

Age Action

Age Equality

*For a society that enables all older people to participate and
to live full, independent lives*

Submission to the Minister for Children, Equality, Disability, Integration and Youth on the Review of the Equality Acts

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Rialtas na hÉireann
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government supporting communities

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Introduction.....	3
Ageism, Age Discrimination and Age Equality	4
Ageism.....	4
Age Discrimination.....	5
Age Equality.....	6
Ageism in Ireland.....	6
Elder Abuse	7
Chronological Age Thresholds.....	7
Ageism in Employment Equality Law.....	8
Ageism in Recruitment.....	9
Compulsory Retirement.....	10
The Lack of Rights for Pensioners.....	10
Ageism in the Rental Market.....	11
Digital Exclusion	11
COVID-19 Measures.....	12
Official Statistics.....	12
Intersectionality	13
Gender Identity	13
Disability.....	14
Socio-Economic Inequality	15
Positive Discrimination	15
Access and Remedies.....	16
Recommendations	17
References	19

Introduction

Age Action is the leading advocacy organisation on ageing and older people in Ireland. Age Action advocates for a society that enables all older people to participate and to live full, independent lives, based on the realisation of their rights and equality, recognising the diversity of their experience and situation. Our mission is to achieve fundamental change in the lives of all older people by eliminating age discrimination, promoting positive ageing and securing their right to comprehensive and high-quality services.

The Equality Acts are a vital part of Ireland's anti-discrimination and equality policies. The protections provided on the grounds of age are an important measure to protect older people from discrimination. As a starting point, Age Action submits that there is no basis upon which to weaken or remove any protections afforded to older persons by the Equality Acts. There are many areas where the legislation could and should be strengthened to ensure that the rights and protections afforded to older persons are more complete and to ensure that remedies to discrimination and breach of rights can be more readily accessed.

Except in the case of employment, discrimination based on age can be more difficult to pinpoint than more overt forms of discrimination or abuse such as racism or homophobia. It can be difficult to provide evidence of direct discrimination based on age in the sale of goods and services, and it can be challenging to get redress for age discrimination. Yet ageism is deeply embedded in Irish culture and many common practices unconsciously discriminate by age without realising the harm caused. Protection in employment equality law is weaker for older workers, which has damaging consequences.

One in four people in Ireland is aged 60 or older, and the growing proportion of older persons in the population is generating greater attention from policymakers, as it has done across Europe.

Age Action is calling on the Minister for Children, Equality, Disability, Integration and Youth to remove exemptions to the Equality Acts that allow employment discrimination against older workers and to ensure that older persons can access redress for discrimination wherever it may arise, including systemic discrimination in public policies.

Age Action is also calling for a concerted effort by the Department, working with the Irish Human Rights and Equality Commission, to raise awareness of ageism and measures to eliminate it as part of the ongoing implementation of the Public Sector Equality and Human Rights Duty.

Ageism, Age Discrimination and Age Equality

Ageism

While ageism is not a new concept,¹ the World Health Organisation (WHO) published a landmark study on ageism in 2021.² The report brings together the findings of hundreds of scientific papers to demonstrate the deep impact of age discrimination and ageism on individuals and on our societies, not least in terms of health and wellbeing. Additionally, while it was not the primary focus of the report, there were also extensive findings of ageism in relation to how countries reacted to COVID-19.

The 2021 WHO *Global Report on Ageism* shows that:

- Ageism is one of the most pervasive prejudices across societies around the world.
- Ageism damages health and wellbeing, and it is a barrier to effective policies on healthy ageing.
- Ageism characterises and divides people in ways which are unjust, and which lead to disadvantage and the undermining of human rights.

Ageism refers to the harm done through how we think (stereotypes), how we feel (prejudice) and how we act (discrimination) towards others or ourselves based on age. Ageism can be conscious or unconscious.

Ageism occurs when people interact with one another (interpersonal), when organisations interact with individuals (institutional) and when people direct ageism towards themselves (self-directed).

Some excerpts demonstrate the evidence of ageism presented by the Global Report:

A survey of more than 83,000 people from 57 countries covering all six WHO Regions of the world, conducted between 2010 and 2014, showed that at least one in every two people held moderately or highly ageist attitudes (i.e. stereotypes and prejudice).

Across 28 countries in Europe, more than one in three people aged 65 years or older reported being a target of ageism (i.e. insulted, abused or denied services because of their age).

A global systematic review on the impacts of ageism on health commissioned for this report, which included 422 studies from 45 countries, found that in 405 (96%) studies, ageism was associated with worse outcomes in all of the health domains examined.

In 16 studies, ageism was associated with the onset of depression, increases in depressive symptoms over time and lifetime depression.

A systematic review of 60 studies found that employers were less likely to hire older applicants than younger applicants; that once employed, older workers had less access to training; and that those who faced ageism in the workplace were more likely to retire early.

In a 2020 review, ageism was found to be a risk factor for poor social relationships in all 13 studies that examined this association.

