



Legislating for Equality In Marriage Registration – Atheist Ireland briefing document for TDs for debate this Thursday

December 2012

Atheist Ireland today wrote to TDs asking them to amend the Civil Registration (Amendment) Bill, which will be debated in the Dail this Thursday, 20 December 2012. [See an earlier article on this Bill here.](#)

We also copied this letter to the Irish Human Rights Commission to ask them to examine the Bill from a human rights perspective, with particular reference to Articles 2, 18 & 26 of the the International Covenant on Civil and Political Rights, and Articles 9, 10 & 14 of the European Convention on Human Rights.

Please email or otherwise contact your TDs between now and Thursday. Specifically we are asking TDs to:

- Amend this Bill to vindicate human rights, including freedom of religion or belief, and equality without discrimination before the law, for religious and nonreligious citizens alike.
- Describe a nonreligious nominating body by using the term ‘philosophical and non-confessional body’, which has legal status under Article 17 of the Lisbon Treaty.
- Define a philosophical and non-confessional body as a body whose principal objects are philosophical and non-confessional.
- Remove all proposed restrictions on nonreligious nominating bodies, apart from those that the Principal Act currently imposes on religious nominating bodies.
- Later, to use the forthcoming review of the Principal Act to apply any proposed new criteria, apply them equally on the same basis to religious and nonreligious nominating bodies, and also allow individuals to nominate themselves directly to the State.

We welcome the intention of this Bill to make our law more inclusive. However, in practice the Bill accepts and further institutionalises discrimination on the ground of religion or belief. It continues the discrimination in the Act that it is amending, which is discrimination in favour of religious people and against nonreligious people, and it adds new discrimination, this time between nonreligious people who have different philosophical and non-confessional beliefs.

If this Bill is passed as it is, Atheist Ireland intends to ask the President to refer it to the Supreme Court to test its constitutionality. If that does not happen, Atheist Ireland intends to challenge the constitutionality of the amended Principal Act.

Our basic position is simple: however the law regulates how people can legally solemnise marriages, the law should treat all religious and nonreligious people and bodies equally, and should not discriminate on the ground of religion or belief.

We enclosed the following briefing document *Legislating for Equality in Marriage Registration*, which outlines our concerns in more detail.

Legislating for Equality In Marriage Registration

Submission by Atheist Ireland re Civil Registration (Amendment) Bill

To be debated in Dail on Thursday 20 December 2012

1. It is unlawful to discriminate based on religion or belief
 - 1.1 How this Bill violates human and civil rights
 - 1.2 Articles 2 & 26 ICCPR, Discrimination & Equality
 - 1.3 Article 18 ICCPR, Freedom of Conscience
 - 1.4 Article 9 ECHR, Freedom of Conscience
 - 1.5 Article 10 ECHR, Freedom of Expression
 - 1.6 Article 14 ECHR, Freedom from Discrimination
2. How this Bill discriminates against nonreligious people
 - Only nonreligious nominating bodies:
 - 2.1 Must have more than 50 members
 - 2.2 Must have specified principal objects
 - 2.3 Must have existed for 5 years
 - 2.4 Must have charitable tax exemption for 5 years
 - 2.5 Have exclusions such as political causes
 - 2.6 Have obvious qualifications selectively applied
3. How this Bill discriminates between nonreligious people
 - 3.1 ‘Secular’ is an inappropriate description
 - 3.2 The definition of ‘secular’ is inappropriate
 - 3.3 The Bill is designed to both include and exclude
 - 3.4 The Seanad debate warned about discrimination
4. What we are requesting you to do
 - 4.1 Specifically how you should amend this Bill
 - 4.2 How you should later revise the Principal Act

1. It is unlawful to discriminate based on religion or belief

1.1 How this Bill violates human and civil rights

It is unlawful to discriminate on the ground of religion or belief, based on a combination of the Irish Constitution, and various international human and civil rights treaties that Ireland is a signatory to.

In this document, for simplicity, we will focus on the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR).

While the protections in many international treaties cover only the rights specified in the treaties, Article 26 of the ICCPR (Equality Before the Law) covers any law enacted.

Article 2 of the ICCPR also makes clear that freedom from discrimination is a fundamental right, and Article 18 of the ICCPR makes clear that restrictions on the right to freedom of conscience, thought and religion are to be strictly interpreted.

This Bill also violates the European Convention on Human Rights.

- The State is restricting a right to religious or secular humanist bodies.
- There is no legitimate aim to the restriction.
- The restriction is not necessary in a democratic society.
- The restriction also discriminates between different nonreligious bodies.

