



## **Submission on the New Human Rights and Equality Commission**

November 2011

### **1. Introduction**

1.1 Atheist Ireland welcomes this opportunity to make a Submission on the New Human Rights and Equality Commission. The right to equal treatment is a fundamental human right and must be guaranteed to all individuals without discrimination.

### **2. What do people want the new body to do?**

2.1 The European Court of Human Rights has stated that “*The Convention is intended to guarantee not rights which are theoretical or illusory but rights which are practical and effective*”, (Airey v Ireland 1979 – para 36 ECHR).

2.2. The Irish State maintains that the rights afforded under the various UN Conventions are guaranteed under the Irish Constitution and the European Convention on Human Rights Act 2003 when this is not the case. According to the Act, every organ of the state must perform its functions in a manner compatible with the European Convention. However, in order to seek an effective remedy under the Act, it is expected that a complainant should ask the courts to interpret statutes in a Convention compliant manner and, if that was not possible, to make a declaration of incompatibility. A declaration of incompatibility is not obligatory on the State. There is no legal aid for these matters and the prohibitive cost of legal action against the state is a major deterrent. Consequently there is no effective remedy in Ireland to secure the human rights under the European Convention and the various UN Conventions. None of the UN treaties have been incorporated into Ireland’s domestic legal framework.

2.3 Given the above, what is needed on the ground is an effective body that can vindicate the human rights of individuals. Taking a case to the courts without assistance is simply not an option for many people, particularly vulnerable people, and the above issues only make the situation worse. As it stands now human rights are a theoretical illusion for many Irish people as there is no practical application given to them on the ground.

2.4 If the state is serious about promoting a culture of respect for human rights and equality then there is no option other than to ensure that this new body has the means to vindicate the rights of individuals, and to ensure that they are aware of their rights.

### **3. What features and functions does it need to do these things?**

3.1 The new body must be able to protect human rights and equality by providing an effective remedy for infringement of human rights and for discrimination.

3.2 The new body must also promote human rights and equality through education. Many if not most Irish people are unaware of their rights, unaware of the obligations that the state has to protect their rights under international treaties, and unaware of the commitment under the 1998 Good Friday Agreement to keep equivalence of human rights arrangements between the two jurisdictions.

3.3 This education needs to be conveyed in terms that relate to the real lives of citizens. For some people discrimination is an everyday experience. Others do not even recognise that it is discrimination and describe the experience with different words. For others discrimination is a humiliating experience and they do not wish to deal with it in public. Others blame themselves and simply avoid situations in which discrimination is likely to occur. To promote a culture of respect for human rights and equality, society needs to understand exactly what these rights mean, and know how to recognise what discrimination is.

3.4 In particular the public service, and teachers and pupils in schools, must be educated and trained on human rights.

3.5 To facilitate all of the above, there needs to be a systematic approach to data collection. Data needs to be collected that can be used to formulate policies and legislation to combat discrimination.

### **4. How should it be structured and what working methods should it use to achieve the above?**

4.1 We are not familiar enough with the structures and working methods of the existing bodies to make detailed suggestions on the structure and working methods of the new body. However, we will make two overview points.

4.2 The new body must have the financial resources and the legal ability to vindicate, in practice, the rights of people whose human rights are infringed or who are discriminated against, by ensuring that, in practice, there is an effective remedy.

4.1 The new body should be completely independent of the Department of Justice, Equality and Law Reform or any Government Department. It should report directly to the Oireachtas.