According to a recent global review of the prevalence of violence against older people, some 15.7% of older people – or almost 1 in 6 – are victims of abuse. Some 11.6% of older people are victims of psychological abuse, 6.8% of financial abuse, 4.2% of neglect, 2.6% of physical abuse, and 0.9% of older people are victims of sexual abuse.

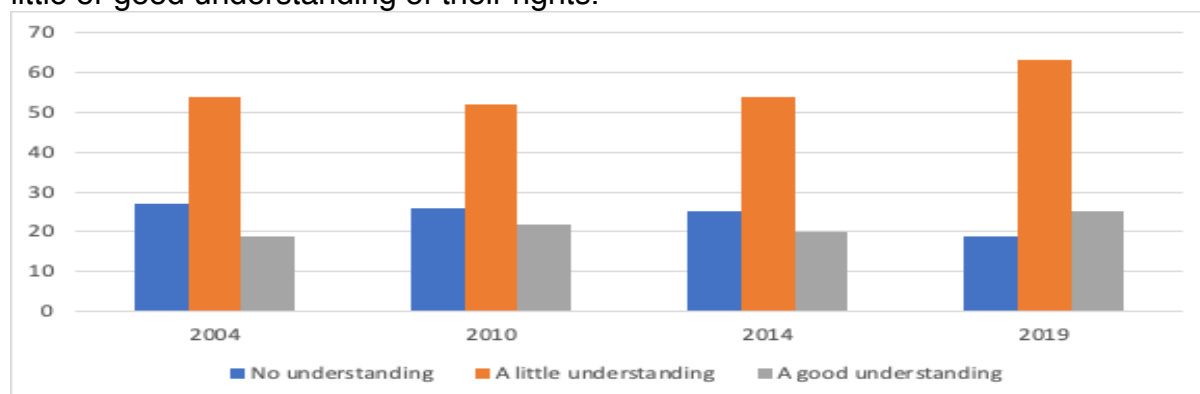
Ageism takes a heavy economic toll on individuals and society, contributing to financial insecurity and poverty and costing society billions of dollars.

The WHO’s *Global Report on Ageism* robustly shows that age discrimination is a major problem, and any revision of Ireland’s Equality Acts should be informed by the detailed findings of that report. Age Action has published a position paper on ageism and age equality, which is an introduction to the WHO report that includes some suggestions for the implementation of its recommendations in Ireland.³

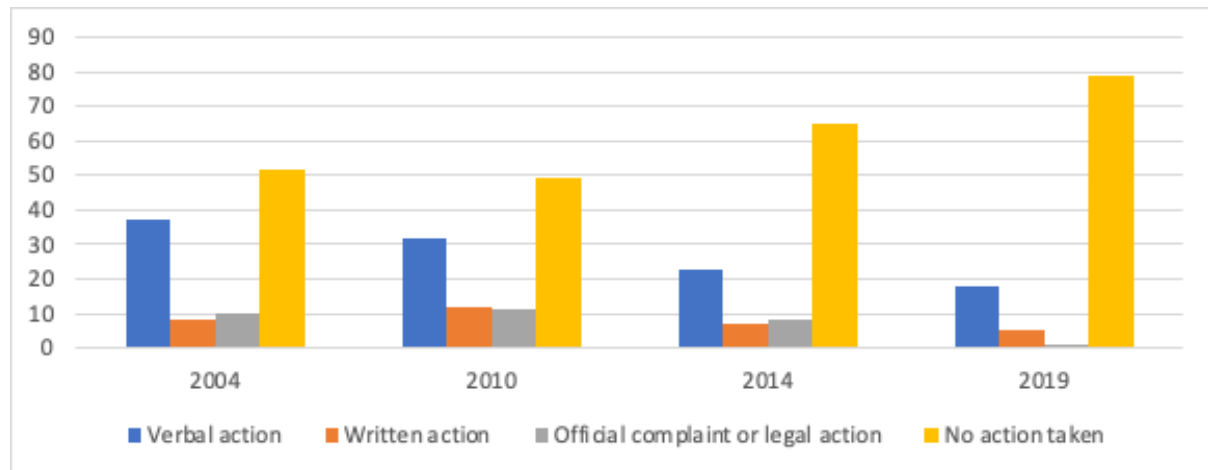
Age Discrimination

The primary effect of the current Equality Acts is to deter discrimination by making it unlawful and by offering remedies to those affected. As such, they have a greater focus on acts of discrimination rather than the wider phenomenon of ageism, which includes stereotypes and prejudice that can be transmitted culturally or through institutions. Nonetheless, the aim in the long title of the Equality Act 2004 is to make “further and better provision in relation to equality of treatment in the workplace and elsewhere” and the aim in the long title of the Employment Equality Act 1998 is to make “further provision for the promotion of equality between employed persons”. Given these broad aims, the Equality Acts should seek to address all aspects of ageism, including the harm caused by stereotypes, prejudice and discrimination, and the transmission of ageism on interpersonal, institutional and self-directed bases.

