



Equality Proofing Issues

Forum Report No. 10

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■ this symbol indicates where recommendations occur in the Report.

Executive Summary

Executive Summary

This Report seeks to raise public awareness and debate on equality proofing issues, provide an input to the employment equality and the equal status legislation under preparation by the Minister for Equality and Law Reform and to the development of other equality proofing strategies. While the Forum is concerned with all disadvantaged groups such as the long-term unemployed, older people, etc., the particular focus of this Report is on women, people with disabilities and Travellers. However, the recommendations will also have a broader relevance to other target groups.

Section II outlines the concepts involved in equality proofing such as targets groups, types of discrimination, barriers and contexts involved. Four interrelated equality objectives are described for conceptual purposes in assessing equality policies and their implementation. Equality of opportunity and equality of participation are vital steps to the achievement of greater equality for all individuals and marginalised groups in our society; seeking to achieve equality of outcome in employment and in the provision of goods and services by the public and private sectors should also be a central policy aim. Equality issues should also be an important aspect of the Strategic Management Initiative now underway in the public sector.

Section III elaborates on the concept of equality proofing mechanisms and institutions and their role in ensuring that equality objectives are achieved. These include legislation, guidelines and codes of practice, administrative procedures and positive action strategies, including quotas. Legislation is important but by itself is not sufficient to promote equality objectives and needs to be backed up by time-scales and targets, by monitoring and enforcement agencies and by supporting policies and resources. The proposal to establish an Equality Authority is seen as essential for equality proofing purposes generally, while an Equality Tribunal would have an important role to play in the enforcement of non-employment equality issues.

Section IV presents the Forum's policy recommendations, beginning with an outline of the main elements which it considers should be the focus of equality objectives. Targets should be set in consultation with marginalised groups and other affected interests and planned over an appropriate time-scale, taking account of resource implications. Its more specific recommendations fall under the following headings:

- **Employment Equality Legislation;**
- **Equal Status Legislation;**
- **Administrative Procedures;**
- **Equality Proofing Structures and Institutions; and**
- **Review of the Constitution.**

Section V stresses that the costs of implementing the recommendations made in the Report should be set off against the long-term benefits to society as a whole as well as to savings in a number of public expenditure areas. Moreover, these recommendations reflect commitments already made by the Government as well as provisions in the Constitution, national legislation and international Conventions to which this State is a Party. Particular account should be taken of the needs and potential of SMEs. Finally, the Forum recommends that the commitments made by the Government in relation to equality legislation and administrative procedures should be implemented without further delay. The Forum accepts that other recommendations contained in this Report should be phased in with realistic targets and time-scales, taking into account the resource implications for both the public and the private sectors as well as developments at EU level.

Overall Conclusions

The Forum's overall conclusions may be summarised as:

- equality objectives should focus on seeking to achieve equality of access, participation and outcome in relation to employment and non-employment areas;
- legislation should prohibit direct and indirect discrimination; employment equality legislation should also seek to actively promote fair employment; equal status legislation should ensure positive action to promote equality which will achieve specific and targeted results;
- equality proofing arrangements and procedures in addressing the impact of Government policies and programmes are recommended; similar arrangements and procedures, having regard to organisation size, should also be encouraged in the private as well as in the voluntary and community sectors; and
- the establishment of an Equality Authority with a focus on employment and non-employment issues is required to oversee the implementation of equality proofing strategies; an Equality Tribunal is also needed as a means of securing enforcement in relation to non-employment issues.

Finally, equality proofing issues entail an integrated and systematic approach to ensure that discriminated and marginalised groups are provided with the necessary means and resources to participate in society as equal citizens. This in turn means that special measures should be taken so that their particular needs and interests are taken into account in the policy-making process and in the ongoing evaluation and implementation of economic and social policies.

Section I

Introduction

Introduction

- 1.1 In its *First Periodic Report*¹ the Forum mentioned that a major concern in its work is the need for more decisive action in tackling disadvantage and the achievement of greater equality and social justice in our society. It was emphasised that this will be reflected throughout the work of the Forum and, in addition, all themes and Reports which it prepares will be addressed within an equality proofing framework.
- 1.2 The terms of reference and constitution of the Forum include a specific reference to its role in addressing these issues and the Forum has among its membership representatives of organisations whose members experience inequality such as women, people with disabilities, Travellers and older people.
- 1.3 The evolution and manner in which the concept of equality has been presented up to now on the political agenda highlights a number of issues and limitations in the approach which has been adopted:
 - a history where, in terms of Government and legislative action, equality has largely been defined as a gender issue;
 - an approach that focuses on women as a homogeneous group;
 - a lack of clarity as to how the concept of equality is to be defined, although a number of approaches are evident such as equality of opportunity, equal treatment and equity;
 - the need for greater co-ordination and integration between various policy instruments viz legislation, implementation agencies, policy guidelines for Government decisions, UN and Council of Europe human rights instruments and the EU Treaties;
 - in the main, inadequate representation in decision-making by those experiencing inequality;
 - lack of agreed indicators and statistical data to monitor and measure progress in achieving defined equality objectives; and
 - an emphasis on strategies promoting equality of opportunity which have laid important foundations of equality but which can be considered as addressing only one dimension within the framework of equality objectives.

¹ *First Periodic Report on the Work of the Forum* (Forum Report No. 8, May 1995).

- 1.4 The concept of equality proofing refers to procedures which are designed to ensure that the equality objectives of public policy are achieved; it is a means to an end rather than an end in itself. In a research project² which was commissioned by the Forum, equality proofing is defined as “a mechanism, process or technical method to implement equality objectives built into a variety of social and economic policies”. It is impossible, therefore, to debate mechanisms without first establishing objectives and what these mechanisms are attempting to achieve.
- 1.5 One of the fundamental questions an equality proofing policy has to address, therefore, is the identification of equality objectives. This, in turn, poses questions about the nature of society and decisions taken in this regard will ultimately determine which objectives are adopted and which equality proofing mechanisms are employed.
- 1.6 One of the principal purposes of this Report is to raise awareness and debate on equality proofing issues and to submit policy recommendations that are specific and timely so as to serve as an input to the *Manifesto for Equality* which is now being implemented by the Minister for Equality and Law Reform. The policy measures and time-scale for achieving the aims of this Manifesto were outlined by that Minister in his address to the Plenary Session of the Forum which was held on 25th January, 1995.
- 1.7 Some of the considerations and recommendations contained in this Report will also need to be considered by the Review Group on the Constitution.
- 1.8 The structure of the Report is as follows:
- Section II outlines a set of equality objectives in terms of four models or conceptions of equality and the scope and limitations of each;
 - Section III discusses what is meant by the concept of equality proofing and assesses the strengths and weaknesses of some of the various mechanisms and institutions involved;
 - Section IV sets out the Forum’s main recommendations; and
 - Section V outlines the cost implications.
- 1.9 Finally, the Forum wishes to record its fullest appreciation and thanks for the contributions and assistance it received from Dr. Kathleen Lynch, Ms Sarah Cantillon and the Equality Studies Centre at UCD, Dr. Pauline Conroy, Social Science Research Centre at UCD, and Ms Judith Kierman in the preparation of this Report. The views expressed and the recommendations made in the Report are, however, the Forum’s own responsibility.

² *Equality Proofing Issues* by Dr. P. Conroy (Social Science Research Centre, UCD) 31st August 1994.

Section II

**Equality
Objectives**

Equality Objectives

Introduction

2.1 This Section places the discussion of equality proofing in a structured context. There are three parts to the Section. As a starting point, some of the terms and concepts used in discussing rights, target groups and characteristics, discrimination, barriers and contexts are briefly outlined. The next part of the Section provides a framework to facilitate consideration of the policy issues and questions emanating from the general concept of equality in terms of four tangible **equality objectives**. Finally, the conclusions of the Forum regarding these objectives are outlined at the end of the Section.

Terms and Concepts

Society and Equality

2.2 Any discussion of equality inevitably poses questions about the nature and organisation of society. In essence, the kind of society that people want determines which equality objectives are adopted. In its very first Report,³ the Forum emphasised that its general philosophy would be very much motivated by the need to create a more caring and equitable society in this country in the future. This Report sets out a framework against which progress towards such a society can be measured and contains a wide range of policy recommendations designed to achieve this aim.

Equality, Rights and Target Groups

2.3 Equality measures seek to guarantee a range of rights to disadvantaged groups and to eliminate various forms of discrimination against them. The term **target group** refers to groups experiencing exclusion or marginalisation in society on grounds of gender, marital or parental status, sexual orientation, religion, age, disability, race, colour, nationality, national or ethnic origins including membership of the Travelling community, or any combination of these factors.

2.4 The Forum is concerned with the exclusion of the long-term unemployed from equality measures. In its Report No. 4, it emphasised the importance of reintegration of the long-term unemployed, identified barriers to this aim and submitted an integrated set of recommendations to this end.

³ See Forum Report No. 1 entitled *Negotiations on a successor agreement to the PESP* (November 1993).

- 2.5 Another particular area of concern is that of older people. The National Council for the Elderly has made a separate submission to the Forum, which addresses economic and social policy issues affecting older people in this country, and this will be taken into account by the Forum in its Reports in the future.
- 2.6 Debates, both in this country and in Europe, have focused principally on characteristics such as gender, disability and ethnic origin. This present Report continues this focus while accepting that there are many other minority groups for whom the general issues raised will also be of relevance. The lack of specification of any of these latter groups should not, therefore, be taken to indicate a denial of their rights or legitimate aspirations by the Forum.

