

REPORTS OF THE REFERENDUM COMMISSION

ON THE REFERENDUMS ON THE

TWENTY-FIRST AMENDMENT OF
THE CONSTITUTION (ABOLITION
OF THE DEATH PENALTY)

TWENTY-THIRD AMENDMENT
OF THE CONSTITUTION
(ACCEPTANCE OF
THE JURISDICTION
OF THE INTERNATIONAL
CRIMINAL COURT)

TWENTY-FOURTH AMENDMENT
OF THE CONSTITUTION
(THE TREATY OF NICE)

FOREWORD

Pursuant to Section 14(1) of the Referendum Act, 1998 I hereby present to the Minister for the Environment and Local Government the report of the Referendum Commissions in relation to the performance of their functions in respect of the following:

The referendum on the Twenty-first Amendment of the Constitution (No. 2) Bill, 2001 (Abolition of the Death Penalty);

The referendum on the Twenty-third Amendment of the Constitution Bill, 2001 (Acceptance of the Jurisdiction of the International Criminal Court);

The referendum on the Twenty-fourth Amendment of the Constitution Bill, 2001 (The Treaty of Nice).

On the 17th day of April 2001 the Minister set up the Referendum Commissions, by means of three separate Establishment Orders, to carry out the provisions applicable to them under the Referendum Act, 1998 in respect of the aforementioned referendums.

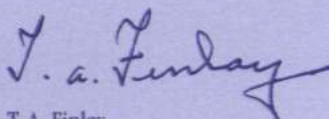
Following my nomination by the Chief Justice in each case, I became Chairman of all these three Commissions, the other four members being the specified *ex officio* appointees.

The voting on the three referendums was held on the same day and, accordingly, there was a considerable common element in the work of all three Commissions in the carrying out of their functions. Some difficulties experienced, particularly those caused by time constraints, were varied in their extent as between the separate referendums but to a greater or lesser extent

they applied to the work of the three Commissions.

Having regard to these considerations each of the Commissions has decided that there would be unjustifiable duplication if it were to submit a separate report. They accordingly decided instead to deal with their work on each referendum in this report and to base their analysis, conclusions and in particular their recommendations on their experience with regard to all three referendums. For simplicity the term "the Commission" is used rather than "the Commissions".

The Commission feels strongly that the time constraints imposed severely affected the capacity of the Commission to fulfil its responsibilities which was exacerbated by the fact that three referendums (four originally) were taking place concurrently. The difficulties experienced by the Commission in the area of procurement, promotion and circulation of information material are dealt with in the report and the Commission in making its report, has made a number of recommendations which would obviate such difficulties in the future.



T. A. Finlay,
Chairman,
Referendum Commission.
December, 2001.

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PART 1 *Establishment and Funding of the* **BACKGROUND** *Referendum Commissions*

On each occasion that a referendum falls to be held the establishment of a Referendum Commission is at the discretion of the Minister for the Environment and Local Government. A Commission is created by means of an Establishment Order issued by the Minister in respect of the proposed referendum. Under the Referendum Act, 1998 the Chairman of the Commission shall be a former judge of the Supreme Court or the High Court or a judge of the High Court. The other members of the Commission shall be the Clerk of the Dáil, the Clerk of the Seanad, the Ombudsman and the Comptroller and Auditor General.

Referendum Commissions have previously been established in connection with the referendums on the Amsterdam Treaty and the Northern Ireland Agreements which were held on 22 May, 1998 and the referendum on the Constitutional Recognition for Local Government which was held on 11 June, 1999.

On 17 April, 2001 the Minister issued Establishment Orders in respect of the Twenty-first Amendment of the Constitution - Abolition of the Death Penalty, the Twenty-second Amendment of the Constitution - Oversight of Judicial Conduct, the Twenty-third Amendment of the Constitution - Acceptance of the Jurisdiction of the International Criminal Court and the Twenty-fourth Amendment of the Constitution - Treaty of Nice. Mr Justice Tom Finlay, former Chief Justice of the Supreme Court, accepted the nomination of the Chief Justice to act as Chairman of the Referendum Commissions established by the Minister. Subsequently, the Twenty-second amendment proposal did not proceed.

The Government approved the allocation of £1 million (€1.27 million) each in respect of the information campaigns on the Death Penalty, Judicial Conduct and the International Criminal Court. A further sum of £2.5 million (€3.17 million) was allocated in respect of the Treaty of Nice information campaign. The resources allocated to the Commission were sufficient to enable it to undertake its various tasks. A breakdown of the expenditure incurred in the case of each of the referendum campaigns which proceeded is provided in Appendices 7, 8 and 9 of this report. Apart from some very minor expenditure, the sum allocated for the purposes of the referendum on Judicial Oversight was refunded.

The Secretariat of the Commission was drawn from the Office of the Ombudsman and was based there and work began immediately in staffing and equipping an office and planning the information campaigns.

At a press conference held on Monday 14th May, 2001 the Commission announced details of its information campaigns and also outlined the constraints within which the Commission had to operate due to the time available.

PART 2
REPORT ON THE REFERENDUM
COMMISSION'S CAMPAIGNS

CHAPTER 1

*Publication and Distribution of
 Information Material*

Three Proposals, Three Decisions

In line with its statutory brief to explain the subject matter of the referendums the Referendum Commission produced an explanatory booklet entitled *Three Proposals, Three Decisions* on the three referendums, which were due to be held on 7 June, 2001.

