

Report of the Civic Forum on Gender Recognition



Senator Katherine Zappone hosted a Civic Forum on Gender Recognition on 14th January 2015. This was the first of its kind in Ireland and brought together forty trans people, their families and allies. The Civic Forum offered a productive, structured and focused platform for the trans community to offer their views on the current Bill and voice their concerns on the provisions of the proposed legislation.

The information in this report is a summary of what was raised in the Civic Forum and highlights the impact this legislation will have on trans and intersex people in Ireland.

It is important that trans voices are heard in this debate, and that the issues raised by trans people are listened to. This legislation should reflect the reality of our lived experiences.

USEFUL TERMS

Gender Identity: Refers to a person's deeply-felt identification as male, female, or another gender. This may or may not correspond to the sex they were assigned at birth.

Gender Expression: The external manifestation of a person's gender identity. Gender can be expressed through mannerisms, grooming, physical characteristics, social interactions and speech patterns.

Transgender or trans: Refers to a person whose gender identity and/or gender expression differs from the sex assigned to them at birth.

Intersex: Refers to a variety of conditions in which a person is born with a reproductive or sexual anatomy that does not fit the typical definitions of female or male.

Non-binary: Refers to gender identities that don't fit within the accepted binary of male and female. People can feel they are both, neither, or some mixture thereof.

KEY FINDINGS AND RECOMMENDATIONS OF THE CIVIC FORUM

Overview

- Gender Recognition provides a process for trans and intersex people to be legally recognised in our preferred gender under Irish law.
- Legal gender recognition is critical to providing basic levels of protection and dignity for trans and intersex people.
- There are serious flaws in the proposed legislation that will hinder many trans and intersex people from accessing our legal right to be recognised. The legislative process should be used to correct these flaws.
- Ireland is the only country in the European Union with no provision for legal recognition and we have failed to meet our international legal obligations under the European Convention on Human Rights (ECHR).
- The legislation that is passed should be evidence-based and human rights compliant and drafted in line with international best practice (e.g. Argentina, Malta, Denmark).

Areas of concern identified by the Civic Forum are:

1. **Implications of the Age Criteria and Exclusion of Children.**
2. **Implications of the Single Criteria ('Forced Divorce').**
3. **Implications of the Medical Criteria.**
4. **Implications of the Exclusion of Non-binary Identities.**

1. Implications of the Age Criteria and Exclusion of Children

- In this Bill, children under 16 years of age will be excluded from being legally recognised even if we have parental support for our gender identity. Lack of legal recognition has negative social and mental health implications. Trans children and young people are among the most isolated youth in Irish society and excluding us from legal gender recognition will only increase our social marginalisation.
- The current requirements for individuals who are 16-17 years old are extremely onerous and will place us in a difficult situation where we may not be able to effectively access legal gender recognition before we turn 18 while we attempt to fulfil the rigorous requirements. The Bill excludes those of us with no parental consent prior to turning 18 year of age.

- The strict exclusion of young trans and intersex people is a product of miseducation about gender diverse young people. International research suggests many of us are aware of our gender identity between 3-5 years of age. At all levels of society, there has to be a better understanding of our experiences.

The exclusion of young trans people will have a detrimental impact, for example:

- Schools may refuse to engage with us because we are not legally recognised which will further isolate and marginalise us.
- We may be prevented from using gender-appropriate facilities in schools or unable to participate in sports which is not good for our mental health or wellbeing.
- We may be prevented from wearing gender appropriate uniforms or participating in school trips which further excludes us.
- We may face bullying by peers or the school administration due to our gender identity and being marked as different.
- Our absolute exclusion may increase our risk of suicide due to depression related to lack of recognition and the stigma and discrimination that we may endure.