Interferences with thought and conscience under Article 9 of the ECHR are often treated as giving rise to issues arising within the scope of Article 10's guarantee of freedom of expression.

In this Bill the State is limiting the right of secularists to express themselves by their choice of marriage solemnising. The Bill is trying to limit the right to secular humanists. This constitutes interference and not being neutral in relation to philosophical beliefs.

Under Article 14 of the ECHR, on freedom from discrimination, the Government must show that there is an objective and justifiable reason for treating you differently, and that the difference in treatment is proportionate to that reason i.e. no more than what is necessary.

1.2 Article 2 & 26 ICCPR – Discrimination & Equality Before the Law

Article 26 of the International Covenant on Civil and Political Rights, which covers Equality Before the Law, states that

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

This is a significant Article because, while the protections in many international treaties cover only the rights specified in the treaties, Article 26 of the ICCPR covers any law enacted.

Article 2 of the International Covenant on Civil and Political Rights, which covers Freedom from Discrimination, states that

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

The United Nations General Comment 18, on NonDiscrimination, which covers Articles 2 and 26, states that

1. Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights. Thus, article 2, paragraph 1, of the International Covenant on Civil and Political Rights obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. “

General Comment 18 also states that

12. While article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, article 26 does not specify such limitations. That is to say, article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.

1.3 Article 18 ICCPR – Freedom of Thought, Conscience and Religion

Article 18 of the International Covenant on Civil and Political Rights, which covers Freedom of Thought, Conscience and Religion, states that

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching,

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

The United Nations General Comment 22, on Article 18, states that

“Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms ‘belief’ and ‘religion’ are to be broadly construed. Article 18 is not limited in its application to traditional religions, or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.”

General Comment 22 also states that

“In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate

the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.”

1.4 Article 9 European Convention on Human Rights – Conscience

Article 9 of the European Convention on Human Rights, which covers the Right to Freedom of Thought, Conscience and Religion, states that

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, and to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

The Council of Europe has issued a handbook explaining the implications of Article 9. This states the following about what is meant by ‘thought, conscience and religion’:

Personal beliefs to fall within Article 9 protection must “attain a certain level of cogency, seriousness, cohesion and importance” and further be such as to be considered compatible with respect for human dignity. In other words, the belief must relate to a “weighty and substantial aspect of human life and behaviour” and also be such as to be deemed worthy of protection in European democratic society...

Atheism [is a] value system clearly encompassed by Article 9...

It is important to note that non-belief as well as nonreligious belief are also protected by Article 9. As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. While religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to “manifest [one’s] religion”.

Bearing witness in words and deeds is bound up with the existence of religious convictions.

1.5 Article 10 European Convention on Human Rights – Expression

Article 10 of the European Convention on Human Rights, which covers the Right to Freedom of Expression, states that:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Interferences with thought and conscience under Article 9 of the ECHR are often treated as giving rise to issues arising within the scope of Article 10's guarantee of freedom of expression.

In this Bill the State is limiting the right of secularists to express themselves by their choice of marriage solemnising. The Bill is trying to limit the right to secular humanists. This constitutes interference and not being neutral in relation to philosophical beliefs.

1.6 Article 14 European Convention on Human Rights – Discrimination

Article 14 of the European Convention on Human Rights, which covers the Right to Freedom from Discrimination, states that:

The enjoyment of the rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 14 provides a protection against discrimination in a person's enjoyment of the rights and freedoms set out in any other Article in the European Convention on Human Rights.

If you are treated differently than other people, the Government must show that there is an objective and justifiable reason for treating you differently, and that the difference in treatment is proportionate to that reason i.e. no more than what is necessary.

2. How this Bill discriminates against nonreligious people

Marriage by civil ceremony is a civil contract. Marriage by certain religious ceremonies is also recognised by civil law as being a civil contract. The General Register Office publishes an online list of currently active marriage solemnisers and their nominating bodies. There are 5,596 solemnisers, of whom 98% are nominated by religious bodies, and 77% are nominated by the Roman Catholic Church. Just 110, or less than 2%, are civil solemnisers, all of whom are nominated by the HSE.

The only statutory criteria for religious bodies nominating solemnisers is the definition of "religious body" in the Civil Registration Act 2004, which is "an organised group of people, members of which meet regularly for common religious worship." The current Bill will impose extra requirements, but only on nonreligious nominating bodies. Therefore the Act as amended will assume by default that religious bodies are responsible enough to nominate members to solemnise marriages, while nonreligious bodies will have to jump through legal hoops to prove that we are as responsible as our religious fellow-citizens.