The booklet explained the role of the Referendum Commission, set out a brief explanation of the three referendum proposals and contained information in relation to further sources of information on each of the three proposals, including the Referendum Commission's website address. A copy of the booklet was distributed by An Post, in the form of an addressed self mailer, to 1.3 million households throughout the country. Delivery commenced on 21 May, 2001 which was the earliest possible date having regard to the time available for the preparation and printing of the document. The Commission also produced 25,000 copies of the exact same information, in English and in Irish, in a separate booklet form in advance of the nation-wide deliveries and made copies available in response to individual requests. These issued from 14th May, 2001 onwards. Copies of the booklet were distributed to County Libraries, all local authorities, Divisional Garda Stations and Citizens Information Centres as well as to a wide range of individuals and other organisations. Copies were also sent directly to all members of the Houses of the Oireachtas and to members of the media. The Irish language edition was made available on

request as well as being distributed to a range of individuals and organisations. The booklet was also made available, through the National Council for the Blind, in Braille and on audio tape for persons with a sight disability. Copies of both the Irish and English versions of the booklet were also posted on the Commission's website in both text and portable document format versions. The text was also made available on the NSSB computerised information database. Members of the Defence Forces and Gardaí serving abroad also received deliveries of the booklet.

More Detailed Information Booklets

In addition to the *Three Proposals, Three Decisions* booklet the Commission also produced more detailed booklets relating to each of the three referendum proposals. Separate Irish and English versions were produced for each of the referendums. These booklets sought to explain, in a straightforward fashion, the main elements of the three referendum proposals. Having regard to the severe time constraints under which the Commission was operating, it was not possible to distribute these booklets to individual households. However, copies were distributed to a wide range of public libraries and Post Offices, all Divisional Garda Stations, all local authorities, all Citizens Information Centres and to a wide range of individuals and organisations. Copies were also sent to each member of the Houses of the Oireachtas and members of the media. Members of the Defence Forces and Gardaí serving abroad also received deliveries of the booklets. Copies of the booklets were also made available, through the National Council for the Blind, in Braille and on audio tape for persons with a sight disability. Irish language versions of the booklets were made available to

a range of individuals and Irish language organisations as well as through a range of public outlets in Gaeltacht areas. Copies of both the Irish and English versions of the booklet were also posted on the Commission's website in both text and portable document format versions.

The Commission printed and distributed a total of 190,500 of the more detailed information booklets during the period of the information campaigns. Taking into account the nation-wide delivery and the other information booklets, the Commission produced and distributed over 1.5 million items of printed matter during the course of the information campaigns.

CHAPTER 2

Arguments For and Against the Referendum Proposals

Section 8 of the Referendum Act, 1998 requires that, as soon as may be after its establishment, the Commission shall publish a notice in two or more national newspapers seeking submissions and specifying the time limit and procedures for such submissions.

In accordance with the statutory requirements, the Commission placed advertisements seeking submissions in the national and regional press. An Irish language advertisement was also placed in the Irish language press. These advertisements began to appear from 11 May, 2001 onwards and the specified closing date was 22 May, 2001. The Commission received nineteen submissions in favour of the Treaty of Nice proposals and forty-nine against. In relation to the Death Penalty fourteen submissions in favour of the amendment and twenty-seven

submissions against were received. In the case of the International Criminal Court referendum six submissions in favour and fourteen against were received.

The Commission decided that, for an argument to be considered valid and admissible, it was necessary that it should be rational and that it should also be relevant to the issues involved. If it was based on any particular set of facts, it was necessary that those facts should not be demonstrably false. If an argument passed all these three tests then it was admissible. It was not part of the function of the Commission to determine disputed issues of fact or to make assessments of the strength or weakness of arguments which were admissible having regard to these criteria.

Having regard to the submissions received, the Commission published advertisements in the national, regional and Irish language press from 28th May onwards setting out the arguments for and against the proposals in relation to each of the three referendums. The arguments were made available on the Commission's website from 25 May, 2001. Some of the Commission's radio and television broadcasts (see Chapter 3 of this Part) also reflected the arguments for and against the referendum proposals. In view of the severe time constraints under which the Commission was operating, it did not prove possible to prepare booklets containing the arguments for and against for nation-wide distribution.

CHAPTER 3

Radio and Television Campaigns

The Commission was not in a position to engage communications consultants (see

Chapter 1 of Part 3) to oversee the planning and implementation of its various information campaigns. The Commission decided, as a matter of urgency, to engage a person with the necessary experience and expertise to fill the post of Co-ordinator of Radio and Television Broadcasts on behalf of the Commission. Following a selection process Mr Tim Collins of Drury Communications was appointed to the position.

Following a further selection process, Irish International Group was chosen as the advertising company to plan and produce the Commission's radio and television advertisements and broadcasts.

Three phases of television and radio advertising were produced. Phase one consisted of an introductory advertisement announcing the three referendums and the date. Phase two consisted of three advertisements, one relating to each proposal. The purpose of these advertisements was to urge people to inform themselves about the proposals and point to sources of information. Phase three consisted of one advertisement that urged people to use their vote.

In addition to the Commission's advertising, a series of special Referendum Commission broadcasts on radio and television was produced which dealt in more detail with the arguments for and against each proposal.

The television and radio advertisements and the broadcasts were produced in a manner that allowed a degree of flexibility in terms of scripting up to a late stage of production. The technique used was devised to allow all filming to happen over a three-day period with voice-overs added as scripts were drafted and cleared by the Commission. On the weekend of the 19th and 20th of May approximately fifty to sixty people, chosen to

give a balance of gender, age and ethnic origin, were filmed in black and white. This created a bank of images of people which was then edited and mixed with suitable voice-overs recorded during the campaign.

This technique was employed for both the television advertisements and the broadcasts. The television broadcasts were differentiated from the advertisements through the use of a blue tone, rather than black and white, and were longer.

The role of the advertising was to raise awareness that the three referendums were being held on a particular date, to inform people about the availability of information (broadcasts, print material, newspaper advertisements, website etc.) and to encourage people to vote.

The broadcasts were designed primarily as a vehicle to communicate the arguments for and against the proposals. They were two minutes long. Two television broadcasts were produced for the Treaty of Nice and one each for the International Criminal Court and the Death Penalty referendums. Four radio broadcasts were produced for the Treaty of Nice and one each for the International Criminal Court and Death Penalty proposals.