The proportion of older persons who have experienced discrimination is increasing, from 6% (accessing service) and 0% (work related) in 2004, to 8% (accessing services) and 4% (work related) in 2019. Older persons knowledge of their rights has also increased, with fewer people reporting no understanding and more reporting a little or good understanding of their rights.⁴



However, while people’s knowledge of rights and their experience of discrimination has increased, fewer people have taken action to seek redress, with the proportion taking “no action” rising from 52% in 2004 to 79% in 2019. People’s willingness to take even verbal action has diminished sharply, from 37% in 2004 to 18% in 2019.



Consideration should be given to how well the Equality Acts address the full range of behaviours that constitute and perpetuate ageism.

Age Equality

Age equality is the opposite of ageism. It involves making a conscious, active effort to overcome stereotypes, prejudice and discrimination based on age, to remove all age-related barriers to equality of outcome for older people.

Ways to promote age equality include **policies and laws** that address discrimination and inequality based on age, **educational activities** including self-directed learning to enhance understanding and empathy about ageing, and to transmit knowledge and skills to overcome ageism, and **intergenerational activities**, where people of all ages interact, to contribute to mutual understanding and cooperation between people of different ages.

Ageism in Ireland

All forms of ageism exist in Ireland, including the most serious forms of abuse of older persons. There is also continued ageism in Irish law and within the practices of Irish businesses and public agencies. To the extent that it is possible, the revised Equality Acts should attempt to eliminate these different forms of ageism.

The following areas provide specific examples of ageism in Ireland today:

- Elder abuse
- Chronological age thresholds
- Ageism in employment equality law
- Ageism in recruitment
- Compulsory retirement
- The lack of rights for pensioners
- Digital exclusion
- COVID-19 measures
- Official statistics

Elder Abuse

A study carried out in 2010 found that one in every 45 older persons (2.2%) had experienced abuse in the previous 12 months.⁵

Ireland's national standards defines abuse as "any act, or failure to act, which results in a breach of a vulnerable person's human rights, civil liberties, physical and mental integrity, dignity or general wellbeing, whether intended or through negligence, including sexual relationships or financial transactions to which the person does not or cannot validly consent, or which are deliberately exploitative." Abuse can take many forms, including physical abuse, sexual abuse and exploitation, psychological threats and harm, interventions which violate the integrity of the person, financial abuse, neglect, abandonment and deprivation, and institutional violence.⁶

In recent years, high-profile cases have exposed serious abuse of older persons in nursing homes. For example, the Leas Cross nursing home was found to be "deficient at many levels" consistent with "institutional abuse". Moreover, it was found likely that this was not an isolated incident, and the review called for "urgent action" to address systemic failures across government, health boards and professional bodies in relation to providing quality care for older persons.⁷ The Health Information and Quality Authority (HIQA) has repeatedly warned that the definition of nursing home in law leaves gaps, and that its powers are inadequate to regulate all forms of residence where older people may receive care.⁸ For example, the lack of HIQA powers makes it difficult or impossible to close deficient premises without lengthy court proceedings.

According to the Banking and Payments Federation Ireland, up to 20% of adults have experienced financial abuse.⁹ During the period 2010 to 2014, one-fifth of the substantiated elder abuse cases reported to the HSE related to financial abuse.¹⁰

The Mental Health Commission stated that "Older people's mental health is an increasingly important area of public policy that does not get the attention it deserves. The levels of unmet mental health needs amongst older people are extremely high and improving current services is necessary." The Commission warned of "an 'alarming' under-provision of acute mental health beds for the elderly and 'serious under-resourcing' of community mental health services for the same population."¹¹ While the provision of mental health services is beyond the scope of the Equality Acts, the serious deficiencies identified by the Commission serve to highlight the impact of the psychological abuse of older persons and other forms of ageism in terms of these factors having an adverse effect on mental health.

The review of the Equality Acts should systematically evaluate the extent to which the Acts assist people to report abuse and to successfully achieve remedies in cases of abuse.

Chronological Age Thresholds

Discrimination based on age is often due to stereotypical and prejudicial assumptions about a loss of capacity or an assumed level of disability among older persons. Yet, in isolation from other information, chronological age is a poor guide to a person's health status or capabilities. As the WHO has noted, "There is no 'typical' older person. While some 70-year-olds enjoy extremely good health and functioning, other 70-year-olds are frail and require significant help from others."¹² Moreover,

“Some 80-year-olds have physical and mental capacities similar to many 30-year-olds.”¹³

One outworking of this evidence is that chronological age should never be a deciding criterion in relation to adults in isolation from other factors. “Maximum” ages should be illegal, and the use of an age as an arbitrary criterion to exclude older adults from accessing services should be illegal.

The revised Equality Acts should outlaw the use of chronological age as a decision-making criterion for whether adults can access goods or services, including all publicly funded services.

Section 5(2)(d) should be qualified so that actuarial or statistical data used to assess risk are not based solely on chronological age.

Ageism in Employment Equality Law

The State Pension age is 66, which indicates an expectation in public policy that most people will work until their 66th birthday. Yet, Section 6 of the Employment Equality Act makes it lawful to discriminate against employees from their 65th birthday. This makes no sense and is blatantly ageist.

