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Submission to the Committee on Housing, Local Government and Heritage on the General Scheme of the Electoral Reform Bill

Irish Human Rights and Equality

Commission

February 2021



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an Duine agus Comhionannas

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Introduction

The Irish Human Rights and Equality Commission ('the Commission') is both the national human rights institution and the national equality body for Ireland, established under the *Irish Human Rights and Equality Commission Act 2014* (the '2014 Act'). In accordance with its founding legislation, the Commission is mandated to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality and to examine any legislative proposal and report its views on any implications for human rights or, equality¹

The Commission welcomes the opportunity to provide the Committee on Housing, Local Government and Heritage with this submission on the *General Scheme of the Electoral Reform Bill* ('the General Scheme') which it hopes will assist the Committee in its pre-legislative scrutiny of the Bill.

Standards in political discourse during election and referendum campaigns

The Commission previously made a submission to the public consultation on a *Regulatory Impact Assessment on the Establishment of an Electoral Commission*.² In that submission, the Commission proposed that an electoral commission should promote the equal participation of all groups in the electoral process by developing and promoting standards for political discourse during election and referendum campaigns. The Commission is of the view that while political debates during elections and referendums should be free and open, they should not be characterized by political discourse that is of a discriminatory nature, or which amounts to hate speech.³ Political discourse that fosters a climate of hostility and intolerance can exclude targeted

¹ Section 10(2) of the Irish Human Rights and Equality Commission Act 2014.

² IHREC (2019) [Recommendations on the Establishment of an Electoral Commission](#).

³ The Committee of Ministers of the Council of Europe define hate speech as "all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin". See Council of Europe, [Recommendation No. R \(97\) 20 of the Committee of Ministers to Member States on 'Hate Speech', 1997](#).

groups from the public sphere. Such exclusion restricts the extent to which these groups can participate at all levels in the democratic process.⁴

The Commission proposed that the electoral commission be assigned an oversight role for electoral events, in addition to an independent policy development role that would enable it to drive further electoral reform, free from the perception of partisan motive.⁵ With this mandate, an electoral commission would be suitably placed to develop and promote guidance on standards in public discourse, in consultation with political parties and candidates. Existing codes of conduct,⁶ previous work on protocols for political parties⁷ and the approaches of other electoral commissions⁸ could inform future guidance.

The Commission therefore recommended that the Electoral Commission be mandated to address the use of discriminatory rhetoric and hate speech in political campaigning by developing and promoting standards in political discourse during elections and referendums. The United Nations Committee on the Elimination of Racial Discrimination has since adopted this view and recommended such a mandate be given to Ireland's Electoral Commission.⁹ The Commission notes that that this issue has not been addressed in the in the General Scheme.

⁴ Alexander Tsesis, '*Dignity and Speech: The Regulation of Hate Speech in a Democracy*', *Wake Forest Law Review*, Vol. 44, 2009, p.497-532. Available at

⁵ Joint Committee on Environment, *Report of the Joint Committee*, p.117 supra fn 2

⁶ The Standards in Public Office Commission has published [A Code of Conduct for Office Holders](#), [A Code of Conduct for TDs](#) and [A Code of Conduct for Senators](#), in accordance with section 10 (11) of the Standards in Public Office Act, 2001.

⁷ In 2001, the National Consultative Committee on Racism and Interculturalism (NCCRI) introduced an Anti-Racism Protocol for Political Parties and a Declaration of Intent for Candidates for Elections. The Protocol was signed by all the political parties in the State and was formally launched by the Minister for Justice, Equality and Law Reform in June 2001. Signatories to the Protocol undertook to ensure that: "election campaigns including campaigns for local elections, general elections and elections to the European Parliament are conducted in such a way that they do not incite hatred or prejudice on the grounds of 'race', colour, nationality or ethnic or national origins, religious belief and membership of the Traveller Community." See NCCRI, '[Towards the Development of a National Action Plan Against Racism In Ireland - A Discussion Document to Inform The Consultative Process](#)', 2002. The European Network Against Racism (ENAR) Ireland further developed and published the *NCCRI Anti-Racism Election Protocol* in 2011 for the General Elections and in 2014 for the Local and European Elections. ENAR invited all the Political Parties that had signed the original protocol to renew their commitment by signing the updated declaration as well as inviting other parties or groups established more recently to sign up as well. Ibid. p21