Discrimination

- 2.7 Discrimination may be direct or indirect. **Direct discrimination** occurs where a person experiences exclusion or is treated less favourably than another on the grounds of their membership of a particular group. The grounds on which direct discrimination occurs are listed as gender, marital or parental status, sexual orientation, religion, age, disability, race, colour, nationality, national or ethnic origins including membership of the Travelling community. This form of discrimination is relatively overt and usually involves intent.
- 2.8 **Indirect discrimination** is less visible and does not always involve intent. It is most visible in terms of the outcomes for particular groups in relation to employment status in the employment area and in relation to the provision of goods and services in the non-employment area. Indirect discrimination occurs where policies, practices, terms or conditions apply which are unnecessary and which have a significantly adverse impact on a particular group. In this scenario, it must be demonstrated that the particular group fares worse under the policies, practices, terms or conditions than other groups, and that these policies, practices, terms or conditions cannot be shown to be necessary. Indirect discrimination refers, therefore, to the differential impact of the same treatment where the differential is not justified.
- 2.9 An example of indirect discrimination in the area of gender would be the way in which the present structuring of the labour market and of labour market measures ignore the socially ascribed domestic and caring responsibilities of women. In the operation of these measures, women are not eligible to participate on training/employment schemes through their exclusion from the Live Register. In addition, their participation on mainstream programmes is made difficult through inadequate provision for their child care needs.

Barriers

2.10 Another feature of discrimination are the barriers placed in the way of equal participation in society. These barriers may be formal, i.e. legal or quasi-legal, or they may be informal. An example of an informal barrier would be inadequate provision made to ensure access for people with disabilities to public facilities. Equality for specific groups means the elimination of discrimination against them, in respect of formal Government policies, legislation, quasi-legal regulations, as well as in relation to other non-formal barriers.

Contexts

2.11 There is a range of contexts in which rights and discrimination are relevant. Employment and non-employment contexts are among the most obvious. Non-employment contexts cover the provision of goods and services including the provision of education, housing, health, child care, other social services, etc.

Equality Objectives

2.12 To be useful and meaningful for policy purposes, the concept of equality for any or all target groups must have a specific focus or objective. There are a number of different ways to classify equality objectives. The conceptual approach set out here is designed to provide a framework for equality policies and their implementation.

2.13 Four equality objectives are discussed. Each objective involves choices for policy purposes and gives rise to a distinct interpretation of the meaning of equality and the related policies to be pursued. All four can be regarded as interrelated and additive viz each objective builds on the basis and the limitations of the previous objectives. For example, the achievement of the second equality objective is not possible without including the measures required to achieve the first equality objective. Each equality objective creates the conditions necessary to move to the next step on the scale. Each of the objectives will be discussed in turn. The steps involved and their respective objectives are presented in Figure 2.1.

Figure 2.1

Conceptual Framework for Equality – Stages and Objectives

Stage	Concept of equality/objective to be pursued
1	Equality of formal rights, opportunities and access
2	Equality of participation
3	Equality of outcome or success
4	Equality of condition

**Equality Objective 1:
Equality of Formal Rights, Opportunities and Access**

2.14 This is the first and foundation stage. It involves a minimalist conception of equality which it defines in terms of equal rights for all to participate in economic, social, political and cultural life. These rights are construed as the absence of legal and institutionalised barriers to entry and participation in any given institution or system. This view is linked to the concept of equality of opportunity. This means that nobody should be prevented from entry to or advancement in education, employment, etc. on the grounds of any irrelevant characteristic (e.g. gender, disability or ethnic origin). Access and advancement should be based on merit.

2.15 The most common way to achieve this Objective is through legislation and policy measures focusing on equality of opportunity. Formal legal and quasi-legal barriers are removed. The vindication of formal rights and opportunities through this process and the removal of legal and quasi-legal barriers to access in fields such as employment and in the provision of goods and services and education seek both to guarantee the rights of access of particular target groups and to eliminate discrimination against them.

2.16 There are, however, a number of limitations to the underlying rationale of this Objective. These include:

- significant difficulties in legislating against indirect discrimination due to the problems involved in defining and in exposing it;

- the costs involved in making, defending and processing discrimination claims;
- the follow-on effects arising from an initial discriminatory act are not addressed within this Objective; and
- the removal of legal and quasi-legal barriers will not of itself guarantee any more substantive form of equality for the target group, such as equality of participation and which is now addressed below under Objective 2.

Some of these limitations and difficulties are returned to again in the next Section of the Report.

Equality Objective 2: Equality of Participation

2.17 This Objective assumes the pre-existence of the equal formal rights and opportunities and equality of access as outlined under Objective 1 above. Objective 2 underlines that actual equality depends not simply on having formal rights to participate but on having the ability and resources to exercise that right.

2.18 Policies based on the equal participation principle under this Objective go beyond the protection of formal rights and the prevention of discrimination under Objective 1, as they actively intervene to:

- **enable;** and
- **encourage** equal participation by the target group concerned.

(i) Enabling Participation

2.19 Enabling participation means ensuring that the basic material, psychological, educational and other needs of the target group are met so that they are in a position to participate on equal terms.

(ii) Encouraging Participation

2.20 Encouraging participation means ensuring that the members of the target group are motivated to participate and are accepted by others as full participants. This means going beyond the provision of basic needs to creating participation on equal terms. It also involves **proactive** policies to promote greater understanding and to encourage involvement. The supporting

strategies involved are those of affirmative action and training and education measures, including those focused on equality issues and the establishment of access programmes.

2.21 There are a number of limitations to the underlying rationale of Objective 2:

- the supporting policies intervene on a voluntary rather than a mandatory principle;
- there is no guarantee that equality will result; enabling and encouraging participation does not ensure it; and
- policies have to be varied according to the nature and scope of the disadvantage and the context; for example, policies to enable a particular group such as the disabled to participate in employment will generally do little to foster the participation of Travellers.

Equality Objective 3: Equality of Outcome

2.22 The achievement of equal rates of success or outcome for given target groups is the aim of this Objective. The logic of this approach is that these groups must be enabled to succeed at the same rates and in the same contexts as is the case at present for the more privileged groups. Equality of outcome refers to achieving overall equality between marginalised and non-marginalised groups in terms of access to and the distribution of economic, educational, cultural, political and other benefits.

2.23 This Objective seeks not only to set equality aims but it also requires tangible equality results. The formal rights under Objective 1 and the mechanisms to promote participation under Objective 2 are subsumed into this approach, which then goes on to measure and ensure equal outcomes or success for different target groups. The focus of this Objective is, therefore, to ensure overall equality for **all** groups in terms of the distribution of economic, educational, cultural, political and other benefits.

2.24 Objective 3 requires a series of strategies which seek to redress inequality. These include policies commonly referred to as “*affirmative action*” in terms of preferential treatment and use of quotas for the target group. Quotas are an obvious strategy for achieving equal success as they ensure an outcome as opposed to merely enable or encourage it. Equality of outcome represents an advance on the previous two equality objectives and a fundamental challenge to existing policies.

2.25 The limitations of this Objective are that:

- it does not take account of substantial inequalities within groups; and
- quotas are controversial and, in particular circumstances, are subject to debate following the recent Bremen and Kalanke case in the European Court of Justice.

Equality Objective 4: Equality of Condition

2.26 The first three equality objectives focus on disadvantaged groups *vis à vis* all other groups. This final equality Objective focuses on the equal status of all citizens, rather than on the equal status of particular groups, through the development of an egalitarian society.

2.27 Under this Objective, there is a commitment to equality in all aspects of the lives of citizens, taking due account of heterogeneity arising from gender, disability, ethnic origin or other attributes. Central to this Objective is the equalisation of wealth, income, working conditions, power and privileges for all. For example, the aims of the taxation system within this Objective would be to attain equal income for all. Political policy and activity would aim at the equal participation and influence of all in a participative democracy. A restructuring of family and personal life would be an inevitable feature.

2.28 Such an Objective would involve fundamental changes in constitutional and legislative frameworks, as well as in the political, economic, social and cultural infrastructures of society. To countenance Objective 4, enormous societal changes would be required. The cost of inequality along many parameters would need to be recognised. Existing privileged groups would need to support egalitarian aims, possibly on grounds of compassion, but perhaps also on the basis of enlightened self-interest.

2.29 Even if a given society does not adhere to the principle of equality of condition, a recognition of its importance does influence the way in which objectives are framed and targeted. For example, a move to promote greater equality in the distribution of income and wealth, through the promotion of greater equality in taxation structures, would move society towards this Objective; the introduction of systems and structures which promoted participatory democracy in decision-making would also help in the realisation of equality of condition.

Conclusions

2.30 This Section of the Report has provided a theoretical framework for policy purposes as well as serving to provide a more focused public debate on equality issues. In the view of the Forum, our society has for too long been based on a model which is exclusive – where groups have been disadvantaged and discriminated against and have not been part of the decision-making and policy formulation structures. Equality issues involve civil and human rights and more regular public debates and more informed discussion are, therefore, required to examine the issues involved and on ways to achieve a society which guarantees the inclusion of all groups and one which values rather than discriminates against differences.

2.31 The effectiveness of any equality legislation and policies is dependent to a large degree on the level of public commitment and support. In this context, the media and opinion-forming institutions in society have an important role to play in creating a favourable climate for change. Advertising and education programmes can also help to change attitudes and practices and promote equality perspectives and policies.