Also, in practice, several of the current religious nominating bodies seem not to satisfy the criteria that the current Bill will impose. So this is not just a theoretical discrimination, it is a practical one.

2.1 Only nonreligious bodies must have more than 50 members

This Bill requires that nonreligious nominating bodies must have not fewer than 50 members. But neither this Bill nor the Principal Act applies this restriction to religious nominating bodies. And in practice, at least one of the current religious nominating bodies seems to have fewer than 50 members. The Arann Reformed Baptist Church, Balinteer, features on its website a photograph of its congregation in November 2011, which includes 17 members.

2.2 Only nonreligious bodies must have specified principal objects

This Bill requires that nonreligious nominating bodies must have specified types of principal objects (they must be secular, ethical and humanist) and they must meet regularly in relation to their beliefs and to further these required objects. But neither this Bill nor the Principal Act applies this restriction to religious nominating bodies. All that religious nominating bodies are required to do is to meet regularly for common religious worship.

2.3 Only nonreligious bodies must have existed for 5 years

This Bill requires that nonreligious nominating bodies must have been in existence for at least five years before applying. But neither this Bill nor the Principal Act applies this restriction to religious nominating bodies. And in practice, at least three of the current religious nominating bodies do not seem to have been in existence for five years before they were accepted.

- The Babul-ul-Ilm Society described itself on its website as a newly established society in September 2009. It had a nominee added to the list of solemnisers in June 2012.
- The Arann Reformed Baptist Church, Balinteer, was constituted as a church in February 2009. It had a nominee added to the list of solemnisers in February 2010.
- The Gorey Christian Assembly began meeting as a church in January 2010 after conducting Bible studies and outreach for several years. It had a nominee added to the list of solemnisers in February 2009.

2.4 Only nonreligious bodies must have charitable tax exemption for 5 years

The Bill requires that nonreligious nominating bodies must have had charitable tax exemption for five years. But neither this Bill nor the Principal Act applies this restriction to religious nominating bodies. And in practice, at least 14 of the current religious nominating bodies do not appear on the current list of bodies that have been granted charitable tax exemption, at 17th November 2012, under Section 207 of the Taxes Consolidation Act, 1997.

- Arran Reformed Baptist Church
- Babul-ul-Ilm Society
- Bridge Christian Community
- Calvary Chapel Cork
- Calvary Church Wexford
- Dublin Vineyard Church
- Ennis Evangelical Church
- First Six Principle Baptist Church of Ireland
- Great Hope Gospel Ministries
- Lurganearly Hall
- Oratory Society
- Pagan Federation of Ireland
- Spiritualist Union of Ireland
- Tramore Bible Church

Also, religious bodies are currently allowed to nominate temporary solemnisers for the purpose of conducting just one marriage in Ireland, presumably to facilitate couples who want their marriages solemnised by a relative or friend.

This has so far included solemnisers nominated by religious bodies based not only in Ireland, but also in other countries including Argentina, Canada, England, Italy, Japan, Kenya, New Zealand, Northern Ireland, USA, Wales and Zambia.

These international religious nominating bodies cannot possibly have charitable tax exemption status in Ireland. Neither they, nor nonreligious nominating bodies based in other countries, could meet this new criteria.

2.5 Only nonreligious bodies have exclusions such as political causes

The Bill requires, among various rules for exclusion, that nonreligious nominating bodies can not promote a political cause. But neither this Bill nor the Principal Act applies any of these rules for exclusion to religious nominating bodies. And it would be extraordinary to find a nonreligious body that wanted to take part with equality in the conduct of marriage ceremonies, and that did not also promote the political cause of secularism through separation of church and state.

Furthermore, this particular exclusion seems to be a deliberate choice. The entire wording of the section on exclusions is transcribed, word for word, from the definition of “excluded

body” in the Charities Act 2009, with just one difference. The Charities Act qualifies “(b) a body that promotes a political cause,” by saying “(b) a body that promotes a political cause, unless the promotion of that cause relates directly to the advancement of the charitable purposes of the body.” There is no reason why this Bill should remove that qualification from the definitions that it has transcribed from the Charities Act.

More fundamentally, any restrictions, along the lines of any of the Charities Act exclusions, should either be applied equally to all nominating bodies, or else not be applied to any.

