

**SUBMISSION TO THE DEPARTMENT OF
JUSTICE, EQUALITY AND LAW REFORM**

On

DOMESTIC PARTNERSHIP

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1. Introduction

- 1.1 The National Women's Council of Ireland welcomes the opportunity to make a submission to the Working Group on Domestic Partnership, established by the Minister for Justice, Equality and Law Reform.

The call is timely and appropriate given:

- Recommendations of the Equality Authority and NESF on the need to legislate in this area;
- The findings of the All-Party Oireachtas Committee on the Constitutional Review;
- The pending Gilligan/Zappone-v-Ireland tax case; and
- Changing and positive public attitudes to same sex unions in recent national survey polls, reflected in television debates and newspaper opinion pages.

- 1.2 The 2002 Census of Population revealed cohabiting couples had almost doubled since 1996 to 77,000 families and this included 1,300 in same-sex relationships. This represented a 150% increase in same-sex couples between 1996-2002. Given the likelihood that many same-sex couples may not have reported their relationship in the Census, it is probable that this number represents a significant underestimation of the extent of cohabiting same-sex relationships in Ireland.

- 1.3 This submission argues that domestic partnerships and civil unions are human rights which should become Irish law as a matter of urgency in an effort to safeguard the rights of the thousands of same-sex couples living in Ireland who are currently being denied their human right to have their relationship recognised formally by the State.

- 1.4 The National Women's Council of Ireland urges the Working Group to **assess the gender impact of any proposed changes to legislation**. Given the gendered inequalities that persist in Irish society, it cannot be assumed that the impact of changes to legislation will be the same for gay men and lesbian women. Women are in a disadvantaged economic position in the paid labour market in relation to men; and also in the Irish social welfare system, which is still based on a male breadwinner model. Furthermore, women's love labour needs to be recognised, and issues around parenting be quite different for men and women in same sex relationships.

2. Affective Equality and the Family

- 2.1 The National Women's Council of Ireland promotes affective equality, that is, all individuals right to relationships of love, care and solidarity. We believe that equality, and recognising the

interdependency, of all individuals should underpin both law and policy concerning families. The NWCI believes that partnership rights should be linked into a wider discussion on Irish society's overall support for all such relationships and that these should be supported equally in accordance with the UN definition of the family and in line with recent arguments from the European Court of Human Rights.

- .2 The NWCI supports **equal rights for all types of family structure**, based on the UN definition of family. Article 41 of the Constitution, however, currently gives special provisions for married families and also allows unequal treatment of other family forms, contrary to the UN definition of the family and to the European Court of Human Rights, which argues that all caring relationships entailing support for children, partners and other dependent persons should be recognised equally by the state.
- .3 The final report of the All-Party [Oireachtas](#) Committee on [Constitutional](#) Reform, established in December 2002, recommended that the 'presumed' recognition of co-habiting partners by the courts, as recommended by the Law Reform Commission, should also be legislated for, but only for heterosexual couples. This discriminatory finding is completely at odds with equality principals and should be abandoned.
- .4 UN Convention on the Rights of the Child is the most effective and comprehensive means of providing for the child as an independent legal person, and therefore should be incorporated into the Constitution. The NWCI believes that the rights of children are paramount and everyone enjoys equal respect for their private and family lives.

3. Policy Context

- 3.1 In January 2001, the Equality Authority published a report on same-sex partnerships in Ireland, which it had commissioned to inform its own debate. In May 2002, the Equality Authority, on its own initiative, issued its report on equality for lesbians, gays and bisexuals that highlighted the lack of recognition for same-sex couples in Irish law. In a departure from the norm, the report recommended legislative changes to give legal recognition to same-sex couples. These were proposed in the context of providing gay couples equality with married couples in the areas of adoption, inheritance and taxation to eliminate discrimination.¹
- 3.2. In April 2003, the National Economic and Social Forum (NESF) published a report on equality policies for gays, lesbians and bisexuals.² The recommendations included calls for the Law Reform Commission to consider models to achieve equal rights for same-sex couples in its then-upcoming report.
- 3.3. In January 2006, the Equality Authority suggested that there is a legal requirement on the Irish Government under the [Good Friday Agreement](#) to provide the same level of human rights as in Northern Ireland, where Civil Partnership has been available since December 2005.³

¹ Equality Authority (2002). *Implementing Equality for Lesbians, Gays and Bisexuals*, Equality Authority: Dublin.

² NESF (2003). *Report No. 27: The Implementation of Equality Policies for Gay, Lesbian and Bisexual People*, NESF: Dublin.

³ www.equality.ie

4. What Should Domestic Partnership Laws Govern?

4.1 The call for submissions requested options as to what extent legal recognition could be given to domestic partnerships. The new partnership law should deal with legislating for urgent, fundamental social and economic rights, including:

- next-of-kin and hospital access;
- equalisation of social security, [pensions](#) and [inheritance tax](#);
- tenancy rights;
- registration of death and intestacy rights;
- immigration rights and parental rights;
- full recognition for life assurance; and
- responsibility to provide reasonable maintenance for partners and children.