2.32 The Forum acknowledges the central value of the concept of equality of opportunity. In fact, in its Report No. 5 the Forum states:

*“The elimination of explicit and implicit discrimination must also be a central objective of policy, and, as a general operating principle, the Forum recommends that everyone should have equal access to and treatment from the system, regardless of their disability, social class, gender, marital status, ethnic origin or sexual orientation”.*⁴

2.33 Equality of opportunity is a vital first step that advances the notion of equal rights and as such must be fully supported. The policies deriving from this Objective provide impartial standards which may be applied across employment and non-employment contexts. Equalising opportunities in terms of access to health care, education, jobs, income and housing would have much to offer the many groups who are at present experiencing inequality of treatment in these areas.

2.34 The Forum also fully supports actions which promote equality of participation. This position has been put forward and developed in a number of previous Forum Reports. Participation of marginalised groups is crucial to the delineation and achievement of greater equality for all individuals and groups in our society.

⁴ See Forum Report No. 5 entitled *Income Maintenance Strategies* (July 1991)

- 2.35 Facets of enabling and encouraging participation by groups whose lives are affected by inequalities include education and information. The Forum sees many of the means to encourage participation as logical steps forward from the present position which would improve the lives of individuals and groups and contribute to a growing understanding of inequality, its causation and means of redress in our society. Ways to promote participation should be actively pursued including education programmes, data collection and monitoring of progress. The objectives of equality of participation should be considered when introducing new policies, legislation and practices.
- 2.36 Seeking to achieve equality of outcome in relation to employment and the provision of goods and services must be a central aim. This requires affirmative action as a key element in strategies to create genuine equality by actively favouring groups experiencing inequality. In this regard, the recognition and acceptance of heterogeneity and of the parameters of inequalities are first and vital steps in addressing the problem of inequality. This implies a dual approach with an emphasis both on the individual as well as on the collective needs of the target group involved. Equality of representation and participation in decision-making processes for groups and interests would permit the development of equality objectives which reflect the needs and interests of these groups and their potential for making an active contribution to society.
- 2.37 Policies which act to promote these developments should include assistance to target groups to organise and participate, inclusion of these groups in decision-making processes and according special status to minority ethnic groups.
- 2.38 Consideration of equality issues should be an important aspect of the Strategic Management Initiative⁵ now underway throughout the public sector. In this regard, the Forum welcomes the National Anti-Poverty Strategy initiative and its emphasis on an integrated approach involving all Government Departments and Agencies in this area.
- 2.39 The Forum's recommendations on equality objectives are outlined in Section IV of the Report.

⁵ The Strategic Management Initiative (SMI) is a programme of public service reform which was launched in February 1994; the aim of the SMI is to improve management of resources and to make the public service more results oriented and better focused on client needs.

Section III

**Equality
Proofing
Mechanisms
and Institutions**

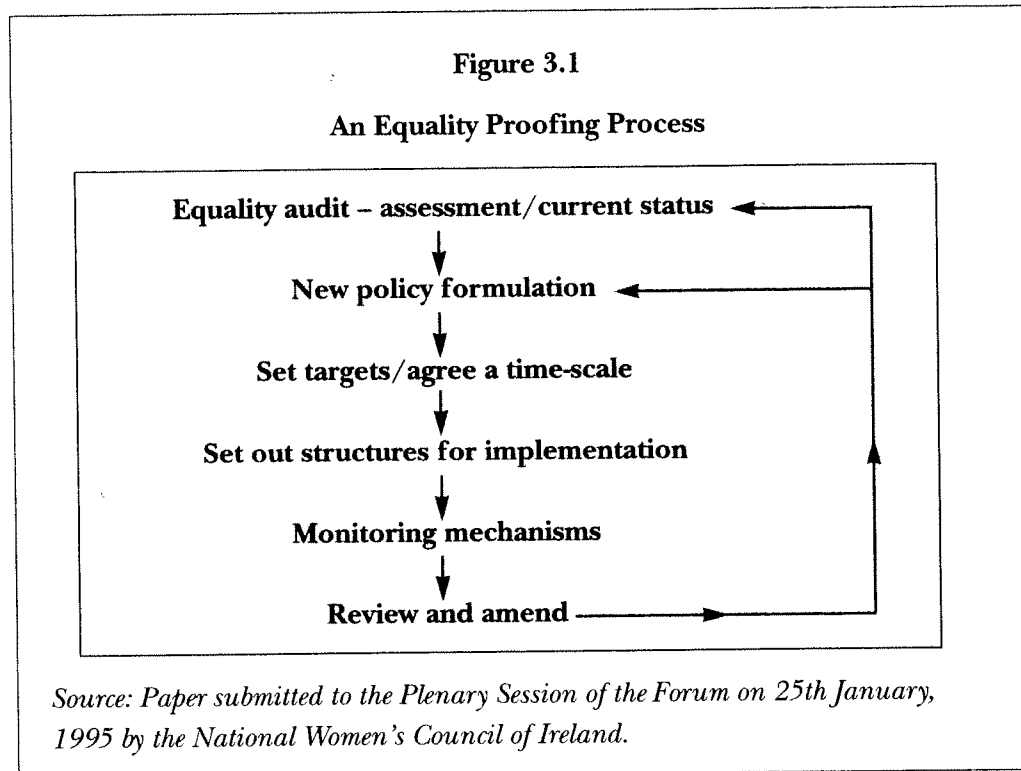
Equality Proofing Mechanisms and Institutions

Introduction

- 3.1 The previous Section of the Report focused in some detail on possible equality objectives. Deciding on objectives is the first step in the formulation of any public policy. A further requirement is to identify how policies designed to implement these objectives can be made effective and monitored, a process which in the context of equality objectives is termed **equality proofing**. This Section discusses such a process, some of its components and assesses their implications.
- 3.2 In the first instance, the concept of equality proofing is introduced and illustrated. Next some specific mechanisms used in equality proofing are critically discussed namely legislation, administrative procedures and positive action strategies which include quotas. Then, the structures i.e. the bodies and institutions charged with implementing and overseeing equality proofing or with resolving conflicts are examined. Finally, some conclusions of the Forum in this area are presented.
- 3.3 Equality proofing mechanisms and bodies are inter-dependent elements in any equality proofing procedure in their role of monitoring and enforcement of policies. While legislation is essential for the protection of basic rights and opportunities, the changes effected by the legislation are, in part, dependent on the coherence of the equality proofing process and operating bodies. This coherence may be viewed in terms of the strength, resources and mandate of enforcement and compliance agencies and the degree to which target groups are effectively involved at all levels.

An Equality Proofing Process

- 3.4 A process of equality proofing involves the integration of selected equality considerations into policy formulation, programme planning and implementation at all levels of society and as an impact assessment mechanism in the evaluating stages. A simple illustration of the administrative process involved in equality proofing is presented in Figure 3.1.



- 3.5 The above is an indicative example only and may not be appropriate in all cases. This process can be utilised in monitoring and implementing any of the equality objectives which were outlined in Section II of this Report. The diagram indicates the avenues of flow and the cyclical nature of equality proofing. Equality proofing is a dynamic process with ongoing evaluation of progress and re-evaluation of policy. Monitoring is an essential component of equality proofing, to allow for assessment, review and improvement of implementation and policy.
- 3.6 The model also indicates that there are a number of points in the equality proofing process for involvement, consultation, participation and collaboration of the specific target groups themselves and indeed the wider public. This is seen by the Forum as of crucial importance in providing real and practical experience and support for necessary policy changes.
- 3.7 The following two facets of equality proofing will be considered in critical detail:
- equality proofing **mechanisms**; and
 - **equality agencies** and **institutions** established to implement an equality proofing process.

These mechanisms and the bodies which use them are mutually reinforcing and inter-dependent elements in any equality proofing procedure.

I Equality Proofing Mechanisms

- 3.8 An equality proofing mechanism is used to implement equality objectives built into a variety of types of social and economic policies. There are a number of mechanisms available to agencies responsible for developing, implementing, monitoring and enforcing equality policies. The equality objective to be pursued determines the appropriate mechanisms. Some mechanisms can be utilised to enforce any equality objective. For example, legislation, equality audits, sanctions or education may be used to promote any or all objectives. Positive action is associated with the promotion of equality of participation and outcome. Quotas reflect a commitment to equality of outcome.
- 3.9 One of the key issues in respect of introducing positive action, including quotas, is whether or not such action should be underpinned by legislative provision viz whether it should be a mandatory or a voluntary measure. Experience to-date in this country would suggest that legal provision for positive action may be essential in some cases.
- 3.10 Some measures such as guidelines or codes of practice can be useful in either introducing the concept of equality or facilitating the implementation of legislative provisions on the ground. As such, they may be viewed as tools which facilitate the implementation of legislative change to bring agencies or bodies to account. A summary of the main equality proofing mechanisms is presented in Figure 3.2.

Figure 3.2
Summary of Main Equality Proofing Mechanisms

Objectives	Mechanisms involved
<i>Applicable to all Objectives</i>	<i>legislation equality audit* and monitoring systems sanctions and enforcement procedures complaints procedures equality education and training policy proofing</i>
<i>Tools applicable to all Objectives</i>	<i>guidelines codes of practice</i>
<i>Applicable to Objectives 2–4</i>	<i>financial and other supports for target groups, affirmative action and quota systems</i>

* This is a process with the purpose of establishing and/or assessing the effectiveness of targeted equality promoting measures over a set period of time.

3.11 The appropriateness of particular mechanisms will be determined by the targeted equality objective. For example, if equality of access is the targeted objective, the appropriate mechanisms would include the enshrining of equal rights in legislation. If, however, the objective is to ensure a particular outcome then the use of quotas or positive action may be necessary.