2.6 Only nonreligious bodies have obvious qualifications selectively applied

The Bill also describes some obvious qualifications for nonreligious bodies that the Principal Act does not describe for religious bodies, such as that they must not have marriage rules that contravene the law, and that they must have appropriate procedures for selecting, training and accrediting solemnisers. But neither this Bill nor the Principal Act applies these obvious qualifications to religious nominating bodies.

Therefore the Act as amended will assume by default that religious bodies are responsible enough to act within the law and to put in place appropriate nominating procedures, while nonreligious bodies will have to be explicitly told that we must obey the law, and we will have to prove that we have appropriate nominating procedures. If these obvious qualifications need to be explicitly stated, they should be stated for religious bodies and secular bodies alike.

3. How this Bill discriminates between nonreligious people

3.1. ‘Secular’ is an inappropriate description

‘Secular’ is an inappropriate description to distinguish between religious and nonreligious bodies. It is too wide, and does not capture the essence of what is being contrasted.

A better description to contrast with ‘religious’ is ‘philosophical and non-confessional.’

- ‘Philosophical’ captures a focus on questions of life meaning, ethics etc
- ‘Non-confessional’ captures the absence of a creed that must be believed.

This is the phrase that was used in the second version of the Bill. Atheist Ireland suggested this phrase to Senator Ivana Bacik. It has legal status under Article 17 of the Lisbon Treaty. As Senator Bacik said in the original Seanad debate:

This definition is not plucked from the air but already has legal status under article 17 of the Lisbon treaty. It is used in the dialogue process between the European Commission, the Parliament and the Council and groups such as the Humanist Association through the European Humanist Federation and Atheist Ireland.

The phrase “philosophical and non-confessional” already has status and this is important. Article 17 of the Lisbon treaty provides that the European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the member states and that it equally respects the status under national law of philosophical and non-confessional organisations. We have used this phrase as the short version of a body that may apply for authorisation under the Act.

And as Deputy Burton said on behalf of the Government:

On the technical element of amendment No. 1, the purpose of the amendment is to extend the definition of “a body” in section 45 of the Civil Registration Act 2004 to include a “philosophical and non-confessional body”. The Bureau of European Policy Advisers was established in the 1990s by the then President of the European Commission, Mr. Jacques Delors, to facilitate dialogue between churches and communities of convictions and the European integration process.

Article 17 of the Lisbon treaty has lifted that dialogue from good practice to legal obligation, enshrined in primary law. Article 17 provides that the EU respects the status under national law of churches and religious associations in member states and equally respects the status

under national law of “philosophical and non-confessional” organisations and that the EU shall maintain and open, transparent and regular dialogue with these churches and organisations, thus the recognition of philosophical and non-confessional bodies contained in the Lisbon treaty provides guidance as to the most appropriate way to address the objectives of the Bill.

We understand that legal drafters were unhappy with this description, and have removed it from the current version of the Bill, but we do not know the reasons why.

This drafting decision, which changes the meaning of the Bill as originally supported by all in the Seanad, should be reversed. ‘Philosophical and non-confessional’ is a more accurate and appropriate description than ‘secular’.

It also avoids the need, in the current version of the Bill, to add a long list of exclusions to the definition of ‘secular’, that could be avoided by simply using the description ‘philosophical and non-confessional’ instead of ‘secular’.

3.2 The definition of ‘secular’ is inappropriate

The Bill defines ‘a secular body’ as follows:

45A(1) For the purposes of this Part, a body shall... be a secular body if it is an organized group of people and

(a) has not fewer than 50 members;

(b) its principal objects are secular, ethical and humanist;

(c) members of the body meet in relation to their beliefs and in furtherance of the objects referred to in Section (b);

(d)-(h)....

The main difficulty here is Section (b): a body shall only be considered a secular body if “its principal objects are secular, ethical and humanist.”

Secularism should never be defined in a way that necessitates allegiance to any particular version of a philosophical non-confessional belief system.

This definition of ‘secular’ discriminates between nonreligious people who have different philosophical beliefs. In particular, it prevents secular bodies whose principal objects are not humanist from applying to nominate people to solemnize marriages.

Bizarrely, this Bill would prevent a purely secular body, hypothetically named ‘The Irish Secular Society’, whose principal objects stressed the philosophical neutrality of secularism, from being defined as a secular body.

3.3 The Bill is designed to both include and exclude

In the debate on the original Bill Senator Bacik said:

However, although speakers on both sides universally supported the Bill on 10 November 2011, many speakers, including the Minister, quite rightly expressed the view that specific criteria would need to be provided in the Bill to guide the decision as to which nonreligious bodies could apply to have their members conduct legal wedding ceremonies.