⁸ The Electoral Commission in the UK publishes guidance to candidates and their agents on the election campaign they are involved in. In one example of such guidance, related to hate speech, it states that: "Under the Public Order Act 1986, it is an offence to publish or distribute threatening, abusive or insulting material that is intended to stir up racial hatred or which is likely to stir up racial hatred." See Electoral Commission (UK), [Local elections in England and Wales: Guidance for candidates and agents, Part 4 of 6 – The campaign, 2018](#).

⁹ The Committee recommend that the State "Ensure that the mandate of the Electoral Commission, once established, includes provisions on the prohibition of racist hate speech in the context of elections". See Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland, 12 December 2019](#), at paragraph 20.

The Commission urges the Committee to consider this recommendation in its examination of the General Scheme.

Research, advisory and voter education function of the Electoral Commission

Head 77 currently states that ‘the Electoral Commission shall also develop means to increase participation in our political processes through voter education’.

The Commission believes that as part of its policy development role, the electoral commission should be mandated to promote more equal political participation through information, education and facilitation programmes. These should aim to engage groups facing barriers to participating in the Irish electoral process, such as; women, persons with disabilities, young people, migrants and people from ethnic minority backgrounds, including Travellers and Roma.

In acting on its policy development role to engage such groups, the electoral commission could lead the way in progressing current government policy objectives. The *National Traveller and Roma Integration Strategy 2017 – 2021* sets the objective that “Traveller and Roma people should be supported to participate in political processes at local and national levels”. The Department of Housing, Planning, Community and Local Government (DHPCLG) has been assigned the responsibility to “support the work of Traveller and Roma organisations on voter education and voter registration initiatives for the Traveller and Roma communities” to progress this objective.¹⁰ Further, one of the actions set out in *The Migrant Integration Strategy* is that “migrants will be supported and encouraged to register to vote and to exercise their franchise”, again with DHPCLG assigned responsibility to progress this action.¹¹ Under the *National Disability Inclusion Strategy 2017 – 2021*, DHPCLG is responsible for implementing the commitment to “progress the accessibility of voting and voter information, building on learning from National Disability Authority research and from experience and best practice”.¹² The *National Youth Strategy 2015 – 2020*, as a priority, set out to “Work to increase young people’s political engagement through the

¹⁰ Department of Justice and Equality, [National Traveller and Roma Inclusion Strategy 2017 – 2021](#), p.42

¹¹ Department of Justice and Equality, [The Migrant Integration Strategy](#), action 59, p.32.

¹² Department of Justice and Equality, [National Disability Inclusion Strategy 2017 – 2021](#), action 29, p.17.

promotion of voter education programmes and other initiatives".¹³ An electoral commission using a broad policy role to progress these objectives would also be in line with the work of electoral commissions in comparable jurisdictions such as the UK and New Zealand (see boxes 1 and 2).

Case study 1: The UK Electoral Commission's Elections for everyone report

Following the general election in the UK on 8 June 2017, the UK's Electoral Commission researched the experiences of persons with disabilities as voters.¹⁴ The Electoral Commission partnered with a wide range of disability organisations to produce and distribute a survey questionnaire, which was used to gather evidence about the specific barriers that persons with disabilities face as voters.¹⁵ On the basis of this research, the Electoral Commission recommended a range of measures that could be taken by Government, political parties and candidates, the people running elections, and carers and support workers to address these barriers.¹⁶ The recommendations included changing election forms to be more easily understood, amending legislation to give persons with disabilities more choice as to who can accompany them to vote, encouraging candidates to publish easy to read materials in good time, ensuring polling station staff are adequately ready to support people to vote, and raising awareness amongst care staff and support workers of persons with disabilities' right to vote.¹⁷

¹³ Department of Children and Youth Affairs, National Youth Strategy 2015 – 2020, action 5.5, p.33.