3.12 In this context, it will be recalled from the previous Section of this Report that all equality objectives are interrelated and that a *combination* of mechanisms may, therefore, be required together to achieve a *combination* of equality objectives for particular targeted groups.

3.13 A number of these equality proofing mechanisms will be discussed here, namely:

- legislation;
- administrative procedures; and
- quotas.

The relative merits and limitations of these key mechanisms and procedures are outlined beneath. Legislation, which is of central importance, will be discussed first.

(i) Legislation

3.14 Equality proofing can be developed by establishing minimum or maximum rights in legislation. It is generally agreed that legislation is a necessary though not a sufficient basis. However, the enactment of legislation can provide the foundation stone for the establishment and realisation of equality objectives, in guaranteeing and protecting rights and in reinforcing equality policies in a public and statutory context. It can also give concepts of equality, and ensuing rights, new authority and status as well as help to inspire and encourage changes in social behaviour and attitudes beyond its strict statutory remit.

Aims of Legislation

3.15 Legislation can either restrict itself to prohibiting discrimination or it can combine this with requirements to promote and achieve equality objectives. Prohibiting discrimination by anti-discrimination measures in legislation does not equate with promoting equality although it is a precondition for it. Promoting equality requires proactive equality promoting measures in legislation.

3.16 The different equality objectives set out in Section II require different combinations of anti-discrimination and equality promotion measures in legislation. The most common way of establishing equality of formal rights and opportunities (Objective 1) is by means of legislation and policies prohibiting direct or indirect discrimination. Equality promotion which supports affirmative action is necessary to ensure equality of participation (Objective 2) or outcome (Objective 3).

Issues in relation to Legislation

3.17 A number of general issues arise with equality legislation. In the first place, legislative provisions in this area should be clear and unambiguous. Vague terminology can be interpreted in any number of ways, lead to confusion and subsequently to ineffective legislation. Additionally, equality legislation should relate accurately and efficiently to the specific experiences of inequality by particular groups.

3.18 Secondly, another concern regarding legislation is the extent to which exemptions are included. Exemptions which are wide in scope or loosely drawn make such legislation ineffective and run contrary to the principle of equality in our society. Continuance of discrimination on the grounds of “*undue hardship*” or “*excessive cost*” should only be considered in the context of a requirement to “*reasonable accommodation*” i.e. taking account of the costs to and needs of all parties affected.

3.19 Thirdly, there are significant difficulties involved in outlawing indirect discrimination against target groups. This is because indirect discrimination is relatively invisible and can happen without intent. This issue applies in a wide range of contexts in both employment and non-employment areas. Experience has shown that eliminating indirect discrimination requires an adequate definition of such discrimination in legislation.

3.20 Fourthly, eliminating such discrimination would entail granting substantial powers of investigation to monitor and review requirements for access and advancement in both employment and non-employment areas and providing for redress where discrimination has occurred.

3.21 Difficulties can also arise with anti-discrimination provisions in relation to finding an appropriate comparator when seeking to identify comparable conditions. This is a difficult problem and is often a function of the existing inequalities in society, which the legislation is attempting to change.

3.22 If equality promotion legislation is to be implemented effectively, target groups must also be involved at all levels, including the drafting, monitoring, and the evaluation of this legislation. Policies of participation and equality of outcome also require resources to establish and maintain an effective equality proofing process and the necessary mechanisms and agencies to do so.

3.23 Finally, the implementation of equality legislation, if it is to be effective, requires time-scales and targets. Any legislative change to enforce equality objectives cannot be applied without the structural backup of monitoring and enforcement agencies as well as supporting policies and measures.

(ii) Administrative Procedures

3.24 Administrative procedures are an important element of any equality strategy to ensure that the policies and practices of any institution do not cause further inequality and actually address existing inequality. The extent to which they do so will depend on the equality objective set.

3.25 Effective administrative procedures should include:

- identification of equality objective and setting equality targets;
- development of data gathering processes adequate for monitoring the achievement of these targets;
- establishing the equality implications of any particular policy or practice prior to its implementation;
- development and implementation of strategies to achieve equality targets;
- creation of independent monitoring systems to analyse and review progress; and
- regular public reporting on progress.

These procedures should be as simple as possible.

3.26 Administrative procedures to equality proof policy-making and the preparation of implementation procedures by Government Departments, Local Authorities and State Agencies are of central importance. The Government commitment to include a gender impact statement in memoranda for Government is a positive example. The *Policy Appraisal and Fair Treatment* procedure applied in the North is another such positive example. However, there is a need for administrative

procedures at this level to evolve to cover the groups to be protected by equality legislation and to reflect the elements outlined in the preceding paragraph.

- 3.27 Planning processes, both strategic and physical, within the public sector are another important focus for equality proofing administrative procedures. The commitment to gender proofing made as part of the *National Development Plan 1994–1999* is a positive example in this area. However, this needs to evolve in the manner described above and to extend to physical planning at national and local levels.
- 3.28 National economic and social agreements such as the PNR, the PESP and the PCW provide another important mechanism for the integration or mainstreaming of equality issues in economic and social planning. These agreements, negotiated on a consensus basis, contain measures to integrate marginalised groups and these should be exploited to the full. The job creation targets aimed at the long-term unemployed and the particular sections dealing with equality for women and people with disabilities are good examples of positive action and these provisions are subject to regular impact assessments by the Central Review Committee.
- 3.29 Equality proofing through performance indicators requires assessment of a programme (economic or social) relative to established key aspects of equality objectives for any targeted group. In the absence of a consensus on these key aspects for most groups, performance indicators are elusive concepts.
- 3.30 These indicators should also be quite specific in nature. They should incorporate key aspects of people's integration in society, in both employment and non-employment areas, and relate directly to existing barriers to participation and the process by which they can be overcome, including resource implications.

(iii) Quotas – an Example of Positive Action

- 3.31 Both the European Union and the United Nations are in favour of positive action. Quotas are a particular form of positive action for achieving equal outcomes for a given target group as they ensure, rather than merely enable or encourage, equal rates of success *vis à vis* other groups. A quota system may be an essential measure to making significant improvements in areas where there has been significant discrimination in the past. Monitoring mechanisms and specified time-scales are all possible methods to support a quota system. This is evidenced by the success of the monitoring provision established in the PESP and the PCW in achieving the 3 per cent employment quota in the civil service for people with disabilities.

- 3.32 One of the difficulties posed by the introduction of quotas is the issue of competency and questions of public attitudes, particularly in spheres such as employment or education. One way of seeking to overcome these problems is to tie quotas to education and training provisions to ensure that members of the target group meet the required level of competency for the position in question, but this can be difficult in practice and uncertain in outcome.
- 3.33 There are differences within target groups which can result in discrimination impacting more severely on some members of a target group than others and which need, therefore, to be taken into account when establishing the aims and terms of quota systems.

II Equality Structures: Agencies and Institutions

- 3.34 To be effective, equality legislation has to be monitored in a publicly accountable way. The monitoring mechanism needs to be as simple and visible as is practicable. Failure to comply with legislation will have no impact on the discriminating party unless there are sanctions imposed for failure to comply. This implies that a regulatory agency (an Equality Authority) must be in a position to effectively sanction, or assist in sanctioning, groups or individuals who discriminate in a manner contrary to legislative provisions.
- 3.35 Equality structures is the term used here to include all agencies, bodies and institutions charged with developing, monitoring and enforcing equality proofing policies or with resolving conflicts. If the commitment to equality is to be more than rhetorical, adequate resources must also be invested in the equality infrastructure.

An Equality Authority

- 3.36 The establishment of an Equality Authority is an essential component in the implementation of equality proofing. Such an Authority would have a specialist role in the application of equality policies and legislation, and compliance with anti-discrimination legislation. The remit of such an Authority should be broad.
- 3.37 This Authority would have an invaluable contribution to make in generating an ethos of equality in our society. It would develop and communicate a knowledge and an understanding of equality and equality strategies. Most importantly, it would ensure the effectiveness of existing and new legislation in this area. It should also serve as a focus for the development and monitoring of equality proofing mechanisms.

An Equality Tribunal

- 3.38 To-date, employment equality issues have been dealt with through the Labour Relations Commission and the Labour Court. For the hearing of non-employment issues, the establishment of an Equality Tribunal should be considered. The value of such a system lies in the appointment of expert staff, the development of a concentrated body of expertise and the informality of setting in comparison with the courts. The operation and effectiveness of any system of enforcement would depend on its access to adequate remedies. In the instance of equality proofing, these remedies should include orders for changes in practice and procedures and financial penalties.
- 3.39 An Equality Tribunal would have an important contribution to make to the successful impact of equality legislation. It would ensure an accessible, simple and speedy means of redress and would also allow for the development of a coherent body of specialist knowledge and experience in the application of equality law.

Summary and Conclusions

- 3.40 This Section of the Report has presented a perspective on equality proofing mechanisms and institutions. As is the case with many central policy issues, and equality is one of these, there are alternative and sometimes competing views.
- 3.41 Section II of the Report outlined a number of approaches in relation to equality objectives with specific reference to the creation of equality in employment and non-employment areas. This suggests that a range of equality proofing mechanisms should be undertaken and themselves evaluated in terms of their effectiveness.
- 3.42 In its earlier Report No. 6 on *Quality Delivery of Social Services*, the Forum has stressed the importance of consultation and active participation by marginalised and disadvantaged groups in the development and implementation of policies which have a crucial bearing on the quality of their daily lives. This viewpoint is equally and particularly relevant in regard to equality proofing and, in this regard, special procedures, mechanisms and structures should be established for this purpose. Such participation and involvement by target groups is critical to ensure that practical experience and relevance is brought to bear in the preparation, implementation and monitoring of legislative and other policy changes in this area.
- 3.43 The various issues raised in Sections II and III of this Report have important implications for the equality legislation which is at present under preparation

by the Minister for Equality and Law Reform and the next Section of this Report puts forward specific recommendations by the Forum as an input into this process.