But why is there a need to do this for nonreligious bodies, when it is not considered necessary with religious nominating bodies? The only criteria they have to meet is that they are “an organised group of people, members of which meet regularly for common religious worship.” The effect of this is to add an extra layer of discrimination against nonreligious people – not only are we not trusted generally to be responsible in the same way as religious people are, but the law is now specifically distrusting some of us more than others, simply on the basis of our preferred philosophical self-identification.

This Bill would exclude Atheist Ireland from applying to nominate marriage solemnisers.

This was specifically raised in the original Seanad debate.

Senator Ivana Bacik: As I said, subsequent to the Second Stage debate, I received representations from other groups and individuals who said that they might wish to have authorisation to solemnise marriages in the future.

Senator Paschal Mooney: Could Senator Bacik name them?

Senator Ivana Bacik: Atheist Ireland, which is included as one of the philosophical and non-confessional organisations under the European definition.

The definition in the Bill then, which used the phrase ‘philosophical and non-confessional’ bodies, would have been consistent with our principal objects. That is the basis upon which we take part in the structured EU dialogue with religious and philosophical and non-confessional bodies.

But in this version of the Bill, a body shall only be considered a secular body if “its principal objects are secular, ethical and humanist.” Atheist Ireland’s principal objects are not humanist. Our principal objects are promoting atheism, reason and ethical secularism. More importantly, even if this Bill did include Atheist Ireland, we would not want to be given privileges over other philosophical and non-confessional who would still be excluded. Our aim is equality for all, not merely the advancement of our own personal interests.

3.4 The Seanad debate warned about discrimination

In the Seanad debate on the original version of the Bill, which used the description ‘philosophical and non-confessional’, Senator Bacik warned about discrimination. She said:

When I was drafting this Bill, I initially proposed, as an alternative to delegating power to the Minister, that section 45 should name the Humanist Association of Ireland and define “body” as “an authority or a religious body or the Humanist Association of Ireland”

I have had a conversation with Senator Mooney about this drafting issue. I have been advised that naming an organisation in the section might create problems. On that basis, the draft was changed to provide that the Minister could designate a body....

There is also a clear danger that if we were to name any one organisation in the Bill other organisations might claim discrimination and might launch constitutional challenges.

While the current version of the Bill does not name the organisation in question, it defines bodies who may gain the privilege being granted by using the main word in that organisation’s name: the principal objects of a ‘secular’ nominating body must be humanist. Both this wording, and the clear intent expressed in the Seanad debates that the Bill is intended to facilitate the Humanist Association of Ireland, constitutes that same discrimination.

If this Bill is passed as it is, Atheist Ireland intends to ask the President to refer it to the Supreme Court to test its constitutionality. If that does not happen, Atheist Ireland intends to challenge the constitutionality of the amended Principal Act.

We intend to do this on the basis of the particular discrimination in this definition, and also on the basis of other discriminations as described throughout this document.

4. What we are requesting you to do

4.1 Specifically how you should amend this Bill

- Amend this Bill to vindicate human rights, including freedom of religion or belief, and equality without discrimination before the law, for religious and nonreligious citizens alike.
- Describe a nonreligious nominating body by using the term ‘philosophical and non-confessional body’, which has legal status under Article 17 of the Lisbon Treaty.
- Define a philosophical and non-confessional body as a body whose principal objects are philosophical and non-confessional.
- Remove all restrictions on nonreligious nominating bodies, apart from those that the Principal Act currently imposes on religious nominating bodies.

4.2 How you should later revise the Principal Act

We understand that the Principal Act will soon be revised. We suggest the following general approach to this, instead of adding in selective restrictions, now, on only nonreligious bodies.

Allow individuals to nominate themselves

If the State wishes to authorise people to solemnise marriages, there is no need to have nominating bodies. Simply have a set of criteria for the State to authorise solomnisers, and allow individuals to nominate themselves directly to the State.

Apply the same criteria to all nominating bodies

If the State wishes to use nominating bodies, it should treat all nominating bodies equally. Simply have one set of criteria, that does not distinguish between religious or nonreligious bodies, and outlines what practical criteria a nominating body must satisfy.

Apply inclusive criteria that celebrate marriage

The State should apply criteria that allow couples to celebrate their marriages in a joyful and meaningful way. The criteria should seek to include, not to exclude. For example, the current practice to continue of people being authorised temporarily, in order to solemnise the marriage of a relative or friend. This would not be possible if the new criteria proposed for nonreligious bodies was also to be applied to religious bodies.