The Commission's television campaigns were transmitted on RTÉ, TV3, Irish language transmissions on TG4, and Sky One, Sky News as beamed into Ireland. Its radio transmissions went out on national stations, local stations and community radio.

The radio and television campaigns commenced on May 23 with repeated transmissions throughout the various phases of the campaign up to June 7.

CHAPTER 4

Referendum Commission Website and Other Advertising

Because of the time and procurement constraints (see Chapters 1 and 2 of Part 3) under which the Commission was required to perform its functions on this occasion, it was not possible to establish an Information Line or a dedicated Press Office to assist in the dissemination of information in relation to the three referendums.

Following a competitive tender process, the Commission selected a company to create the Commission's own website, in both Irish and English versions, and an e-mail address to act as a conduit for information in relation to the referendums. Persons making enquiries in relation to the referendum proposals were, where appropriate, directed to the website. However, where callers did not have access to the Internet, efforts were made to answer those queries or to direct callers to the appropriate information source.

The Commission's website went live on 22 May, 2001. All the Commission's publications were posted on the site as were the Commission's advertisements inviting submissions and the text of the Commission's newspaper advertisements setting out the arguments for and against the referendum proposals. The texts of the Rome Statute setting up the International Criminal Court and of the Treaty of Nice were also made available on the Commission's website.

In addition to details relating specifically to each of the three referendums, the Commission's website also contained the text of the Commission's press releases together with a Frequently Asked Questions

section which set out the answers to a number of the most frequently made queries to the Commission's Secretariat. Links were created to the European Union on line, the United Nations, the National Platform and the European Movement websites.

Following previous Referendum Commission campaigns, the Commission's website was withdrawn from service. The Commission decided on this occasion however that it should establish a permanent presence on the world wide web. It is intended that the Commission's site will, in the longer term, act as a point of reference for members of the public, the media and academics in relation to current and previous referendum campaigns. It is anticipated that the main focus of the site will be the referendum(s) of the day and that an archive section will allow for examination of documentation relating to previous campaigns.

The website received 26,283 visits during the course of the Commission's campaign in relation to the referendums held on 7 June, 2001.

The Commission ran an extensive outdoor poster campaign during the two weeks leading up to the referendums. Two versions of a poster were produced for 6 sheet sites i.e. for bus shelters etc. The posters were placed at urban locations throughout the country. The posters were designed to heighten awareness of the referendum date, to encourage citizens to seek more detailed information on the proposals and to advertise the Commission's website address.

The Commission also placed advertisements in match programmes for a number of major sporting events in the run up to the referendums.

The Commission also placed Internet advertisements by the use of banners on more frequently accessed sites such as Ireland.com. The banners linked in to the Commission's website but also had embedded information that could be instantly accessed.

In addition, the Commission assisted in the production of a special sign language video for the Deaf Society to enable members of the deaf community to have access to the Commission's information material.

CHAPTER 5

Approval of Bodies for the Purposes of the Referendums

Section 7 of the Referendum Act, 1998 makes provision for a body to apply to the Referendum Commission to seek a declaration that it is an approved body for the purposes of a referendum. Approved bodies are entitled to appoint agents to attend at the issue and opening of postal voters ballot papers, at polling stations and at the counting of votes. Members of both Houses of the Oireachtas, who already had the right to appoint such agents, continue to have this right under the Act.

In order to become an approved body, an applicant must fulfil conditions and follow procedures set out in the Referendum Act, 1998.

These conditions and procedures are:

- » the body must be a body corporate or unincorporated body which, or a branch of which, is established in the State, governed by a constitution, a memorandum of association or other such document or

other written rules and having a membership of not less than 300;

- » the body must have an interest in the referendum and have a name which is not identical to, or does not closely resemble, the name of a political party registered in the Register of Political Parties. A political party for the time being registered in the Register of Political Parties is deemed to be a body for the purposes of the Act and need not establish compliance with the above conditions;

- » applications must be made on the official form, which is available from the Commission and must be submitted within such time as the Commission may specify.

The Referendum Commission may refuse to make a declaration if a body does not fulfil the relevant conditions, or fails to provide the Commission with reasonable information or documentation which the Commission considers necessary to determine the application.

The Commission may also revoke a declaration made by it in relation to a body where it is satisfied that false information has been furnished to it. The Act also provides, under section 9, that it will be an offence to knowingly provide false information in relation to an application.

Commencing on 9 May, 2001 advertisements were placed in the national press seeking applications from bodies seeking approval for each of the three referendums. The specified closing date was 18 May, 2001. An Irish language advertisement was placed in Foinse. Following the application process, the Commission approved ten bodies in respect of the referendum on the

Abolition of the Death Penalty, ten bodies in respect of the referendum on the International Criminal Court and twelve bodies in respect of the referendum on the Treaty of Nice. These bodies are listed in Appendices 4, 5 and 6 respectively.

PART 3
SOME ISSUES OF CONCERN
AND RECOMMENDATIONS

CHAPTER 1

*The Referendum Commission and
 Public Procurement Matters*

At the outset, the Commission was conscious of the need to engage communications consultants as quickly as possible to provide the advice and support required to run four separate intensive information campaigns in a short space of time. Following the 1998 referendums on the Amsterdam Treaty and the Northern Ireland Agreements, the Commission had received some criticism from its auditors for not complying fully with certain tendering and other procedures and these matters were subsequently highlighted by the Public Accounts Committee. One point raised by the auditors was that the Commission had not sought the guidance of the Department of Finance before engaging communications consultants without publishing the tender in the Official Journal of the European Union. The Commission had pointed out at the time that the difficulties arose due to the impossible time scales imposed on the Commission in carrying out its tasks. In the circumstances, the Commission wrote to the Department of Finance on 20 April, 2001 outlining the huge logistical challenge it faced and pointing out that it would not be possible to engage in an EU wide tendering process as the timescales for such a process, which would require that at least 25 days notice be given to potential tenderers under the accelerated procedure, would make it impractical. The Commission expressed the view that the circumstances were such that they fell within the derogation set out in Article 11(3)(d) of the EU Procurement Services Directive 92/50 and that in such circumstances an EU wide tendering procedure need not arise.