4.2 The issues, by their nature, are cross-cutting and require actions to be taken by a number of Government Departments. Some may require joined-up, inter-Departmental co-ordination to avoid stasis.

4.3. The recommendations of the Equality Authority should be fully endorsed as follows:⁴

(a) **Department of Justice, Equality and Law Reform (DJELR)**

- The legal and policy codes should be systematically reformed by DJELR to ensure that references to the family recognise the diversity of family forms, households and couple relationships.
- DJELR should ensure that same-sex couples are treated in an equal manner by extending the right to nominate a partner with legal rights to same-sex couples, comparable with those recognised for a spouse. The outcome of which would recognise the right of same-sex couples to: (i) nominate a partner or successor; (ii) designate a next-of-kin for medical issues; (iii) nominate a beneficiary of pensions and inheritance; and (iv) nominate a partner as a co-parent or guardian of a child.
- DJELR and the Department of Enterprise, Trade and Employment (DETE) should establish appropriate mechanisms to accord equal rights of residency and work entitlements for foreign partners of Irish citizens who are same-sex couples.
- DJELR and the DETE should ensure that leave entitlements (e.g. parental leave) should be provided for same-sex couples.

⁴ See: Equality Authority (2002). *Implementing Equality for Lesbians, Gays and Bisexuals*, Equality Authority: Dublin.

- (b) **Department of Finance**
The Department of Finance should make the necessary recommendations for change to taxation systems in line with according equal rights to same-sex partners and opposite-sex couples.
- (c) **Department of Social and Family Affairs**
The Department should establish entitlement to welfare benefits in such a manner as to ensure that same-sex couples are not discriminated against, relative to heterosexual married and non-married couples.
- (d) **Department of the Environment, Heritage and Local Government**
The Department should ensure that all regulations and codes of practice governing the provision of, and support for, housing should operate on an equal basis towards lesbians, gays and bisexuals at national, regional and local levels, thus recognising and going beyond, as necessary, the provisions of the Equal Status Act.
- (e) **Department of Health and Children**
Rights in relation to parenting, fostering and adoption should operate on an equal basis for same-sex couples, individuals, married and non-married heterosexual couples and should be based on the core principle of attaching rights to children and responsibilities to parents and carers. This can be achieved on a phased basis, but recent public polls show growing support for same-sex adoption.⁵

⁵ An Irish Examiner representative poll in [February](#) 2006 showed 50% supported allowing [gay adoption](#).

5. Gender Impact

- .1 Women's role as carers, and their love labour, needs to be recognised, and for lesbians this may not be necessarily blood relatives, similarly many lesbians may not be living with their partner but still wish them to be nominated as their domestic partner.
- .2 In families headed by lesbian couples, children's rights are not protected. A lesbian couple who, for example, decide to have a child, cannot put in place any protection in respect of the non-biological mother's rights and duties towards the child except in the eventuality of the death of the biological mother. They cannot jointly adopt the child, an option open to married heterosexual couples, nor can the biological mother appoint the co-parent as guardian during her lifetime. If the biological mother dies, the child, even if the co-parent has been named in a will as guardian, could be deprived of that parent if a close family member contests.
- .3 If the non-biological mother dies, neither the child nor the biological mother has any claim on her estate, which means that unless a will has been made, the child is not provided for. Even if there is a will, both the mother and child will be liable to inheritance tax. Where the couples break up after the birth of a child, there are no safeguards for the child to maintenance, access to or custody by the other parent, even if that child has known the partner as a parent all his/her life.
- .4 Current social welfare policies will affectively discriminate against many same sex couples if their partnership was registered. The current social welfare system is based on a male breadwinner model, which currently defines women in cohabiting heterosexual couple as a 'qualified adult'. There needs to be individualisation in social welfare and a formal acknowledgement that just because two people are living together or in a domestic partnership doesn't mean they have access to each other's finances. For example, the experience of women who have been in families where they have suffered domestic violence, has demonstrated the need for individuals access welfare in their own right.
- .5 Couples who have registered in domestic partnerships should have equal right of access as opposite sex couples, to fertility services, considered for adoption and fostering and guardianship of partner's children.

6. Conclusions

- 6.1. It is argued that Ireland, as a highly successful, modern country with a solidly-performing economy, should aim high as regards the legal recognition status it gives to same-sex partnerships. Domestic partnerships are an important first step in this regard, but Ireland should adopt legislation that provides for civil unions for same-sex couples, as has been done in many countries in Europe and elsewhere.
- 6.2. The final report of the All-Party [Oireachtas](#) Committee on [Constitutional](#) Reform, established in December 2002, recommended that the 'presumed' recognition of co-habiting partners by the courts, as recommended by the Law Reform Commission, should also be legislated for, but only for heterosexual couples. This discriminatory finding is completely at odds with equality principals and should be abandoned.
- 6.3. Ireland is a model of economic success, and has been so for over a decade now. Many countries look to Ireland as a case study *exemplar* on economic progress. We must harness this economic success in creating a successful society, one which treats all its citizens equally and without discrimination. Recognising the legitimacy and value of same-sex relationships through domestic partnership or civil union legislation will be an important step in meeting that goal.