2. Implication of the Single Criteria ('Forced Divorce'):

- The Bill provides that only people who are 'not in an existing valid marriage or civil partnership' will be entitled to apply for legal recognition. This effectively forces those of us who are married or civilly partnered to terminate our legal union before being granted formal recognition of our gender identity.
- The single criteria ('forced divorce') disrespects valid marriages and forces those of us who are married to choose between our family and our right to legal recognition.

- Ireland's draconian divorce laws, which require four years living apart, will cause a significant delay in accessing legal recognition. The legal costs of attaining a divorce are prohibitive.
- Couples that are happily married do not qualify for divorce as we have an amicable relationship. In these cases, the court will not award a divorce and therefore the trans spouse will be unable to avail of gender recognition.

The exclusion of married and civilly partnered trans people will have a detrimental impact, for example:

- There will be an intolerable burden on our families which have not been placed upon any other Irish families.
- We will experience stress and anguish as we are forced to make an impossible decision between breaking up our families or having the legal right to be recognised.
- This will seriously disadvantage and hurt our children and spouses both emotionally and financially.
- Those of us that cannot fulfil the single criteria for legal gender recognition will be excluded. This may also mean the roll back of our other documentation (e.g. drivers license) which could have devastating effects on us.

3. Implications of the Medical Criteria

- This Bill requires that a 'primary medical practitioner' (defined as a psychiatrist or endocrinologist) conduct a 'medical evaluation' of an applicant. This criteria medicalises and pathologises our identities and links medical treatment with legal recognition.
- The Bill fails to differentiate between medical transition – a process where some of us may seek appropriate gender confirming healthcare – and legal transition – a process where, independent of healthcare, we seek to have our true civil status recognised.

- The Bill makes an explicit assumption that all trans people will undergo a medical transition. While some of us do medically transition, many of us do not for a variety of reasons ranging from medical circumstances to personal choice.
- The Bill fails to recognise that many trans people cannot access gender confirming healthcare treatment even when we want to. The medical requirement is, in reality, a pre-condition that many of us will not be able to fulfil. This Bill could force us to have unwanted and unnecessary medical treatment.
- Many trans people have medically transitioned many years ago or abroad and we do not have a primary medical practitioner at this point in our lives. Also many people cannot access endocrinologists or psychiatrists because of our finances, disability or other issues.
- The “medical evaluation” requirement could lead to (a) a requirement for medical treatments, such as hormones or surgery, and (b) could result in degrading and inhuman physical examinations which will have a serious negative impact on our mental health.
- This legislation should be based on self-determination which affirms our right to self-identification. The medical criteria disrespects the dignity and agency of trans people and pathologises trans people.

Restrictive medical criteria will have a detrimental impact, for example:

- Requiring medical sign-off suggests that we are medically deficient and doubles the stigma attached to a trans identity. It suggests that trans people need someone else to tell us who we are.
- We will be forced to access services that we may not otherwise need and puts increased and unnecessary strain on an already overburdened healthcare system.

- Medical evaluations could end up equating to a physical examination as has been the case in other countries such as France. This robs us of our dignity and subjects us to potentially demeaning examinations.
- The Bill requires trans individuals to provide evidence of our gender in a way that is never expected of non-trans persons and hence is unfair and discriminatory.

4. Implications of the Exclusion of Non-binary Identities:

- The Bill excludes individuals with non-binary identities (people who do not identify as either male or female).
- As the Bill currently requires restrictive medical criteria to be legally recognised, those of us who are non-binary and do not wish to avail of medical transition will be excluded from legal recognition.
- The Bill continuously uses the terms “he” and “she”. Even if the Bill only recognises two legal genders, it should be possible to remove gendered language from the Bill (preference for the use of “they” or “their”).

The restrictive exclusion of non-binary identities will have a detrimental impact, for example:

- Non-binary individuals will continue to be invisible in all legislation and we have no legal protection for our gender identity or gender expression.
- We will continue to face ongoing isolation and discrimination.

This document has been published by the Office of Senator Katherine Zappone in collaboration with Transgender Equality Network Ireland (TENI).