On 23 April, 2001 the Department of Finance responded to the Commission and indicated that it was not a function of the Department to grant a derogation from the EU tendering requirements and that compliance with the EU Directives was a matter for the contracting parties concerned in consultation with their legal advisors. On 24 April, 2001 the Commission sought the urgent guidance of its legal advisors on the matter. In undertaking an analysis of the matter the Commission's legal advisors visited Brussels and consulted with officials from the European Commission. On 30th April the Referendum Commission received advice to the effect that, while ultimately it would be a matter for the courts to determine in an individual case if a contracting party was in breach of the relevant Directive, it appeared that the circumstances were such that the Referendum Commission might not be justified in invoking the derogation. The derogation applies in a case of urgency caused by unforeseen events outside the control of the contracting party. Ireland has a duty to comply with the Directive and in the event of a challenge it would have to defend its position. The timescale for the referendums was being dictated by the Government and as such the consequences of the short timescale should have been foreseeable by the Government in the context of the Directive.

At this point the Commission was faced with a serious difficulty in terms of planning its campaign strategies which up to that point were being formulated on the basis that the advice and support of communications consultants would be available to the Commission. Indeed, much work had already been done in drawing up tendering documents and contracts for a local tendering process in order to engage consultants. The Commission decided to inform the

Government on 30 April, 2001 about the dilemma with which it was now faced in the light of the legal advice received and the danger that the Commission might not be able to fulfil its remit. The Commission asked the Government if it wished to consider authorising the Commission to proceed with a tendering process pending official contact with the European Commission on the question of the EU directive and referendums generally. The Government subsequently advised that the Referendum Commission might consider arranging the secondment of staff from Government Departments, with the assistance of the Department of Finance, to assist in the carrying out of its functions. The difficulty this posed for the Commission was the amount of time which would be required to identify and select available staff as well as getting agreement to the release of staff with the appropriate communications expertise.

On 4 May, 2001 the Commission met to review its position in the light of developments to date. On the previous day the Taoiseach had informed the Dáil that, since there was such fundamental disagreement among the political parties about certain aspects of the Judicial Conduct proposals, it had been decided not to proceed with the proposed Twenty-second amendment of the Constitution Bill.

At its meeting the Commission agreed that all preparatory work on the Twenty-second amendment would cease and no further expenditure could be incurred from the allocation of £1 million authorised for that particular campaign. The Commission decided that it would seek agreement to the secondment of a person from within the public service to fill the post of Press Officer for the Commission. The Commission also decided to put immediate plans in place to

recruit a specialist from the private sector to fill the post of Co-ordinator of Radio and Television Broadcasts on behalf of the Commission (see Chapter 3 of Part 2). Subsequent efforts to get agreement to the secondment of a Press Officer were not successful.

The circumstances which had arisen forced the Commission to adapt and curtail its plans in the following respects:

- » The Commission's Secretariat would have to carry out all press liaison work;
- » The Commission's Secretariat would have to carry out the full range of administrative tasks, including selection and management of all third party service providers;
- » The Commission would not be in a position to carry out any monitoring of public interest in and awareness of the referendum proposals;
- » The Commission would not be in a position to set up dedicated help lines;
- » The Commission would not be in a position to carry out any detailed monitoring of media coverage of the referendums;
- » The Commission would not be able to consider arranging any public meetings or other media events due to the administrative and time constraints imposed on it.

Subsequent to the Commission's decision to follow its revised strategy, it was informed that the Office of the Attorney General had provided legal advice to the effect that in its view the Referendum Commission could validly invoke the terms of the "urgency" provision set out in Article 11(3)(d) of the

EU Procurement Services Directive 92/50 to justify a decision not to tender through the Official Journal of the European Union. The basis for the advice was that the activities of the Commission could be deemed to fall within the terms of Article 45 (ex-55) of the EC Treaty. This Article would provide for an exemption from the Directive in the case of activities connected with the exercise of official authority. The advice cited a number of cases to support its conclusions.

In view of the conflicting legal advice the Commission has included in its recommendations (see Chapter 3 of this Part) a request that this matter be clarified at official level, perhaps in consultation with the European Commission, so that the Referendum Commission will in future be able to operate without the legal uncertainty that prevails at present in relation to this issue.

CHAPTER 2

The Referendum Commission and Time Constraints

The Referendum Commission has to date presented two reports to the Minister for the Environment and Local Government. The first report (November, 1998) related to the referendums on the Amsterdam Treaty and the Northern Ireland Agreements and the second report (November, 1999) related to the referendum on Constitutional Recognition for Local Government. The two reports, in particular the first one, highlighted the severe difficulties posed for the Commission in seeking to fulfil its statutory remit in a full and effective manner within unrealistic and unreasonable time frames imposed on it from the outset by the Government. The Commission's first report

made specific recommendations on how these might be addressed but unfortunately they have been ignored. On this occasion the Commission was asked to run three separate information campaigns, originally four, in a seven week period. One of the campaigns related to the particularly complex Treaty of Nice. It is worth recalling that the public interest and awareness research carried out by the Referendum Commission, during and after the Amsterdam Treaty referendum, highlighted a lack of interest in and understanding of the subject matter. Indeed, over the years other research, including research carried out in the aftermath of the Treaty of Nice campaign, indicates that this pattern of disinterest and lack of any in-depth understanding of EU matters remains consistently high among the Irish electorate.

The decision to hold three referendums on the same day was a significant constraining factor for the Commission. Instead of focusing all its energies on one proposal, the effort was dispersed. One obvious outcome was having to divide the limited time available for the television broadcasts between the three proposals (although the time available was weighted in favour of the Nice Treaty debate). The complexity of the issues involved in the Nice Treaty, coupled with the time pressures involved, also militated against any effort to engage the wider public.