3.44 Finally, our present Constitution contains many valuable provisions that relate to promoting equality in our society. These include provisions for democratic structures, equality before the law, human rights and social justice. The present Constitutional Review provides an important opportunity to reflect the changes in our society and the new commitments to equality since the original Constitution was written and to update existing provisions to reflect these new realities.

Section IV

Recommendations

Recommendations

Introduction

- 4.1 This Section of the Report presents the main policy recommendations of the Forum. The first part of the Section presents an overview of the Forum's perspectives and conclusions. This is followed by specific recommendations which relate to equality objectives, proposed legislative changes, administrative procedures and equality proofing structures i.e. agencies and institutions, using as a basis the theoretical frameworks which have already been outlined in Sections II and III of the Report.
- 4.2 In considering this complex and important topic of equality proofing the Forum has looked at concerns of equality, equity, fairness and rights. Equality and equality proofing are about seeking to change public attitudes and behaviour and where it is essential to outline principles which have relevance and applicability to all marginalised groups and to identify communality of issues in so far as possible. These principles should be such as to be acceptable and command general support from the body politic and the public at large.
- 4.3 At the outset, some general concerns for the specific target groups of women, people with disabilities and Travellers are briefly outlined. In this respect, particular regard has been taken to ensure that work already underway in other fora such as the follow-up on the Second Commission on the Status of Women, the Commission on the Status of People with Disabilities and the Task Force on the Travelling Community is not duplicated. Finally, and as already mentioned in paragraph 2.5, the specific needs and concerns of older people will be addressed by the Forum in its future work. It is understood that a detailed comprehensive report has been submitted to the Government by the National Council for the Elderly and the Forum urges that this should be given full consideration along with the above mentioned reports.

Women

- 4.4 Even though substantial progress has been made in certain areas women continue to be discriminated against, both directly and indirectly, at all levels of society, within private and public spheres and within both economic and social life. In addition, as members of minority groups and frequently within minority groups (for example, women with disabilities), women experience a double discrimination.
- 4.5 The appreciation of women's issues has a longer history than that of other groups in this country. It is instructive that women's representative groups seek to focus society's efforts on equality of outcome while valuing equality of access and participation as a means to an end.

People with Disabilities

- 4.6 People with disabilities are a heterogeneous target group, as their defining attribute, the disabling condition, can have great variety of effect. The Forum recognises that the complex nature of disability must be given special attention in equality policy-making and implementation and in equality proofing processes.
- 4.7 People with disabilities are often discriminated against in terms of rights and opportunities which other people take for granted. As such there is a need for flexible responses and attitudes towards people with disabilities in every aspect of social integration. The Forum recognises the importance of equality in areas such as education, employment, political decision-making, and in the right to develop and maintain personal relationships.

Travellers

- 4.8 While there is now a more positive policy context in all areas, i.e. accommodation, health, education, etc., nevertheless, there is substantial discrimination against the Traveller community throughout our society. This ranges from direct discrimination based on overt hostility to indirect discrimination based on a denial of their cultural rights. Travellers and Traveller organisations have been excluded from decision-making processes which affect their lives. The Forum has addressed the issue of Traveller rights on a number of previous occasions. In this Report special emphasis is placed on the equal rights and legitimate expectations of Travellers. A key issue is the ongoing discrimination, direct and indirect, which Travellers experience as a daily reality. Previous Forum Reports have identified particular aspects of this discrimination, have been forthright in their condemnation of it and have submitted specific recommendations to this end.

Recommendations

- 4.9 The remaining Section of this Report outlines the Forum's recommendations under the following headings:
- equality objectives;
 - legislative changes in relation to employment and equal status;
 - administrative procedures; and
 - equality proofing structures, agencies and institutions.

I Equality Objectives

4.10 At the outset, and having regard to the considerations set out in Section II of this Report, the Forum **recommends** that equality objectives should focus on:

- seeking to achieve equality of access, participation and outcome in relation to employment and non-employment areas;
- respecting diversity rather than promoting homogeneity, and facilitating the creation of new relations between different communities;
- asserting the right of the individual as well as the rights of that individual as a member of a particular disadvantaged community;
- guaranteeing equal weight to the interests of groups and communities experiencing inequality in decision-making processes; these should include:
 - a review of the adequacy and effectiveness of public funding for these groups to organise and formulate their interests;
 - incorporating the participation of such organisations in decisions that affect them through identifying this as one priority of the present Strategic Management Initiative; and
 - allowing special status to minority ethnic groups with rights to protect and enjoy their cultural heritage; and
- affirmative action as a key element in strategies to actively favour groups experiencing inequality.

4.11 These objectives would have to be adequately resourced and should not be undermined by short-term arguments over resource considerations. These should be achievable through setting definite, realistic and reasonable targets, with the consultation and involvement of marginalised groups, and realised in a planned way, taking account of resource implications, and made possible in the medium-term.

II Legislative Changes

4.12 Legislation is a key mechanism to advance equality rights and is supported by the Forum. However, such legislation must be strong enough to work, contain clear and unambiguous provisions, and have clear objectives and definite means of implementation and monitoring of its effects.

- 4.13 Moreover, the implementation of legislation which seeks to alter an existing situation should have realistic targets and time-scales and adequate resourcing. Measurable targets should be set for any legislation designed to promote equality. Full implementation should be completed in a planned way, taking account of resource implications.
- 4.14 A particular concern for people with disabilities is the potential for restriction of their participation through legislative exemption on the grounds of “*undue hardship*” or “*excessive cost*”. The Forum **recommends** that, if exemptions are proposed to be included in legislation, there should be consultations with representatives of target groups and other affected interests to ensure that “*reasonable accommodation*” for the needs of the target groups is achieved, i.e. taking into account the costs to and needs of the parties affected.

Employment Equality Legislation

- 4.15 The Forum has considered unemployment and employment issues in a number of its previous Reports. For most people, employment is the key to economic and social participation. It **recommends**, therefore, that discriminatory practices in relation to access to employment and training and career development prospects in employment should be a key target in this area. In addition, the Forum further **recommends** that indirect discrimination which arises in relation to the access of women returners to employment, training and career development should be addressed.
- 4.16 As regards amendments to the existing employment equality legislation, the indications already given by the Government to extend the range of groups included in this legislation are broadly welcomed as an important step forward. Following on the extension of the Unfair Dismissals legislation to cover sexual orientation, the Forum **recommends** that the definition of discrimination in employment be extended to include discrimination on the basis of sexual orientation. However, the focus on individual as opposed to group concerns should not preclude a more wide-ranging analysis of the causes and effects of discrimination.
- 4.17 It is essential, where an employee or job applicant is pursuing an equality case, that reasonable access to all relevant information should be provided. The Forum **recommends** that, in the processing of claims alleging discrimination, the onus should be on the employer to provide the investigating officer with reasonable access to information. Where the employer fails to provide the information, the onus of proof should shift to the employer.

- 4.18 Employment equality legislation should not only prohibit discrimination but should also seek to actively promote fair employment.
- 4.19 The Forum is also aware that discrimination in employment, recruitment or promotion may reflect past discriminations within the education and training services. In seeking to eliminate discrimination in the workplace, the Forum emphasises that these fundamental inequalities must be addressed as well as direct discrimination which may arise from the present structuring of work and home life.
- 4.20 More specifically, in implementing the legislation, the Forum **recommends** that:
- use of quotas within the public sector should be continued and extended; and
 - special education and training programmes on equality should be introduced for private and public sector employees regarding the needs of target groups, their perspectives, and the potential for discrimination in the workplace.

Specific Groups

Women

- 4.21 The Forum accepts that without economic independence women will remain subordinate to men. Equality policies for women need, therefore, to be directed at ensuring such independence. In this respect, cultural, legal and constitutional change will be required to guarantee women's equal participation in all aspects of society.
- 4.22 Women have a number of particular concerns regarding the forthcoming legislation. The continuation of indirect discrimination both in accessing employment and achieving promotion remains a serious problem. There is substantial evidence to demonstrate that indirect discrimination continues to hamper the rights of women to be effective members of society. As such, the Forum endorses the recommendations of the Second Commission on the Status of Women that the concept of indirect discrimination should apply to equal pay i.e. to the issues covered at present by the Anti-Discrimination (Pay) Act, 1974. The proposals to define indirect discrimination are welcomed. The concept and structure of work comparability with men is, however, a complex and controversial issue.

- 4.23 Enabling women to participate on equal terms means taking account of their basic needs and responsibilities, including their reproductive roles and their caring commitments. Although women have tended to be the primary carers of children and other dependent persons in our society, there is no reason for this to be the norm in the future. The Forum **recommends**, therefore, that any policy provision to support carers should be gender inclusive and it also reiterates its recommendations regarding child care provisions to assist both men and women.⁶ In this context, the Forum further **recommends** that flexible employment practices which fully protect quality working conditions should be actively promoted to assist men and women workers in the integration of home and work life.

- 4.24 Redressing the effects of past discrimination is an important concern. Specialised training and education is needed, including the provision of supports for women to re-enter and be promoted in employment as well as special access measures to promote women's participation in mainstream programmes. Gender proofing necessitates examining all aspects of an organisation's functions from policy formation through to implementation, outcomes and evaluation. The actual operation of such a process demands that targets are built in and attained. A source of concern to the Forum is the continued fragmented Departmental and State Agency approach to the principle of full inclusion of women in society.