Section 6 of the Employment Equality Act 1998 states:

(3) Where—

(a) a person has attained the age of 65 years, or

(b) a person has not attained the age of 18 years,

then, subject to section 12 (3), treating that person more favourably or less favourably than another (whatever that other person's age) shall not be regarded as discrimination on the age ground.

Discrimination against people aged 65 or older in terms of employment is ageism and it should be unlawful. There is no reasonable basis for to reduce protections against age discrimination for workers once they attain the age of 65.

Among the reasons for this include:

- 65 is younger than the State Pension age of 66.
- Encouraging people to remain in work beyond 65 is an aim of public policy, and it is an aim of the Programme for Government, which seeks to “Introduce a system to enable people to defer receipt of their state contributory pension on an annual basis, to include actuarial increases in payment as soon as practicable” and to “Facilitate those without a full social insurance record to increase their retirement provision by choosing to continue making PRSI payments beyond pensionable age.”
- The Pensions Commission has suggested raising the State Pension age, which would extend more people’s working lives beyond 66.
- Many people continue to work beyond the “retirement age” of 65 or the State Pension age of 66. The CSO’s Quarterly Labour Force Survey found a 50% increase in the number of people aged 65 and older at work in the five years between 2016 and 2021 (latest data). Approximately 102,000 people aged 65+ are at work, representing one in seven older people in the population.¹⁴

- Many older people are still paying their mortgage or have other reasons that require them to remain in work. This is in addition to those who may wish to remain in work. People should have choice and flexibility around when they choose to transition from paid work.
- Age Action estimates that 80,000 people at work are aged 66 or older.

Based on all these reasons, Section 6(3)(a) is out of step with both public opinion and public policy. **Section 6(3)(a) of the Employment Equality Act 1998 should be repealed.**

Repeal of Section 6(3)(a) would remove any grounds for discrimination purely based on age. The Equality Acts already provide a basis for employers to address a situation where a worker is unable to fulfil the requirements of their role. Such objective criteria should be the only basis for discrimination, not merely an arbitrary chronological age.

Ageism in Recruitment

Age Action has regular contact from older job candidates who are disappointed in their interaction with potential employers. They feel that once their age is mentioned, job opportunities become closed to them. The Employment Equality Act has provisions against discrimination in the advertisement of jobs and the selection of employees, yet it is commonplace to see language used in job advertisements in ways that may breach the Act or that may exploit loopholes in the legislation. For example, text from job advertisements often use the term “young” to describe the age of an organisation or of a team within an organisation, in a way that could suggest they are seeking younger candidates.

The following are verbatim quotes from jobs being advertised:

“We have an opportunity for a hospitality professional to join our young and dynamic team.”

“If you want to work with a young, enthusiastic and growing construction company and can meet the requirements below please get in touch.”

“...a positive working environment in a young and international team.”

“A fun and interesting job in a young and vibrant team.”¹⁵

The revised Equality Acts should ensure that there are no loopholes that permit employers to send “coded messages” that discriminate based on age (or any other ground) when advertising for jobs.

In addition, **Section 33(5)(b) of the Employment Equality Act 1998 should be revised.** This section excludes from the legal definition of age-based discrimination a situation where a maximum age is set for recruitment to a job based on “the need for there to be a reasonable period of time prior to retirement age during which the recruit will be effective in that job.” If not simply repealed, this clause needs to be tightly limited to avoid reinforcing the difficulty and ageism that people in their 50s, 60s and 70s face when seeking job opportunities.

Compulsory Retirement

Forcing the retirement of people aged 65 or older who wish to retain their jobs and who are fit to carry out their roles is ageism and it should be unlawful.

As outlined above, there is no reasonable justification or objective basis for the Employment Equality Act to reduce protections against age discrimination for workers once they attain the age of 65. One of the consequences of Section 6(3)(a) of the Employment Equality Act 1998 is to permit compulsory retirement clauses in employment contracts from age 65 onwards.

Many workers wish to have the choice to remain at work, to keep their existing terms and conditions of employment, and most of them are fit and able to continue to work. For all the same reasons given above, compulsory retirement should be illegal. The Pensions Commission also recognised that compulsory retirement clauses were a problem.

Studies have shown negative physical and mental health effects from forced retirement.¹⁶ Given the Programme for Government's stated aims of promoting an age-friendly Ireland and healthy ageing, allowing compulsory retirement is counter-productive.

The revised Equality Acts should outlaw compulsory retirement.

In addition to the repeal of Section 6(3)(a) it may be necessary to insert a new section that outlaws compulsory retirement clauses. Similarly, related clauses such as Section 33(4) of the Employment Equality Act 1998 should also be repealed at the same time as outlawing compulsory retirement.

Section 10 of the Equality (Miscellaneous Provisions) Act 2015 provides an important protection to older workers, by requiring employers to objectively justify the continued employment of some workers to an older age than others. Specifically, employers must demonstrate that discrimination in relation to different retirement ages are "objectively and reasonably justified by a legitimate aim" and that "the means of achieving that aim are appropriate and necessary".

