaviour. The least skilled occupations (e.g. construction workers) have higher rates of suicide. A low level of educational attainment and no home ownership increases an individual’s risk of suicide.

***Admissions to hospital following self-harm are two times higher in the most deprived neighbourhoods compared to the most affluent.***

Socio-economic status is also linked with ‘social capital’. This highlights the levels of influence, control and access to persons who can guide, advise and support a person through difficulties associated with equality. Such persons with expert opinion/advice are more readily available through networks of high social status and less accessible for those living in low status/socially disadvantaged communities. This is why representation matters, this is why advocacy matters and this is why the CRPD’s genesis of “Nothing About Us, Without Us” matters.

**Recommendation:**

**MHR urges the inclusion of socio-economic status as a grounds for discrimination.**

**4) Whether the legislation adequately addresses intersectionality or the intersection of discrimination across a number of grounds;**

“Is it possible to take a complaint on more than one ground? Yes. If a person feels that he/she has been discriminated on more than one of the nine grounds he/she may



indicate each of the grounds that are applicable in the particular case. The Adjudication Officer will consider each of them<sup>20</sup>.”

The above information is on the WRC website. However, in MHR’s consultations, we found that the legislation does not adequately address the intersectionality of discrimination.

In November 2021, the Joint Committee on Key Issues Affecting the Traveller Community published its final report. The report found that there is “*a crisis in mental health in the Traveller community. 90 per cent of Travellers agreed that mental health problems were common in their community, with suicide being the cause of 11% of Traveller deaths. Travellers’ daily experiences of racism and exclusion have a profound effect on their mental health*<sup>21</sup>”.

Pg. 20 of the report states:

*The Committee was struck by the interconnected nature of the issues facing the Traveller community which they examined. Deficient and substandard living conditions, precarious accommodation and homelessness have severely detrimental effects on both mental and physical health, and brutally impact Traveller children’s ability to thrive in education. Lower educational outcomes have a damaging impact on employment opportunities. Chronic unemployment causes stress and has negative consequences for mental health. It is clear that these issues will not be solved in isolation and must be tackled through a whole of Government and a whole of society approach.*

The above is just one example of the need for legislative provisions on intersectionality. MHR recognises that there are multiple intersections in the grounds for discrimination against people with psychosocial disabilities. LGBTQi+ people can have disabilities, people with physical disabilities can have mental health difficulties; there are possible intersections through most of the grounds and those most marginalised and vulnerable to discrimination will be the people with the multiple intersections.

Of note is the importance of acceptability of supports to certain communities. For example, who and in what way would ‘equality support services’ be acceptable to

---

<sup>20</sup> [https://www.workplacerelements.ie/en/what\\_you\\_should\\_know/equal-status-and-employment-equality/employment%20equality%20and%20equal%20status/](https://www.workplacerelements.ie/en/what_you_should_know/equal-status-and-employment-equality/employment%20equality%20and%20equal%20status/)

<sup>21</sup> [https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint\\_committee\\_on\\_key\\_issues\\_affecting\\_the\\_traveller\\_community/reports/2021/2021-12-01\\_final-report-of-the-joint-committee-on-key-issues-affecting-the-traveller-community\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_key_issues_affecting_the_traveller_community/reports/2021/2021-12-01_final-report-of-the-joint-committee-on-key-issues-affecting-the-traveller-community_en.pdf)



members of the Traveller Community or similar communities? MHR calls for building capacity, internal to these communities and for the promotion of peer support and peer advocacy services.

**Recommendation:**

**MHR urges the inclusion of specific provisions around intersectionality.**

## **5) Whether existing exemptions in the legislation should be modified or removed;**

MHR notes that the exemptions in legislation should be removed. The blanket exemptions for the State under Section 14 of the Equal Status Acts services only to undermine the thrust of the Acts. The State should be setting an example in best practice by not only not discriminating against people, but by actively promoting equality and equity.

In our research and consultations, MHR learned that discrimination is experienced in the contexts of services provided by Government Departments and Public Bodies. MHR believes that the Acts should apply to the functions of all public bodies, including An Garda Síochána, the Irish Prison Service and Direct Provision centres. MHR has long campaigned for the reform of the Mental Health Act 2001, which is currently undergoing Pre-Legislative Scrutiny (PLS).