- 4.25 Since 1985, the operation of the equality legislation has been extended to include the Garda and the Prison Service and, in this regard, the Forum endorses the recommendation of the Second Commission on the Status of Women that this legislation should now be extended to the Defence Forces.

People with Disabilities

- 4.26 The Forum recognises the varied nature of disability and handicap and its potential effects on employment opportunities. The National Advisory Committee on Training and Employment and the Commission on the Status of People with Disabilities are addressing specific measures which will help the employment prospects of disabled people (the unemployment rate among disabled people is calculated to be 80 per cent). The lack of access to employment, combined with inadequate welfare payments, results in poverty for many disabled people. To address this issue, together with the wider issue of integrating disabled people into society, a number of initiatives are required. A Government-led initiative to educate the public regarding access and inclusion should also be undertaken. In addition, the Forum, recognising the need for

⁶ See Forum Report No. 7 on the *Jobs Potential of the Services Sector* (April 1995).

legislative provision on the inclusion of people with disabilities in the employment arena, **recommends** that the following principles be enshrined in legislation:

- employment practices, in terms of recruitment and promotion, should not discriminate against individuals or particular groups of individuals or against those people who have undergone medical or rehabilitative treatment in the past; and
- positive action should be taken by employers to ensure that places of employment as well as production and working processes are accessible to people with disabilities.

There are unjustifiable barriers to the participation of people with disabilities in a variety of employment contexts and a genuine commitment to change is, therefore, the first step to overcome these obstacles.

Travellers

4.27 Travellers are virtually absent from the mainstream labour force. If employment equality legislation is to be relevant to Travellers, it must contain equality promoting measures as well as anti-discrimination measures. The Forum **recommends** that this legislation should ensure:

- that appropriate strategies are developed for the employment of Travellers in the public sector;
- the introduction of special measures as recommended in the *Report of the Task Force on the Travelling Community* to increase the employment of Travellers within services being provided to the Traveller community; and
- the introduction of special access measures to increase Traveller participation in mainstream training, work schemes and training and education schemes.

Equal Status Legislation

4.28 Equal status legislation will be an important new area of legislation. It should make it possible for discrimination in non-employment areas to be challenged on a legal basis, and for equality to be promoted in non-employment areas. The legislation also has an international significance in that it should allow the Irish Government to ratify the U.N. Convention on the Elimination of Racial Discrimination.

4.29 The Forum **recommends** that:

- this legislation should apply to a wide range of facilities and services; for example, access to and use of a public place, the services of any profession or trade or any public or local authority, education facilities, transport or travel facilities, banking, insurance, loans, grants, credit or finance, and entertainment, recreation, refreshment and accommodation services;
- this legislation should not only prohibit unlawful discrimination but also provide statutory powers to ensure positive action to promote equality which will achieve specific and targeted results;
- a strategic plan to eliminate inequalities in the provision of social services should be developed which would address both prevailing discriminatory practices and the consequences of past discrimination;
- all goods and services, including those provided by Central and Local Government, should be accessible on equal terms to all citizens without exemption;
- positive action should be taken by State Bodies and Agencies to promote the equal rights of all groups;
- a clear definition of indirect discrimination, as that outlined in paragraph 2.8 above, should be included; this should go beyond mere terms and conditions regarding provision of goods and services and should also include policies and procedures; this will require definition of the extent of adverse impact; in any definition of lack of access, legislation should define this not merely in terms of direct refusal of admission but should also include indirect forms of lack of access;
- this legislation should not preclude different treatment which takes into account the special needs of a particular group; and
- economic cost should not be an *a priori* exemption as this would effectively legitimise discrimination against people with disabilities in many cases; continuance of discrimination on the grounds of “*undue hardship*” or “*excessive cost*” should only be considered in the context of a requirement to “*reasonable accommodation*” (see paragraph 3.18).

Specific Groups

Women

4.30 Equal status legislation will provide for the crucial extension of anti-discrimination legislation into non-employment spheres. This will be an important breakthrough for all women and, in particular, specific groups of women; for example elderly women, women in the home, lesbian women and women who have suffered abuse and violence.

4.31 Women generally dominate those spheres of society in which activity is not valued as a component of Gross National Product. Equal status legislation, by making discrimination unlawful in a wide range of social and economic areas, should provide a framework to support and externalise the variety of roles played by women in society and confer social recognition of the caring responsibilities, home-making and community activities of women as well as their formal economic roles.

- 4.32 Under equal status legislation, it should be unlawful to discriminate against any individual on the grounds of sex, marital or parental status or sexual orientation. The Forum **recommends** that this legislation should ensure that companies, organisations, or clubs seeking public funding or contracts should be required to show that they do not discriminate against women or minority groups.

People with Disabilities

4.33 The proposed equal status legislation will afford an opportunity to enshrine in law the rights of disabled people to goods and services which the rest of society take for granted. Again, the Commission on the Status of People with Disabilities which is to report in April of this year will focus on many areas which impact on the quality of life of, and degree of opportunities afforded to, people with disabilities. Notwithstanding the work and likely recommendations of the Commission, the Forum **recommends** that this proposed legislation should include the following:

- the right of all children with a disability to the most appropriate education;
- the right of all disabled people to appropriate services and, in particular, to information, equipment, personal assistance and respite care;
- the right of access within and around the built environment (note: in Denmark 33 per cent of all new hotel rooms must be wheelchair accessible);

- the right to appropriate housing, with a particular commitment to the building of all new homes to lifetime standards;
- the right to transport; transport companies must be required to make suitable modifications to existing stock, and when replacing or adding new stock, to purchase wheelchair accessible buses and train-carriages, particularly when public money is being used; and
- the right to equality of opportunity in all aspects of Irish life (as laid out in the United Nations Standard Rules on the Equalisation of Opportunities for People with Disabilities).

The Forum accepts, however, that regard must be had to an appropriate time-scale for the implementation of the above rights.

Travellers

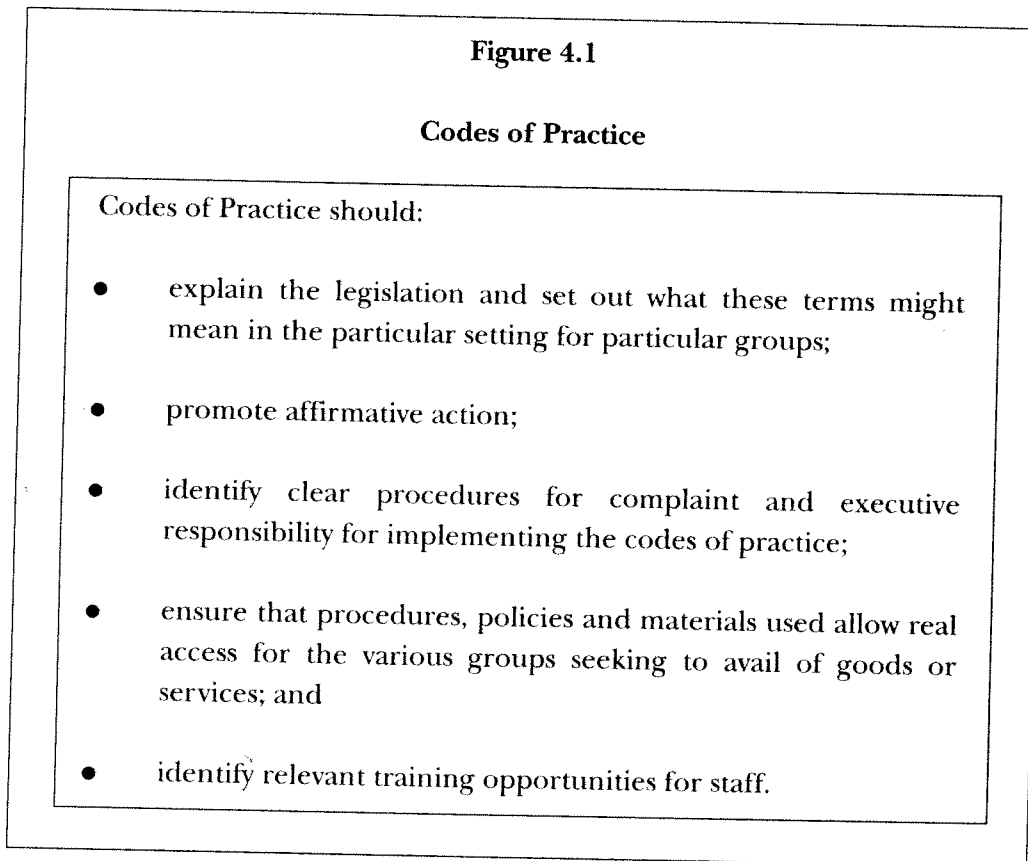
- 4.34 The proposed equal status legislation will provide an unique opportunity to validate and accept the ethnic identity of the Travellers and, in this context, the Forum **recommends** that Travellers should be identified as an ethnic group for the purposes of the legislation. This should involve recognition of the collective rights of Travellers as well as the rights of individual Travellers.
- 4.35 The Forum also **recommends** that this legislation should identify, as indirect discrimination, practices, policies or situations relevant to Travellers that do not acknowledge and respect their culture and traditions and that strategies should include Travellers and Traveller organisations in decision-making processes.
- 4.36 In a number of its previous Reports the Forum has recognised the unique and nomadic culture of the Travellers. Nomadism, as a feature of Traveller culture, should be recognised in policy-making in education, accommodation, health, welfare and economic development. The Forum **recommends** that active consultation and participation of Travellers and Traveller organisations should be a requirement for all policy-making and decisions affecting Travellers lives.
- 4.37 The Forum reiterates a previous **recommendation** which it made that elected representatives should exercise leadership and have a responsibility to effect change in the perception of Travellers in the community at large, including the legitimate accommodation rights of Travellers. In relation to accommodation, the Forum has previously **recommended** that the independent national body proposed by the Task Force on the Travelling Community should be established. This body should set annual targets with Local Authorities, support the achievement of these targets, and have sufficient powers to oblige Local Authorities to meet these targets.⁷

7 See Forum Report No. 6 on the *Quality Delivery of Social Services* (February 1995).

III Administrative Procedures

4.38 Regardless of the equality objective under discussion, the Forum strongly supports the adoption of equality proofing administrative procedures. The precise aims of such procedures will vary depending on the area of society (employment/non-employment), the target groups and the equality objective under discussion. These will require accompanying mechanisms to promote participation as well as education and media campaigns.