¹⁴ Electoral Commission (UK), [Elections for everyone: Experiences of people with disabilities at the 8 June 2017 UK Parliamentary general election, 2017](#), p.2.

¹⁵ Electoral Commission (UK), [Elections for everyone](#), p.3.

¹⁶ Electoral Commission (UK), [Elections for everyone](#), p.3-4.

¹⁷ Electoral Commission (UK), [Elections for everyone](#), p.4.

Case study 2: The New Zealand Electoral Commission's Voter and Non-voter Satisfaction Surveys

The Electoral Commission in New Zealand has been conducting research on voters and non-voters after every general election since 2002.¹⁸ The primary aims of this research, which is done by way of a survey questionnaire, is to understand the level of engagement with the voting process, uncover barriers to voting and how to address these barriers for different population groups, and measure voter satisfaction with the services that the Electoral Commission provides.¹⁹

The survey is designed to gather data on the electorate as a whole and on specific groups who have traditionally had lower levels of political participation, such as people of ethnic minority backgrounds, young people (aged 18-29), persons with disabilities, and non-voters. The Electoral Commission highlights the responses of these groups when reporting on survey results, and where possible compares results with those of previous surveys.²⁰ The survey questions address topics such as understanding of the registration and voting process, knowledge of where to vote, experiences of and satisfaction with voting on polling day (including polling facilities and staff, ballot papers and occurrences of issues when voting), and non-voters reasons for not voting.²¹ The Electoral Commission uses the results of these surveys to develop evidence-based action plans that promote the equal participation of all groups in the electoral process, such as its current disability access strategy *Access 2020*.²²

The Commission recommends that Head 77 be amended to reflect the Commission's recommendation in relation to engaging groups facing barriers to participating in the Irish electoral process.

¹⁸ Electoral Commission (New Zealand), [Voter and Non-Voter Surveys](#)

¹⁹ Electoral Commission (New Zealand), [Voter and Non-Voter Satisfaction Survey 2017](#)

²⁰ Electoral Commission (New Zealand), [Report into the 2017 General Election, 2018](#), p.5; p.8.

²¹ Electoral Commission (New Zealand), [Report into the 2017 General Election](#).

²² Electoral Commission (New Zealand), [Access 2020: Electoral Commission Disability Strategy](#).

Reform of the Electoral Acts

The Commission notes that the General Scheme proposes to amend the *Electoral Act 1992* and the *Electoral Act 1997*. The Commission has previously made recommendations to amend both acts.

The Commission notes that the *Disability (Miscellaneous Provisions) Bill* proposed to amend sections 28, 41 and 94 of the 1992 Act. Given that this Bill lapsed with the collapse of the previous Dáil, the Commission is of the view that the Electoral Reform Bill represents an opportunity to bring about these timely reforms to ensure accessibility of the electoral process for persons with disabilities.²³

In particular, the Commission notes that the functions of Returning Officers include requisitioning buildings for use as polling stations and recruiting personnel to take the poll.²⁴ The Commission has been advised by its Disability Advisory Committee (DAC)²⁵ of concerns regarding the accessibility of polling stations and the current arrangement whereby if a polling station is inaccessible for a person with a disability, the obligation falls on that person to apply to their Returning Officer for permission to vote at an alternative polling station which is accessible to them.²⁶ *The Disability (Miscellaneous Provisions) Bill 2016* proposed to amend the Electoral Acts so that all polling stations must be accessible to wheelchair users.²⁷ However, the concerns of the Commission's DAC address accessibility issues for all persons with disabilities.

In raising these concerns, the Commission draws attention to the *Public Sector Equality and Human Rights Duty* provided for in section 42 of the *Irish Human Rights and Equality Commission Act 2014*.²⁸ Under this provision, all public bodies in Ireland are obliged to promote equality, prevent discrimination and protect the human rights of their customers, service users and everyone affected by their policies and plans. The

²³ See further IHREC (2016) [Observations on Disability \(Miscellaneous Provisions\) Bill](#).