The Referendum Commission is a body that has no on-going legal existence but is resurrected shortly before a referendum is held and is then expected to run comprehensive information campaigns, often on complex matters about which there is little public understanding. The point has been made before, but it bears repeating, that this poses extreme difficulties for the Commission. At the outset, offices have to

be equipped and staffed with personnel, most with no prior experience of such work. Payment and accounting procedures also have to be put in place. The subject matter of the referendum proposals has to be researched and information material produced. The information material cannot be finally approved by the Commission until the text of the Bill has been approved by the Houses of the Oireachtas and the referendum date is decided.

On this occasion the Twenty-first Amendment of the Constitution (No. 2) Bill was approved by the Houses of the Oireachtas on 1 May, 2001 the Twenty-third Amendment of the Constitution Bill was approved on 2 May, 2001 and the Twenty-fourth Amendment of the Constitution Bill was approved on 4 May, 2001. The date for the referendums was not announced until 8 May, 2001. Consultants, advisors and other third party service providers have to be engaged. Once information material has been approved by the Commission the publications have to be designed and printed and contracts for such work have to go through the appropriate tendering procedures. All information material has to be translated and produced in Irish. Distribution networks have to be put in place and vast amounts of information material have to be disseminated in time for the electorate to absorb the information in advance of the referendum. The public have to be allowed time to make submissions on the referendum proposals and the Commission has to analyse the submissions and produce and publicise the arguments for and the against the proposals. In addition press advertising, website development, television and radio advertising have to be planned, approved and put in place.

The work imposes huge administrative pressures and a long series of tight deadlines. Operational pressures allow no time or space for the development of innovative strategies to communicate the information material to the public or to target certain groups such as young voters. For instance, the Commission has been criticised by some commentators because of the format of its television broadcasts. The reality is that, by the time the Commission had engaged an advertising company and a production company, it had only a matter of days to approve the format and content of the broadcasts and commence production. In normal circumstances a typical planning and production cycle for a 30 second television advertisement is three months. In addition, the Commission had hoped to target young voters on this occasion by measures such as cinema advertising but, due to the lead in time necessary to book cinema advertising slots and the time needed to produce such advertisements, this was not possible.

Furthermore, while the Commission produced all its publications in Irish and distributed them as widely as possible, if there had been more time available then the distribution of the Irish texts could have been targeted at persons and groups interested in receiving them. As the Commission does not have an in-house translation capacity, the Irish language publications were not available at the same time as the English language publications. On this occasion, and in the past, the Commission has received numerous complaints from individuals and organisations due to a perception that it does not provide an equal service to Irish language speakers and that adequate attention is not paid to the production and distribution of information material in the Irish language. The difficulties in

this regard were all due to a lack of time. The Commission did, however, put much time and effort into producing and distributing Irish language material and the Commission's website is a testament to the amount that was achieved taking account of the time constraints imposed on the Commission.

The lack of time had implications for all elements of the campaigns. What should have been a carefully planned, well thought out and engaging campaign was instead a series of somewhat disjointed initiatives that were criticised in some quarters as being unwieldy and uninspiring.

Any opportunity to create synergies between the different elements of the campaign was lost in the drive to get publications to the printers and distribute them or to meet production deadlines for television or radio.

Lack of time also meant that it was not possible to develop and test new formats for presenting the arguments for and against, which is the key part of the campaign. The format developed for the Amsterdam Treaty and Northern Ireland referendums whereby actors gave the two sides of the argument was adjusted and much improved upon, but it would have made more sense, given the considerable expenditure involved, to test this and other possible formats for overall effectiveness.

For any public information campaign of significance, a two to three month lead-in time would be considered normal. Drafting, designing and printing a booklet designed to communicate complex subject matter would normally take a minimum of four to six weeks.

It is highly unusual for a campaign as wide ranging and involving such a significant level of expenditure not to have built in procedures for evaluating the effectiveness of the measures employed both during and at the conclusion of the campaign. It is regrettable that time constraints again militated against carrying out baseline research on public awareness and attitudes in respect of the three proposals and ongoing research to track awareness and understanding as the campaign progressed.

The Commission cannot overstate the importance it attaches to this issue and would wish to underline the recommendations it is making on this point in Chapter 3. The Commission thinks it unreasonable that its members should be expected to continue to bear the brunt of adverse public criticism for perceived failures in its information campaigns when the root cause of the difficulties is beyond its control.

Notwithstanding the foregoing, the Commission did manage to fulfil its remit on this occasion. Through its efforts it managed (as reported in Chapters 1 to 4 of Part 2) to get a considerable amount of information into the public domain within the short time available.

CHAPTER 3

Effectiveness of the Individual Elements of the Campaigns

The Commission carried out extensive research following its previous campaigns on the Amsterdam Treaty and the Northern Ireland Agreements. This revealed that newspaper advertisements were widely recognised but actually read by very few. Publications again scored highly on recogni-

tion but poorly in terms of the number who actually read them. The most favoured means of communication were television advertising and broadcasts. Given the time constraints in this campaign, it was not possible to incorporate the lessons of this research.

Publications

While publications will always be one of the least effective formats with which to communicate information, they are an essential part of any campaign. This is because they offer the only opportunity to provide detailed information in an easily accessible format and when distributed to each home, certainty that each voter has at least been given the basic information.

Accessibility depends on a number of factors including good drafting, design and layout as well as wide availability. Printed material is still more accessible than web based material.

While the Commission produced a range of publications at short notice there were significant shortcomings in terms of ensuring that people had access to the information.

Only one publication was actually distributed to every household. All the other publications were made available through the Citizens Information Centres and local authorities and some Garda Stations, libraries and Post Offices. Given the relative inaccessibility of the above outlets for many communities, the publications should have been made available at all Post Offices, as a minimum, but the distribution networks were limited due to time constraints.