Unless compulsory retirement is outlawed (as recommended above), this protection should be retained. To remove this protection could allow employers to pick which workers to retain and which to force to retire, which would be deeply unjust.

If compulsory retirement is not outlawed, the protections granted by Section 10 of the Equality (Miscellaneous Provisions) Act 2015 should be retained.

The Lack of Rights for Pensioners

Recipients of occupational pensions have an evident continued interest in the activities of their former employers with respect to how occupational pension schemes are administered and funded, yet former employees with occupational pensions are not given any standing in law. As such, former employees cannot use the industrial relations institutions of the state, such as Workplace Relations Commission in relation to any dispute with their former employer about their occupational pension scheme. The Oireachtas has recently debated one proposal to legislate on the issue, with the relevant Minister of State recognising the validity of the pensioners' concern and postponing debate by 12 months rather than opposing the private member's Bill.¹⁷

The revised Equality Acts should include provision that a person cannot be less favourably treated than current employees with respect to his/her rights and entitlements in an occupational pension scheme when he/she leaves a given employment.

Ageism in the Rental Market

As more people now rent from the private sector, including adults in their fifties and sixties, Age Action has heard from older persons who find it hard to get access to the rental market. For example, in situations where an older adult cannot afford to rent an entire property, it is often very difficult to be accepted as a co-tenant for the purposes of sharing a property. There is anecdotal evidence that young renters (students or worker) are less likely to accept an older adult in a rental sharing arrangement. Greater public awareness of ageism and its effects would also be a step towards ensuring that older persons in the private rental market are not discriminated against.

The revised Equality Acts should include provisions to assist older persons who are discriminated against in accessing rental housing.

Digital Exclusion

Two-thirds of older persons in Ireland (65%) are digitally excluded, either because they are not using the Internet at all or because they have “below basic” digital skills.¹⁸ Increasing numbers of businesses and publicly funded services are prioritising online access, and in some cases traditional “offline” channels of communication are decidedly inferior or non-existent. For example, one radio advertisement promoting public mental health supports during the pandemic referred people online exclusively to access further information. Another example is banking, where hundreds of bank branches have closed and where the average distance to a bank is now 11.1km in rural areas and 2km in urban areas, with over 900,000 people living more than 10km away from a bank.¹⁹ This puts people under pressure to use online banking that they may not be comfortable with or else lose their independence by relying on others to handle private financial activities online on their behalf.

For as long as a large proportion of the population does not or cannot use the Internet, there needs to be protection to ensure that organisations are not discriminating by providing “digital only” access to their goods or services. **The revised Equality Acts should ban the “digital only” provision of publicly funded services.**

In addition, **the Equality Acts should ensure that digital technology cannot be used exclusively in a way that systematically excludes certain categories of people.**

For example, at present, it is lawful for businesses to refuse cash if they display a notice indicating that they require payment to be made electronically.²⁰ This discriminates against those who, for whatever reason, do not have access to credit or debit facilities (bank cards or mobile apps). A “no cash” policy effectively discriminates on socio-economic grounds, and it is likely to discriminate on the grounds of age, ethnic minority status and other grounds. **The Equality Acts should**

make it illegal to refuse cash for many categories of typical goods or services, such as in cafes and restaurants.

COVID-19 Measures

The WHO report found many examples of ageism in countries' responses to COVID-19. In Ireland's case, the lack of consultation with older people, the use of arbitrary ages rather than health status to determine stay-at-home rules, and the widespread depiction of older people as "vulnerable" were all examples of ageism. For example, people aged 65 or older were instructed to stay at home, and many interpreted this as a legally binding order. A significant number of older people lost their jobs or self-employment due to lockdown.

The blanket restrictions that were imposed on older residents of nursing homes during COVID-19 represented an extraordinary and disproportionate attack on the basic rights of people to family life, personal freedom and other liberties. While COVID-19 measures undoubtedly saved lives, a similar level of societal protection could have been achieved without resorting to undermining people's rights through sweeping measures. The lived experience and negative consequences of COVID-19 measures such as "cocooning" have been documented by TILDA and the HSE.²¹

Many economic supports were ageist in their formulation, as workers already in receipt of the State Pension (maximum €248.30/week) were barred from accessing Pandemic Unemployment Payments (€350/week) even though loss of employment could affect them as much as any other worker, and many older persons need to work due to low pension and/or high costs, including housing costs. Similarly, supports to the self-employed excluded people aged 66 or older, affecting for example older tax drivers and others. The implication of these policies was that older workers were expected by the Government to lose their incomes with no compensation, compared to how younger and middle-aged workers were treated.