- 4.39 The Forum **recommends** that the use of codes of practice in employment and non-employment areas should be made commonplace (see Figure 4.1). These are important within both the public and private sectors and should have a basis in equality legislation and should be supported by the Equality Authority.



Public Sector

4.40 The Forum **recommends** the adoption of equality proofing arrangements and procedures in assessing the impact of Government policies and programmes and in particular that:

- equality proofing should be seen as an essential principle to be implemented by all Government Departments and State Agencies;

- a unified Government approach should be taken by all Departments, through the Strategic Management Initiative; this should include an equality impact assessment for all proposed legislation;
 - the design, implementation and outcomes of Government funded programmes should be scrutinised from an equality perspective;
 - the policies and actions of Government Departments and public organisations should be equality proofed; and
 - gender proofing of EU Structural Funds in Ireland should be broadened to an equality proofing that includes groups protected under equality legislation; data collection should be developed to allow for this broader equality proofing; this should be applied to all areas of Structural Fund investment and should be addressed in the Mid-Term Review.
- 4.41 The Forum also **recommends** that increased coherence should be pursued between equality approaches throughout Ireland, North and South. In particular, the approach of the *Policy Appraisal and Fair Treatment* procedure, or PAFT, which has been in force in Northern Ireland since early 1994, may be a useful potential tool to assist Government Departments in studying the effects of policies and services on a wide range of groups. Some aspects of the PAFT are presented in Figure 4.2 (overleaf).
- 4.42 The Forum **recommends** that the Department of Equality and Law Reform should develop strategies for the exchange of experience on a North/South basis and for increasing the coherence of approaches to equality proofing issues.
- 4.43 It is also **recommended** that, in developing administrative procedures for equality proofing policy-making and planning systems, the PAFT should be considered as a model to be followed. In relation to the groups to be considered in these procedures, the list should be the same as those protected under equality legislation. This should be combined with independent monitoring of progress and base-line data compilation. It should apply not only to Government policy and procedures but also to Local Authorities as well as all other statutory agencies and bodies.
- 4.44 The danger of subjectivity factors needs to be avoided and it is important, therefore, that all Government Departments and Agencies should introduce equality audits on the delivery of their policies and programmes. (An equality audit is a process with the purpose of establishing and/or assessing the effectiveness of targeted equality promoting measures over a set period of time.) A central consideration in such audits should be the impact, positive and negative, along a variety of parameters on various minority or disadvantaged

Figure 4.2

**Features of the Policy Appraisal and Fair Treatment (PAFT)
procedure in Northern Ireland**

PAFT – A Northern Ireland approach	PAFT Objectives
<p>The Policy Appraisal and Fair Treatment procedure circulated to all Government Departments in Northern Ireland ensures study of different effects and impacts of policies and services on:</p> <ul style="list-style-type: none"> – people of different religious beliefs or political opinions; – men and women; – married and unmarried people; – people with or without dependants; – people with or without a disability; – people of different ages; – people of differing sexual orientation; and – people of different ethnic groups. 	<p>The objectives of the PAFT are defined as:</p> <ul style="list-style-type: none"> – to promote a positive proactive approach to providing equality of opportunity and equity of treatment; – to ensure that there is no unlawful discrimination or unjustifiable inequality in any aspect of public administration; – to incorporate a fair treatment dimension into all policy-making and consideration of new provision for services; – to take account of fair treatment aspects when reviewing existing policies and delivery of services; and – to monitor, as appropriate, the impact of Government policies.

groups. Inconsistencies found in existing legislation and administrative practices in terms of equality proofing should be rectified. For this purpose, agreed guidelines setting out the criteria and the mechanisms for the equality audit should be drawn up and established at central Government level.

Private, Voluntary and Community Sectors

- 4.45 The Forum **recommends** that equality proofing administrative procedures, appropriate to size, should also be encouraged in the private as well as in the voluntary and community sectors. In this regard, codes of practice and guidelines should be set up to promote and encourage necessary changes. General education programmes for employers and employees should also be undertaken as the promotion of equality objectives requires that all groups should be actively involved.

- 4.46 Employer representative organisations already advise and encourage their members to monitor and assess using gender equality considerations. The Forum **recommends** that this approach should be taken into account in the forthcoming legislation so as to raise awareness and promote equal opportunities and participation for all other target groups.

Women

- 4.47 Discrimination on the basis of gender, economic disadvantage, disability and ethnic origin operates in different and sometimes in multiple and interactive ways. In applying equality proofing to specific target groups, e.g. women, people with disabilities and Travellers, it is important to ensure that administrative procedures monitor the impact of policies and practices both on and within target groups. For example, in assessing the gender impact of a specific training programme, it would be important to assess not just the representation of women on the programme, but also the representation of rural women, women from disadvantaged communities and women of specific ages.
- 4.48 The Forum **recommends**, therefore, that any equality proofing mechanism, including affirmative action, should ensure that different types of women are represented and that training and education measures should support this aim.

People with Disabilities

- 4.49 People with disabilities are not a homogenous group. Consequently there is no specific formula to be used when assessing administrative procedures. The Forum **recommends**, therefore, as a general principle that people with disabilities and their organisations should be consulted widely when any equality proofing mechanism, including positive action is taken.

Travellers

- 4.50 Administrative procedures to equality proof the impact of policies and procedures on the Traveller community will require new approaches to data collection. The Forum **recommends** that specific measures should be taken to collect data on Traveller participation in, and take-up of, policies and procedures which are subject to equality proofing measures.
- 4.51 These procedures should take account of issues of cultural difference and racism if they are to be of relevance to Travellers. They should also involve the appropriate participation of Traveller organisations. Likewise, they should take account of diversity within the Traveller community.

IV Equality Proofing Structures – Agencies and Institutions

4.52 There is a range of existing agencies to promote and monitor the application of existing equality legislation. Those dealing with employment legislation in the form of the Labour Relations Commission and the Labour Court will, it is understood, continue to operate and fulfil their present roles in relation to employment equality issues.

An Equality Authority

■ 4.53 The Forum **recommends** the establishment of an Equality Authority. This Authority should have separate employment and non-employment boards each with an agenda to look at developing issues in the achievement of equality and with its central role directed at developing and implementing equality proofing policies. Equality Officers should be appointed. The Authority would also need to have considerable autonomy if it is to operate as an independent body and this should be given statutory expression.

4.54 It is **recommended** that the tasks for this Authority should include:

- examining current and proposed legislation to ensure its consistency with equality objectives;
- preparing a framework for the implementation of equality proofing systems and performance indicators and publication of an annual report on progress achieved;
- investigating and reviewing, on its own initiative, patterns and trends in public and private sector practices and activities to determine if they reveal, or create conditions for, or result in discrimination or fail to promote equality and making recommendations to ensure the implementation of practices that comply with statutory provisions;
- preparing codes of practice, in both the public and private sectors;
- advising and guiding employers on ways to promote inclusion of target groups into the workforce;
- assisting and advising those who request support in taking a complaint under the legislation;
- financing and taking test cases;
- developing and overseeing the implementation of programmes of affirmative action;
- undertaking research on appropriate equality topics; and
- developing public education programmes.

4.55 In addition, the Forum **recommends** that the Authority should:

- have staff units dedicated to particular target groups (e.g. women, people with disabilities, Travellers) with the aim of making both the Authority and the legislation relevant and responsive to these groups' distinct perspectives;
- include effective representation and participation of target groups as a feature of its role and operation;
- be provided with adequate resources to operate effectively and be able to recruit staff directly; and
- establish consultative bodies to include members of the Authority, representatives of target groups and other relevant agencies to develop strategies to combat discrimination and promote equality.

Enforcement Procedures

- 4.56 While, for constitutional reasons, it would be essential to provide for a general right of action in the courts, the Forum **recommends** that an alternative means of redress should also be made available through the establishment of an Equality Tribunal. The value of an Equality Tribunal lies in the appointment of expert staff, the development of a concentrated body of expertise and the informality of setting in comparison with the courts. This Tribunal should also have the power to apply sanctions adequate to ensure compliance with statutory provisions.
- 4.57 Right of access to information has proved to be an important element in employment related anti-discrimination legislation. The Forum **recommends** that there be established an obligation to provide reasonable access to information to those investigating complaints in all cases of alleged discrimination.
- 4.58 An essential aspect of enforcement procedures is that they apply and can be availed of on an equal basis by every individual. The Forum **recommends**, therefore, that the operation of the Free Legal Aid Scheme should be extended to include cases under the proposed new and existing legislation.