The content of the publications was generally dry and technical. There was perhaps too

much emphasis by the Commission on explaining its role and functions and also on using too much legal terminology rather than taking the risk of paraphrasing and simplifying the language of the proposals. At the same time, the Commission was very conscious that its publications were being parsed and analysed by the various bodies campaigning for a yes or no vote, particularly in the case of the Treaty of Nice. Use of graphics or photographs was also absent and the overall design was somewhat lacklustre.

The self-sealed booklet delivered to each household was particularly unappealing as it was printed in black and white, contained no graphics or photography and made no attempt to lure the recipient into opening it and reading the contents. While it had been possible to produce and make a nationwide delivery of a reasonably attractive booklet in the case of the Amsterdam Treaty it was not possible to do the same on this occasion because of time constraints. At around the same time as the Commission's self-sealed booklet was being delivered, the Department of the Environment and Local Government was delivering a very similar self-sealed document containing the wording of the referendum proposals to the electorate. This caused confusion for the public and many people may not have realised that the two documents contained different information.

It has to be acknowledged however that an enormous amount of printed matter was produced and distributed during the campaigns.

The publications were solely focused on explaining the proposals. However, the nature of discussion and debate in general is to focus on the arguments for or against

the proposals and less so on the detail of what it is that is being proposed. The public would probably have been more interested in publications that set out the arguments. Again, time constraints prevented this being done.

Newspaper Advertisements

Two waves of newspaper advertisements were employed. The first wave was purely functional in nature with the objective of inviting submissions on each of the proposals. Given its intended purpose, its relevance to the objectives of informing and encouraging debate was minimal.

The second wave was important in that it was one of the few means available to communicate the arguments for and against. These advertisements appeared in national and local newspapers in the final week of the campaign. They contained quite an amount of text and were official looking. It is not possible to say how effective they were but it is clear that very effective use was made of some of the arguments in a number of crucial radio and TV debates towards the very end of the campaign on the Treaty of Nice.

Website

Given the increasing levels of access to the Internet both at home and at work, the web is becoming a more important means of communication. It is however a passive medium which is dependent on voters making a conscious decision to seek to access information. Nonetheless, the Commission considers it to be an increasingly important information tool which is why the Commission has decided to establish a permanent website (see Chapter 4 of Part 2).

Outdoor Advertising

The media strategy ensured that there was high coverage in urban areas. Time constraints meant that, for technical reasons, it was not possible to effectively target rural areas.

Television and Radio Advertising and Broadcasts

While the Commission did not carry out formal research, it would appear that there was a high recognition level for all of the broadcast advertising. The media strategy ensured almost 100% coverage indicating that the key objectives of the advertising components were met. There was however a perceptible "wear" factor and one concern is that the high exposure of the advertising would have contributed to a degree of turnoff when it came to the broadcasts. While the Commission has no evidence of this, the difficulty in differentiating the advertising from the broadcasts may have been a negative factor.

The format and execution of the broadcasts, while a significant improvement on the Amsterdam Treaty and Northern Ireland campaigns, was still not wholly engaging. While the subject matter of many referendums militates against this, more could be done in terms of making the format more effective. Time and pre-planning are critical to achieving this.

Balance

Achieving balance was an ongoing challenge for the Commission, particularly in its presentation of the arguments for and against.

The Commission had no difficulty in drafting and providing basic information on

each proposal in a neutral manner. It was criticised by the yes campaign in relation to the information it provided on the Nice Treaty because of the interpretation of the relevance of the Treaty for enlargement. While the wording used in subsequent communications by the Commission was altered to take some of this criticism into account, the post referendum debate served to underline the difficulty in defining the exact relevance of the Treaty for enlargement.

Most of the difficulty encountered by the Commission in terms of balance was, however, centred on the presentation of the arguments for and against. As the broadcasts were the main vehicle used in this portion of the campaign most of the attention of the Commission was focused there.

A number of factors were involved in achieving balance in each broadcast. These included the amount of time given to each side, the scripting of the arguments, the strength of the voice used on each piece, the number of definitive statements such as "I'm voting no" and whether the piece began or ended with a yes or no statement.

The major difficulty in achieving balance is not in the mechanics or structure of the piece but in the relative persuasiveness of the arguments. The arguments for a proposal are always couched in positive terms and involve persuading a voter to make a decision to change something. The arguments against are often negative and involve an appeal to preserve the status quo. There is the argument that the no arguments will often be more powerful than the yes arguments. How then is the Commission to achieve real balance, especially if it is to inject more emotion and more polarised arguments into the debate format, in order

to make it more engaging and effective? It may be that, to ensure balance and avoid criticism of bias towards one side or the other, the Commission will remain constrained in terms of the format and style of its broadcasts.

Other Campaigns

In the days immediately following the referendums there was much comment about the shortcomings of the Referendum Commission's approach to the campaign. The debate shifted the following week to the effectiveness of the campaigns run by the political parties and other interested groups.

The responsibility for ensuring that there is an effective and well-informed debate on the issues is a joint one between the Commission and the interested parties.

While there is much that can be done to improve the effectiveness of the Commission's approach, it cannot substitute for a vigorous debate between the political parties and other groups.

While it may be possible for the Commission to inject a greater degree of "polarity" into its presentation of the arguments for and against, it cannot replace the type of debate which occurs when two groups with different beliefs and positions engage with each other in the media and on the airwaves.

The Commission's role is to provide the necessary material to citizens so that they are equipped to participate in the debate and to provide an outlet for all the arguments for and against the proposals so that the debate is not one sided. Ideally, the Commission should have the resources to

actively monitor the debate and the flexibility to intervene where a debate is one sided.