²⁴ Department of Environment, Community and Local Government, [Consultation Paper on the Establishment of an Electoral Commission in Ireland](#), 2015, p.20. Available at: For elections to Dáil Éireann and the European Parliament, Returning Officers are either a County Registrar or a City or County Sheriff who is a statutory officer of the Courts Service; local authority officials are Returning Officers for elections to local authorities. Ibid, p.20.

²⁵ The Commission's Disability Advisory Committee was formally appointed on 28 January 2019 to advise the Commission on its statutory function of monitoring Ireland's implementation of the UNCRPD. See Irish Human Rights and Equality Commission, [New Departure on Rights of Persons with Disabilities as Formal Committee Begins Work in Monitoring Ireland's Obligations](#), 28 January 2019. .

²⁶ This arrangement arises from s.100 of the [Electoral Act 1992](#).

²⁷ Section 2, [Disability \(Miscellaneous Provisions\) Bill 2016](#).

²⁸ S.43, [Irish Human Rights and Equality Commission Act, 2014](#).

Commission is of the view that in order for the requirements of this duty to be met in the running of elections, actions need to be taken to ensure that all polling stations are accessible to persons with disabilities.

It is proposed that an electoral commission develop performance indicators with which to measure its progression of high level objectives.²⁹ Relevant indicators could be developed to monitor the performance of Returning Officers as they seek to meet the requirements of the *Public Sector Equality and Human Rights Duty*. These indicators should capture the extent to which the services provided by Returning Officers are compliant with the *Equal Status Acts 2000-2018*.³⁰

In the course of addressing this issue the electoral commission should consult persons with disabilities.

The Commission recommends that the Bill be amended to incorporate proposed reforms to the Electoral Act to ensure accessibility of the electoral process for people with disabilities.

The Commission recommends that the electoral commission should be mandated to set standards for the use of polling stations that are compliant with the constitutional right to vote and the obligations of all public bodies under section 42 of the *Irish Human Rights and Equality Commission Act 2014*. Persons with disabilities should participate in the setting of such standards, the implementation of which the electoral commission could monitor by developing appropriate performance indicators.

The Commission previously called for a review of the Electoral Acts with a view to considering a clearer linkage of the restrictions placed on 'third party' activity and activity for 'political purposes' with electoral matters.³¹ The Commission notes that since the amendment to the Electoral Act 1997 in 2001, it has been the practice of

²⁹ Department of Housing, Planning, Community and Local Government, Regulatory Impact Analysis, p.15

³⁰ The Equal Status Acts 2000-2015 prohibit discrimination in the provision of goods and services, accommodation and education. They cover the nine grounds of gender, marital status, family status, age disability, sexual orientation, race, religion, and membership of the Traveller community. For more information, see <https://www.ihrec.ie/guides-and-tools/human-rights-and-equality-in-the-provision-of-good-and-services/what-does-the-law-say/equal-status-acts/>.

³¹ IHREC (2019) *Recommendations on the Establishment of an Electoral Commission*, page 8. See also IHREC (2019) *Policy Statement on the Electoral Acts and Civil Society Space in Ireland*.

many civil society organisations to register as 'third parties' under the Electoral Act's provisions in the context of receiving funding for 'political purposes' during referendum campaigns and other electoral activity. However, the Commission understands that it has not been the practice or the expectation that such civil society organisations register as a third party due to the carrying out of ordinary functions outside the context of elections and referenda.

It appears that the meaning of 'political purposes' under the Electoral Act however, lends itself to a much wider potential interpretation. In this regard, concerns have been raised about the wide scope of the definition of 'political purposes', and the extent to which it could, in principle, apply to a wider range of community organisations, non-governmental organisations, representative bodies and interest groups.³²

The Commission is of the view that the work of civil society organisations in Ireland, and their sources of funding should continue to be clearly regulated and subject to high standards of scrutiny, transparency and accountability. However, such regulatory measures should avoid placing undue restrictions on wider civil society activity engaging in legitimate advocacy aiming to influence political decision making and policy making, including with regard to human rights and equality issues. The General Scheme of the Bill does not address this concern.

The Commission recommends consideration of whether further reforms of the Electoral Acts are required in order to avoid placing undue restrictions on civil society.

³²Ibid.



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