While some of these practices reflect cultural biases that are beyond the scope of the Equality Acts, **the ability of public services to make binding decisions during the pandemic based on an arbitrary age category (65 or older) rather than on objective criteria (e.g. health status, underlying illness, income) should have been illegal and should now be outlawed in the revised Equality Acts.**

Rules and guidelines for hospitals treating patients for COVID-19, based solely on chronological age, have been identified as ageist by the WHO. For example, in some cases hospitals have been given guidance in relation to the rationing of life-saving intensive care units or other treatments, with chronological age being used as the decision-making criterion for who should receive treatment. **The Equality Acts should outlaw any rationing of healthcare based purely on chronological age.**

Official Statistics

The WHO has identified ageism in how official statistics are collected and how data is analysed. For example, in the *Global Report on Ageism*:

"Ageism also manifests itself in the way statistics and data are collected and compiled. Examples include data simply not being collected about older people or when such data are collected, they are not disaggregated. For

instance, many public health data sets [...] lump all data into a single age group of >60 years or >65 years, thus hiding the vast diversity among older people.” Also, “The mathematical models of COVID-19 that have been used to guide the response to the pandemic have also often failed to consider populations in long-term care, an omission which is a form of ageism in statistics and data, given that the risk of spread of COVID-19 is higher in these facilities than in the general population.”²²

A fundamental flaw in the Equality Acts is the lack of a positive requirement on government and the relevant public agencies to produce sufficient disaggregated statistical data and detailed analysis of the outcomes experienced by different categories of people covered by the grounds of the Equality Acts. **The revised Equality Acts should include a provision that a minimum level of statistical analysis is a requirement of government, sufficient to ensure that potential discrimination against people in the protected categories can be systematically investigated.**

Intersectionality

As noted above, discrimination based on age is often due to stereotypical and prejudicial assumptions about disability among older people, which emphasises the intersectionality between age and disability. For example, there is an ageist assumption in Irish law that workers become less capable from the age of 65, which is arbitrary and objectively untrue. While the incidence of disability increases year-on-year, there is no one year of age where this incidence suddenly increases. Likewise, two-thirds (64.8%) of people aged 65 or older do not have a disability or serious impairment,²³ and while many older adults have health issues, these are little different from conditions affecting working age adults that can be managed in a work environment (e.g. high blood pressure, back pain and/or diabetes). Despite population ageing, the number of people aged 65 or older without a disability is increasing, up from 61.9% in 2011, which is evidence of the success story of healthy ageing.²⁴

There are other examples of intersectionality affecting older people. For example, Ireland has a gender pension gap of 35%.²⁵ Part of the reason for this is the state’s policy of paying spouses (predominantly women) a “dependent adult” supplement to social protection payments like the State Pension, rather than a full payment in their own right. Although the adult supplement is paid directly to a spouse, this is of a lower amount than paid to the welfare recipient. This kind of institutional inequality should be illegal. **The Equality Acts should provide a stronger mechanism through which individuals and groups can challenge manifest inequality in public policy.**

Gender Identity

The Programme for Government sets out to examine adding gender identity as a protected characteristic under the Equality Acts. An example of where any person (but perhaps especially older persons) may experience discrimination in relation to gender identity is when they seek medical care. While a person’s original biological sex is obviously relevant to health professionals when determining the appropriate

diagnosis or treatment, there needs to be sensitivity about the gender identity of the patient. This is especially true for older people who may have lived in their preferred gender for many years without needing medical care, but who later in life may find their identity being dismissed by medical professionals as part of the treatment of serious or chronic illness. Studies of older persons in relation to their LGBT sexuality and/or gender identity provides evidence of the need for this provision.²⁶ **The Equality Acts should include gender identity as a ground to receive protection against discrimination.**

Disability

There is significant intersectionality between discrimination on the grounds of age and discrimination based on (perceived or actual) disability.

In terms of employment equality law, “a person who has a disability is fully competent to undertake, and fully capable of undertaking, any duties if the person would be so fully competent and capable on reasonable accommodation (in this subsection referred to as ‘appropriate measures’) being provided by the person’s employer”.

To the same extent, a person with a disability or impairment should be assumed to be fully competent to make independent decisions and/or to engage in activities if disabling barriers or obstacles are removed by whatever organisation they are trying to interact with. For example, this could be as simple as the provision of a ramp for a user of a mobility aid, or it could be the provision of Plain English information for someone with a learning disability or cognitive impairment.

The Equality Acts should be made to be consistent with and supportive of the aims of the Assisted Decision-Making (Capacity) Acts (ADM Acts). In particular, the guiding principles of the ADM Acts should be reinforced by the Equality Acts, such as the assumption of capacity, the acknowledgement that a person’s capacity might be short-term but is still valid, and the freedom accorded to individuals to make “an unwise decision”. Moreover, as set out in the ADM Acts, interventions in a person’s independence and freedom should minimally restrict their rights and their freedom of action, should respect their dignity, bodily integrity, privacy, autonomy and control over their financial affairs and property, should be proportionate, and should be limited. For example, many older people fear being placed in nursing home or care home environments in case they should have their independence and freedom curtailed in precisely the way that the ADM Acts are meant to prevent.