Much was made of the argument that it was unnecessary and counterproductive to provide the counter arguments to a proposal such as the abolition of the Death Penalty when there is a wide consensus in this country against its use. This ignores the importance of adequately informing the electorate when it is being asked to make important changes to our Constitution and the ability of people to recognise that the counter arguments (however unpopular they are) are being put forward in the interest of democracy.

Some commentators expressed surprise at the level of the no vote in the referendum on the Abolition of the Death Penalty which was much higher than anticipated at 37.92%. The point was made that there was no organised campaign against the proposal and opinion polls prior to the referendum predicted a much lower no vote. The view has been expressed that one contributory factor was confusion caused by the ballot paper and electors may have been unclear as to whether a no vote meant no to the death penalty or no to removing it from the Constitution.

It is not the role of the Commission to examine why people vote for or against any particular proposal and it has decided, therefore, not to comment on the relative effectiveness of the groups favouring a yes or no vote on the ratification of the Treaty of Nice.

CHAPTER 4

Recommendations

The Commission requests the Minister for the Environment and Local Government (who has overall responsibility for franchise and electoral issues) to give consideration to the following issues, which in the Commission's view are necessary to enable it to fulfil its statutory function in a meaningful way. Some of these issues were also set out in the Commission's two previous reports.

- (1) *The necessity to provide a mechanism by which research and information on possible future proposals for amendments to the Constitution can to be undertaken in anticipation of the setting up of a Referendum Commission.*
- (2) *The desirability of amending section 2 of the Act so as to enable the Commission to be set up at a stage earlier in relation to the polling date of a referendum than is possible at present.*
- (3) *The extension of the minimum period to elapse between the passing of the referendum Bill or the making of an order under section 12 of the Act of 1994 and the polling date for a referendum.*
- (4) *Clarification as to the necessity or otherwise for the Commission to advertise contracts, which exceed the relevant threshold, in the Official Journal of the European Journal. Chapter 1 of this Part of the Report sets out the conflicting legal advice received to date on this point.*

In relation to item (3) the Commission notes that the Sixth Progress Report of the All Party Oireachtas Committee on the Constitution (November 2001) recommends that, in the case of complex referendum proposals, a period of one hundred and twenty days should be allowed in order to ensure adequate public debate and that the legislation should be amended to change the present upper limit of ninety days accordingly. The Commission also notes that when the Government announced its intention to hold a referendum on Abortion it indicated that a period of three months debate should be allowed before the date of the referendum.

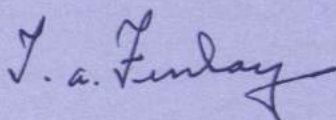
CHAPTER 5

Acknowledgements

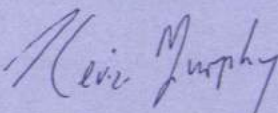
Given the constraints under which the Commission has operated to date, it could not hope to fulfil its statutory functions without the wholehearted support and co-operation of a wide range of service providers. The Commission wishes to acknowledge, in particular, the helpful assistance of RTE and TV3 which carried the vast bulk of the Commission's transmissions within extremely tight schedules. This important element of the campaigns could not have been delivered on without the commitment and expertise of Mr Tim Collins of Drury Communications who acted as the Commission's Co-ordinator of Radio and Television Broadcasts.

The Commission would also wish to express its appreciation to its Secretariat which comprised Mr Tom Morgan, Secretary, Mr Noel Tallon, Mr Paddy Walsh, Ms Evelyn Hernon and Ms Sheila McCarthy. Their dedication and flexibility in the face of seeming-

ly impossible deadlines has to be commended.



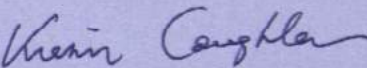
Mr Justice T. A. Finlay, Chairman



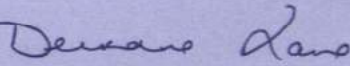
Mr Kevin Murphy, Ombudsman



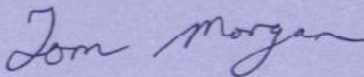
Mr John Purcell, Comptroller & Auditor General



Mr Kieran Coughlan, Clerk of the Dáil



Ms Deirdre Lane, Clerk of the Seanad



Mr Tom Morgan, Secretary to the Referendum Commission

APPENDICES APPENDIX 1***Establishment Order in Respect of
the Referendum on the Abolition of
the Death Penalty***

S.I. No. 155 of 2001.

Referendum Act, 1998.

Referendum Commission (Establishment)
Order, 2001.

The Minister for the Environment and Local Government, in exercise of the power conferred on him by section 2 of the Referendum Act, 1998 (No. 1 of 1998), hereby orders as follows :

1. This order may be cited as the Referendum Commission (Establishment) Order, 2001.
2. A Referendum Commission is hereby established to undertake the functions assigned to it by the Referendum Act, 1998 in relation to the proposal for an amendment of the Constitution contained in the Twenty-First Amendment of the Constitution (No.2) Bill, 2001.

GIVEN under the Official Seal of the Minister for the Environment and Local Government, this 17th day of April, 2001.

NOEL DEMPSEY

**Minister for the Environment and Local
Government**

APPENDIX 2***Establishment Order in Respect of
the Referendum on the Acceptance
of the Jurisdiction of the
International Criminal Court***

S.I. No. 157 of 2001.

Referendum Act, 1998.

Referendum Commission (Establishment)
No. 3 Order, 2001.

The Minister for the Environment and Local Government, in exercise of the power conferred on him by section 2 of the Referendum Act, 1998 (No. 1 of 1998), hereby orders as follows :

1. This order may be cited as the
Referendum Commission
(Establishment) No. 3 Order, 2001.
2. A Referendum Commission is hereby established to undertake the functions assigned to it by the Referendum Act, 1998 in relation to the proposal for an amendment of the Constitution contained in the Twenty-third Amendment of the Constitution Bill, 2001.

GIVEN under the Official Seal of the
Minister for the Environment and Local
Government, this 17th day of April, 2001.