In our human rights analysis on the heads of bill to reform the Mental Health Act 2001, our legal experts stated:

*Significant human rights concerns have been raised in respect of the powers conferred on Gardaí and others authorised persons to force persons subject to the 2001 Act to*



*approved centres. This is evident in circumstances where Gardaí arrive to a person's home in a marked Garda car, or where an admission takes place in public<sup>22</sup>.*

MHR has called for access to independent advocacy services and independent complaints mechanisms for those with psychosocial disabilities. Historically, An Garda Síochána have been involved in detaining those with mental health difficulties. In addition, there is now a move towards trauma-informed, person-centred care. Therefore, these changes should be reflected in our equality legislation.

People should have a right to have alleged discrimination investigated in any circumstances when dealing with public bodies.

The Public Sector Equality and Human Rights Duty is supposed to ensure that all public bodies in Ireland have the responsibility to promote equality, prevent discrimination and protect the human rights of their employees, people accessing their services and indeed everyone who may be affected by their plans and policies. This is provided for in Section 42 of the Irish Human Rights and Equality Act 2014. Exempting public bodies from recourse in our Equality Acts undermines this duty.

**Recommendations:**

**MHR recommends that exemptions for the State be removed.**

**MHR recommends amending the Equal Status Acts to include the functions of public bodies in the definition of “services”.**

**MHR calls for the removal of exemptions for the State under Section 14 of the Equal Status Acts.**

---

<sup>22</sup> <https://www.mentalhealthreform.ie/wp-content/uploads/2021/11/Legal-analysis-MH-Act-28-October-1.pdf>

## **6) Any other issues arising from the legislation;**

### **Additional Comments**

The Huntington's Disease Association of Ireland wanted to highlight the issue of 'genetic' discrimination in this submission. People at risk of Huntington's Disease and other genetic diseases, face discrimination in accessing insurance and mortgages because they are asked about 'family history' risk. Some may be refused insurance or others have their premiums weighted. This can have a significant impact on the mental health of individuals and on the well-being of their families. Some people may not seek support or a diagnosis for fear of the impact it might have on their children's access to a mortgage.

Part 4 of the Disability Act prevents the processing of 'genetic' data so family members cannot be asked to provide a predictive genetic test result. This works unfavourably against people who have a negative predictive test result. People with a negative genetic test who will not develop Huntington's Disease, are weighted on the basis of their family's history of the disease.

As mentioned at the start of the submission, there are issues around accessing services such as insurance, mortgage protection, etc. There have been reports of people with mental health difficulties being refused mortgage protection<sup>23</sup>. In MHR's consultations, an issue was also raised around prohibitive insurance costs for disabled people and their Personal Assistant Services (PAS). MHR calls for further examination of this issue and the contributory effect this discrimination has on the stigma associated with mental health difficulties. MHR notes that it is unfair to ask people to speak out about mental health difficulties for support and to help reduce stigma whilst simultaneously discriminating against them for disclosing information about their mental health.

MHR notes that access to employment, training, supports, services also requires access to transport, communication formats, forms, etc. In designing services, if a universal approach is taken then it would reduce the number of people excluded. There is a need for joined-up thinking and this review process is a welcome start.

---

<sup>23</sup> <https://extra.ie/2021/11/30/news/irish-news/refused-mortgage-protection-eating-disorder>



**Recommendations:**

**MHR advocates for a universal access approach to all things. Listening to the voices of people with disabilities will lead to improved policy and law-making.**

**MHR recommends that people not be discriminated against for disclosing mental health difficulties when accessing services, employment, training, housing. Instead the State should be taking positive action to ensure equality for people with psychosocial disabilities.**

## Conclusion

MHR welcomes the opportunity to reflect on the Review of the Equal Status Acts and the time extensions for this first part of consultation. There are many improvements to be made to ensure that our equality legislation is fit for purpose, and that the State is undertaking positive action to eliminate discrimination and inequality. MHR looks forward to participating in the consultative process.

*For more information on any of the above content please contact Ber Grogan, Policy and Advocacy Coordinator at [bgrogan@mentalhealthreform.ie](mailto:bgrogan@mentalhealthreform.ie) or at 083-089 4186.*

*The Scheme to Support National Organisations is funded by the Government of Ireland through the Department of Rural and Community Development*



Department of Rural and  
Community Development



An Roinn Forbartha  
Tuaithe agus Pobail