It should be noted that the Assisted Decision-Making (Capacity) Act 2015 is not fully commenced, pending amendments due in the Assisted Decision-Making (Capacity) Bill 2021.²⁷ It should also be noted as problematic that the Decision Support Service,²⁸ established under the 2015 Act, has taken a “digital first” approach, which is likely to be a barrier to many older persons accessing the service given that two-thirds of them are digital excluded.

In line with the HSE’s recovery model in mental health, there should be a general assumption that people with a disability may, at least, develop greater capacity if not recover (depending on the nature and extent of their disability). In relation to mental health, cognitive impair or dementia, there should not be an assumption built into the law of permanent and irreversible decline. That is, regardless of medical prognosis,

the law should not take away or condone the restriction of people's rights based on unjustified assumptions about ageing.

Socio-Economic Inequality

The Programme for Government sets out to examine introducing a socio-economic ground as a protected characteristic in the Equality Acts.

There is no doubt that there is socio-economic inequality. For example, it is established that there is a socio-economic gradient to health outcomes, with people from more disadvantaged backgrounds more likely to suffer ill health and to have a lower average life expectancy.²⁹ As the World Health Organisation (WHO) reports: "The diversity seen in older age is not random. A large part arises from people's physical and social environments and the impact of these environments on their opportunities and health behaviour."³⁰ And "A significant proportion of the vast diversity of capacity and circumstances that we see in older age is likely to be underpinned by the cumulative impact of these health inequities across the life course. This is sometimes referred to as cumulative advantage/disadvantage."³¹

While overcoming all facets of socio-economic inequality is beyond the scope of the Equality Acts, anti-discrimination legislation can none the less make an important contribution to reducing inequality. Aspects of socio-economic discrimination are especially salient for older persons, for example those who didn't have educational opportunities when they were young – e.g. nearly half (48.4%) of people aged 65 or older left school after primary or lower secondary education³² – and the one in six (17.5%) people aged 65 and older report their socio-economic group as farmers, compared to 3.5% of those aged 25-34.³³ One of the drivers of socio-economic discrimination is the rapid pace of economic change. Younger generations have enjoyed greater socio-economic opportunities and alternative forms of employment, which can lead to some people devaluing older individuals or discriminating against them based on a negative opinion of the worth of the occupations they held in the past.

The revised Equality Acts should outlaw discrimination against a person's actual or perceived socio-economic status, employment status, level of education, local identity, accent, clothing or appearance.

Positive Discrimination

Section 33(1)(a) of the Employment Equality Act allows for positive discrimination for those aged 50 or older, in relation to measures designed to facilitate their integration into employment. This provision is a welcome recognition that age-related barriers prevent many older persons from securing paid work.

There are other areas where older persons experience a disproportionate level of difficulty. For example, there is a growing proportion of older persons who live in private rented housing (2.4% in Census 2016). Once they stop working, older persons in rental housing generally do not have the capacity to raise additional income above a generally low, fixed retirement income, whereas even controlled rents in Rent Pressure Zones are permitted to rise by 4% per year, and rents in other areas can rise even faster. At present, Section 6(1)(b) of the Equal Status Act 2000 specifies that a person shall not discriminate in terminating any tenancy or other

interest in premises, however **there is a reasonable and objective basis to justify additional tenancy protection as a form of positive discrimination in favour of older persons in private rented accommodation, and the Equality Acts should not impede any such development, which may require amendment of Section 6(1)(b) of the Equal Status Act 2000.**

Access and Remedies

The consultation on the Equality Acts gives a list of legislation for information purposes, noting that it is not exhaustive.³⁴ A notable omission from the list is the Irish Human Rights and Equality Commission (IHREC) Act 2014. The original Equality Authority was established under the Employment Equality Act 1998 before merger with IHREC in 2014. The purpose of both organisations is to provide easier access to justice and remedies in the case of discrimination than through the Court Service.

In this context, IHREC has never used the full range of powers available to it under statute, which begs the question of whether they are expressed too vaguely in the original law or whether there is a need to reinforce its powers.

Under the Equality Acts at present, a person experiencing discrimination can end up at the Workplace Relations Commission (WRC) representing themselves, without the support of a lawyer. Even the process of completing the WRC's application forms to lodge a complaint can be onerous, not least for older adults. This process can be overwhelming for many individuals, and there is a need to examine whether IHREC or some other body can provide individuals with the support they need to access justice under the Equality Acts.

The review of the Equality Acts should consider the current and future role of the Irish Human Rights and Equality Commission, including its capacity and powers to provide redress for people affected by discrimination.

Another relevant issue is the Public Sector Equality and Human Rights Duty, established under the 2014 IHREC Act. This duty, "is a statutory obligation on public bodies, in the performance of their functions, to have regard to the need to eliminate discrimination, promote equality of opportunity and protect human rights of staff and service users. It requires public bodies to assess, address and report on progress in relation to equality and human rights, in a manner that is accessible to the public."³⁵

The review of the Equality Acts should consider how revision of the Equality Acts will enhance and support the Public Sector Equality and Human Rights Duty.