NOEL DEMPSEY

**Minister for the Environment and Local
Government**

APPENDIX 3***Establishment Order in Respect
of the Referendum on the Treaty
of Nice***

S.I. No. 158 of 2001.

Referendum Act, 1998.

Referendum Commission (Establishment)
No. 4 Order, 2001.

The Minister for the Environment and Local Government, in exercise of the power conferred on him by section 2 of the Referendum Act, 1998 (No. 1 of 1998), hereby orders as follows :

1. This order may be cited as the
Referendum Commission
(Establishment) No. 4 Order, 2001.
2. A Referendum Commission is hereby established to undertake the functions assigned to it by the Referendum Act, 1998 in relation to the proposal for an amendment of the Constitution contained in the Twenty-fourth Amendment of the Constitution Bill, 2001.

GIVEN under the Official Seal of the
Minister for the Environment and Local
Government, this 17th day of April, 2001.

NOEL DEMPSEY

Minister for the Environment and Local
Government

APPENDIX 4***Bodies Approved for the Purposes of
the Referendum on the Abolition of
the Death Penalty***

Communist Party of Ireland
James Connolly House
43 East Essex Street
Temple Bar
Dublin 2

Comhar Críostaí - The Christian
Solidarity Party
73 Deerpark Road
Mount Merrion
County Dublin

Fianna Fáil
Áras de Valera
65 - 66 Lower Mount Street
Dublin 2

Fine Gael
51 Upper Mount Street
Dublin 2

Green Party
Kildare House
Kildare Street
Dublin 2

The Labour Party
17 Ely Place
Dublin 2

Progressive Democrats
25 South Frederick Street
Dublin 2

Sinn Féin
44 Parnell Square
Dublin 1

The Socialist Party
141 Thomas Street
Dublin 8

The Workers Party
23 Hill Street
Dublin 1

APPENDIX 5

Bodies Approved for the Purposes of the Referendum on the Acceptance of the Jurisdiction of the International Criminal Court

The Socialist Party
141 Thomas Street
Dublin 8

The Workers Party
23 Hill Street
Dublin 1

Communist Party of Ireland
James Connolly House
43 East Essex Street
Temple Bar
Dublin 2

Comhar Críostaí - The Christian Solidarity
Party
73 Deerpark Road
Mount Merrion
County Dublin

Fianna Fáil
Áras de Valera
65 - 66 Lower Mount Street
Dublin 2

Fine Gael
51 Upper Mount Street
Dublin 2

Green Party
Kildare House
Kildare Street
Dublin 2

The Labour Party
17 Ely Place
Dublin 2

Progressive Democrats
25 South Frederick Street
Dublin 2

Sinn Féin
44 Parnell Square
Dublin 1

APPENDIX 6***Bodies Approved for the Purposes
of the Referendum on the Treaty
of Nice***

Afri
Grand Canal House
Lower Rathmines Road
Dublin 6

Communist Party of Ireland
James Connolly House
43 East Essex Street
Temple Bar
Dublin 2

Comhar Críostaí - The Christian Solidarity
Party
73 Deerpark Road
Mount Merrion
County Dublin

Fianna Fáil
Áras de Valera
65 - 66 Lower Mount Street
Dublin 2

Fine Gael
51 Upper Mount Street
Dublin 2

Green Party
Kildare House
Kildare Street
Dublin 2

The Labour Party
17 Ely Place
Dublin 2.

No to Nice Campaign
60a Capel Street
Dublin 1

Progressive Democrats
25 South Frederick Street
Dublin 2

Sinn Féin
44 Parnell Square
Dublin 1

The Socialist Party
141 Thomas Street
Dublin 8

The Workers Party
23 Hill Street
Dublin 1

APPENDIX 7

*Expenditure on the Referendum on
the Abolition of the Death Penalty*

	IR£	€
Braille & Audio Tapes	£65	€82
Co-Ordination of Radio & Television Advertising and Broadcasts	£13,420	€17,040
Legal Fees	£6,212	€7,888
Other Advertising Costs	£30,820	€39,133
Postal	£139,029	€176,530
Press Advertising	£291,612	€370,271
Printing & Design of Publications	£24,702	€31,365
Radio & Television Advertising and Broadcasts	£339,592	€431,193
Translation	£396	€503
Website	£9,860	€12,520
Miscellaneous (Office supplies etc.)	£817	€1,037
Total*	£856,525	€1,087,562

*Subject to Final Accounts

APPENDIX 8

*Expenditure on the Referendum on
the Acceptance of the Jurisdiction of
the International Criminal Court*

	IR£	€
Braille & Audio Tapes	£65	€82
Co-Ordination of Radio & Television Advertising and Broadcasts	£13,420	€17,040
Legal Fees	£7,232	€9,183
Other Advertising Costs	£32,322	€41,040
Postal	£139,021	€176,520
Press Advertising	£291,612	€370,271
Printing & Design of Publications	£24,781	€31,465
Radio & Television Advertising and Broadcasts	£339,595	€431,197
Translation	£392	€498
Website	£9,860	€12,520
Miscellaneous (Office supplies etc.)	£817	€1,037
Total*	£859,117	€1,090,853

*Subject to Final Accounts

APPENDIX 9

*Expenditure on the Referendum
on the Treaty of Nice*

	IR£	€
Braille & Audio Tapes	£99	€126
Co-Ordination of Radio & Television Advertising and Broadcasts	£13,420	€17,040
Legal Fees	£35,037	€44,488
Other Advertising Costs	£40,069	€50,877
Postal	£140,663	€178,605
Press Advertising	£438,714	€557,052
Printing & Design of Publications	£40,671	€51,641
Radio & Television Advertising and Broadcasts	£573,202	€727,816
Translation	£1,117	€1,418
Website	£9,860	€12,520
Miscellaneous (Office supplies etc.)	£1,724	€2,189
Total*	£1,294,576	€1,643,772

*Subject to Final Accounts

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