Review of the Constitution

4.59 The Forum considers that the present review of the Constitution should reflect the new consensus on equality issues in our society which has emerged since the adoption of the current Constitution. The Forum **recommends** that any new Constitution should acknowledge:

- the emergence of structures for participatory democracy at national and local level and commit the State to create conditions for the active participation of citizens in decision-making that affects them;
- the position of women through deleting Articles 41.2.1 and 41.2.2;
- the position of people with disabilities through enshrining their collective rights to an accessible environment;
- the position of Travellers through protecting their collective rights which flow from their distinct culture and identity;
- a conceptual framework on equality that goes beyond “*equal before the law*” to include equality of participation and of outcome; and
- that the principles of justice and equality should inform all the institutions of our national life.

Conclusions

- 4.60 The Forum hopes that this Report will serve as an important addition to the debate on equality and equality proofing processes. In coming to its conclusions and making recommendations, the Forum is aware of forthcoming legislative changes and developments, in particular the legislation to extend employment equality and the proposed equal status legislation. As a result, special emphasis has been placed in this Section on the Forum’s recommendations regarding these legislative developments.
- 4.61 Finally, the Forum recognises that much further public debate is necessary to promote the full participation of all marginalised groups in our society and, given its concern and the importance which it attaches to these issues, the Forum intends to return again to equality and equality proofing issues in its future work. The proposal to include equality on the agenda for the EU Inter-Governmental Conference is fully supported by the Forum.

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Section V

**Cost
Implications**



Cost Implications

- 5.1 At the outset, it is important to note that this Report sets out an equality framework and outlines equality proofing processes based on commitments which have been already made by the Government and which to a great extent are endorsed by the Constitution, national legislative provisions and international Conventions to which this State is a Party.
- 5.2 Resourcing the key recommendations outlined in the Report will require significant investment in the short to medium term but this will reap social and economic benefits to society as a whole, both in the immediate and in the long-term. Such an investment requires visionary political decision-making and would reflect a genuine commitment by Government to the principles of social equity and inclusiveness.
- 5.3 The main cost areas where increased expenditure will be called for arise in relation to:
- establishment of a new Equality Authority; the Forum proposes that the present Employment Equality Agency (whose current Grant-in-Aid from the Exchequer amounts to £0.5 million) should be subsumed into this new Authority; given that this recommendation reinforces and reflects the proposed restructuring of the Employment Equality Agency which will be contained in the Equal Status Bill due to be published this year, no net additional expenditure will, therefore, arise in this respect;
 - establishment of an Equality Tribunal; however, the additional costs would not be significant and every effort should be made to contain these through staff redeployment and retraining;
 - costs of applying equality proofing policies and administrative procedures by Government Departments, Local Authorities and State Agencies should be seen as but an additional dimension to personnel/human resource management and policy-making; hence any extra costs should be minimal;
 - compliance costs for employers in both the public and private sectors are difficult to estimate; however, these costs should be seen in the light of the cost of not following equality procedures at the outset; in the longer-term, appointment on merit will reduce labour costs and improve efficiency; and
 - similar considerations apply in the case of costs for service providers.

5.4 In relation to compliance costs

- exemptions should only be allowed on the grounds of “*excessive cost*” or “*undue hardship*” where the requirement for “*reasonable accommodation*” has been taken into account; the design and implementation of specific measures should have regard to competitiveness factors, job maintenance and job creation, and the procedures involved should be kept as simple as possible so as to minimise bureaucratic red tape; and
- in keeping with the above, particular account should be taken of the needs and potential of SMEs.

5.5 Costs will arise in establishing rights for women, people with disabilities and Travellers in the employment and non-employment areas (Section IV of the Report). Rights for these target groups, which the rest of our society take for granted, have been recommended by the Second Commission on the Status of Women, the Commission on the Status of People with Disabilities and the Task Force on the Travelling Community and have already been or are being costed by these bodies. Such costs have also to be related to savings in areas such as Social Welfare, Health, etc.. Account has also to be taken of the cumulative direct and indirect costs involved of living indefinitely with the status quo and which cannot be defended on economic and social grounds.

- 5.6 Finally, the Forum **recommends** that the commitments made by the Government in relation to equality legislation and administrative procedures should be implemented without further delay. The Forum accepts that other recommendations contained in this Report should be phased in with realistic targets and time-scales, taking into account the resource implications for both the public and the private sectors as well as developments at EU level.

Annexes

Annex 1

Terms of Reference and Constitution of the Forum

1. The Terms of Reference of the National Economic and Social Forum are to develop economic and social policy initiatives, particularly initiatives to combat unemployment, and to contribute to the formation of a national consensus on social and economic matters.
The Forum will:-
 - (i) Have a specific focus on:-
 - job creation and obstacles to employment growth;
 - long-term unemployment;
 - disadvantage;
 - equality and social justice in Irish society; and
 - policies and proposals in relation to these issues;
 - (ii) Make practical proposals on measures to meet these challenges;
 - (iii) Examine and make recommendations on other economic and social issues;
 - (iv) Review and monitor the implementation of the Forum's proposals and if necessary make further recommendations; and
 - (v) Examine and make recommendations on matters referred to it by Government.
2. The Forum may consider matters on its own initiative or at the request of Government.
3. The Forum will work in two year cycles and will inform Government of its programme of work within three months of the beginning of each cycle.
4. In drawing up its work programme, the Forum will take account of the role and functions of other bodies in the social and economic area such as NESC and the CRC to avoid duplication.
5. The Forum may invite Ministers, Public Officials, Members of the Forum, and outside experts to make presentations and to assist the Forum in its work.
6. The Forum will publish and submit all its reports to Government, to the Houses of the Oireachtas and to other Government Departments and bodies as may be appropriate.
7. The Forum will be drawn from three broad strands. The first will represent the Government and the Oireachtas. The second will represent the traditional Social Partners. The third strand will be representative of groups traditionally outside the consultative process including women, the unemployed, the disadvantaged, people with a disability, youth, the elderly and environmental interests.
8. The Forum will have an independent Chairperson appointed by Government.
9. The term of office of members will be two years during which term members may nominate alternates. Casual vacancies will be filled by the nominating body or the Government as appropriate and members so appointed shall hold office until the expiry of the current term of office of all members. The size of the membership may be varied by the Government.
10. The Forum is under the aegis of the Office of the Tánaiste and is funded through a Grant-in-Aid from that Office. This Grant-in-Aid is part of the overall estimate for the Office of the Tánaiste.

Annex 2

Membership of the Forum

Independent Chairperson:	Maureen Gaffney
Government Representative:	Eithne Fitzgerald, T.D., Minister of State at the Office of the Tánaiste and at the Department of Enterprise and Employment
Chairpersons of the Standing Committees:	Dr. Eileen Drew Professor Donal Dineen
Oireachtas	
<i>Fianna Fáil:</i>	Martin Cullen, T.D. Chris Flood, T.D. Tom Kitt, T.D. Senator Willie Farrell Senator Marian McGennis Senator Paschal Mooney
<i>Fine Gael:</i>	Alan Dukes, T.D. Frances Fitzgerald, T.D. Senator Bill Cotter Senator Madeleine Taylor-Quinn
<i>Labour:</i>	Joe Costello, T.D. Senator Mary Kelly
<i>Progressive Democrats:</i>	Senator Cathy Honan
<i>Technical Group:</i>	Kathleen Lynch, T.D.
<i>Independent Senators:</i>	Senator Mary Henry
Social Partners	
<i>Trade Unions:</i>	Paula Carey Charlie Lennon Patricia O'Donovan Manus O'Riordan Tom Wall

Employer/Business Interests:

Mirette Corboy
David Croughan
Karin MacArthur
Declan Madden
Aebhric McGibney

*Agricultural/Farming
Organisations:*

Mary Coleman
Ciarán Dolan
John McGee
Monica Prendiville
Michael Slattery

“Third Strand”

Womens' Organisations:

Ursula Barry
Noreen Byrne
Cris Mulvey

Unemployed:

Mike Allen
Brendan Butler
Jane Foley

Disadvantaged:

Niall Crowley
Mary Daniel
Eithne McNulty

Youth:

Gearóid O'Maoilmhichíl

The Elderly:

Breda Dunlea

People with a Disability:

Roger Acton

Environmental Interests:

Jeanne Meldon

Academics:

Fr. Seán Healy
Monica McWilliams

Secretariat

Director:

Seán O'hÉigeartaigh

Secretaries of the Standing:

Committees:

Tony Smyth

Economist:

Greg Heylin

Executive/Secretarial:

Maura Conneely

Theresa Higgins

Liz Reason

Annex 3

Forum Publications

(i) Forum Reports

Report No.	Title	Date
1.	<i>Negotiations on a Successor Agreement to the PESP</i>	November 1993
2.	<i>National Development Plan 1994-1999 – the proposed Local Development Programme</i>	November 1993
3.	<i>Commission on Social Welfare – Outstanding Recommendations</i>	January 1994
4.	<i>Ending Long-term Unemployment</i>	June 1994
5.	<i>Income Maintenance Strategies</i>	July 1994
6.	<i>Quality Delivery of Social Services</i>	February 1995
7.	<i>Jobs Potential of the Services Sector</i>	April 1995
8.	<i>First Periodic Report on the Work of the Forum</i>	May 1995
9.	<i>Jobs Potential of Work Sharing</i>	January 1996

(ii) Forum Opinions

Opinion No. 1 (dated 7th March, 1995) on the *Interim Report of the Task Force on Long-term Unemployment*

Opinion No. 2 (dated 29th January, 1996) on the development to-date of the *National Anti-Poverty Strategy*