The Equality Acts should also ensure that no publicly funded service is outside the purview of the Acts.

The Assisted Decision-Making (Capacity) Act 2015 established the Decision Support Service.³⁶ **It is important that the review of the Equality Acts takes account of the role of the Decision Support Service, and how it might assist people to seek redress under the Equality Acts.**

As mentioned earlier, institutional ageism can be created by legislation. At present, there does not appear to be adequate equality proofing of Bills to remove the

potential for institutional ageism or other forms of institutional inequality or discrimination. **The revised Equality Acts should strengthen mechanisms through which people can challenge public policy or legislation on the basis that they increase inequality or discrimination.**

Recommendations

Age Action is calling on the Minister for Children, Equality, Disability, Integration and Youth to remove exemptions to the Equality Acts that allow employment discrimination against older workers and to ensure that older persons can access redress for discrimination wherever it may arise, including systemic discrimination in public policies.

Age Action is also calling for a concerted effort by the Department, working with the Irish Human Rights and Equality Commission, to raise awareness of ageism and measures to eliminate it as part of the ongoing implementation of the Public Sector Equality and Human Rights Duty.

The following is a summary of the recommendations in this submission, under the six headings provided by the Department for their consultation.

1. The functioning of the Acts and their effectiveness in combating discrimination and promoting equality

- The WHO's *Global Report on Ageism* robustly shows that age discrimination is a major problem, and any revision of Ireland's Equality Acts should be informed by the detailed findings of that report.
- Consideration should be given to how well the Equality Acts address the full range of behaviours that constitute and perpetuate ageism.
- The revised Equality Acts should outlaw the use of chronological age as a decision-making criterion for whether adults can access goods or services, including all publicly funded services.
- The revised Equality Acts should include provisions to assist older persons who are discriminated against in accessing rental housing.
- The revised Equality Acts should ban the "digital only" provision of publicly funded services.
- The Equality Acts should ensure that digital technology cannot be used exclusively in a way that systematically excludes certain categories of people.
- The Equality Acts should make it illegal to refuse cash for many categories of typical goods or services, such as in cafes and restaurants.
- The ability of public services to make binding decisions during the pandemic based on an arbitrary age category (65 or older) rather than on objective criteria (e.g. health status, underlying illness) should have been illegal and should now be outlawed in the revised Equality Acts.
- Section 5(2)(d) should be qualified so that actuarial or statistical data used to assess risk are not based solely on chronological age.

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

- The review of the Equality Acts should systematically evaluate the extent to which the Acts assist people to report abuse and to successfully achieve remedies in cases of abuse.
- The Equality Acts should provide a stronger mechanism through which individuals and groups can challenge manifest inequality in public policy.
- The review of the Equality Acts should consider the current and future role of the Irish Human Rights and Equality Commission, including its capacity and powers to provide redress for people affected by discrimination.
- The review of the Equality Acts should consider how revision of the Equality Acts will enhance and support the Public Sector Equality and Human Rights Duty.
- The Equality Acts should also ensure that no publicly funded service is outside the purview of the Acts.
- It is important that the review of the Equality Acts takes account of the role of the Decision Support Service, and how it might assist people to seek redress under the Equality Acts.
- The revised Equality Acts should strengthen mechanisms through which people can challenge public policy or legislation on the basis that they increase inequality or 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

- The revised Equality Acts should include provision that a person cannot be less favourably treated than current employees with respect to his/her rights and entitlements in an occupational pension scheme when he/she leaves a given employment.
- The Equality Acts should include gender identity as a ground to receive protection against discrimination.
- The revised Equality Acts should outlaw discrimination against a person's actual or perceived socio-economic status, employment status, level of education, local identity, accent, clothing or appearance.

4. Whether the legislation adequately addresses intersectionality or the intersection of discrimination across a number of grounds

- The Equality Acts should be made to be consistent with and supportive of the aims of the Assisted Decision-Making (Capacity) Acts (ADM Acts).

5. Whether existing exemptions in the legislation should be modified or removed

- Section 6(3)(a) of the Employment Equality Act 1998 should be repealed.
- Section 33(5)(b) of the Employment Equality Act 1998 should be revised.

- The revised Equality Acts should ensure that there are no loopholes that permit employers to send “coded messages” that discriminate based on age (or any other ground) when advertising for jobs.
- The revised Equality Acts should outlaw compulsory retirement.
- If compulsory retirement is not outlawed, the protections granted by Section 10 of the Equality (Miscellaneous Provisions) Act 2015 should be retained.
- The Equality Acts should outlaw any rationing of healthcare based purely on chronological age.

6. Any other issues arising from the legislation

- There is a reasonable and objective basis to justify additional tenancy protection as a form of positive discrimination in favour of older persons in private rented accommodation, and the Equality Acts should not impede any such development, which may require amendment of Section 6(1)(b) of the Equal Status Act 2000.
- The revised Equality Acts should include a provision that a minimum level of statistical analysis is a requirement of government, sufficient to ensure that potential discrimination against people in the protected categories can be systematically investigated.

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