

Submission from Atheist Ireland to IHREC
on the Draft Code of Practice on the
Public Sector Equality and Human Rights Duty

1. Name of organisation/representative group

Atheist Ireland

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3. Is the information contained in the draft code accurate? If there are inaccuracies, please identify these by referencing a page and paragraph number.

4. The purpose of the draft code is to reflect the relevant law and the definitions within the law. The Code explains the different definitions of “public body”, “human rights”, “discrimination” “equality of opportunity and treatment” within the relevant laws including the Irish Human Rights and Equality Act 2014. Do you have any comments on the explanation of the various definitions in the draft code?

The Code refers specifically to Education & Training Boards but not to other publicly funded schools under various Patron bodies. This is confusing for service users/parents as it gives the impression that only ETB schools come under the code.

Justice Whelan in the Court of Appeal in the recent Burke case 7th March 2023 in relation to Wilson’s Hospital School said that in interpreting the obligations of the Board pursuant to the Education Act of 1998 (as amended) regard must be had to the terms of the Convention. Wilson’s Hospital School is a second level voluntary school and the Patron is the Church of Ireland.

In your Submission in November 2015 on the ‘Observations on the Education (Admission to Schools) Bill 2015, IHREC stated that:

“11. Further legal obligations on schools in respect of both their admission policies and the performance of their functions more generally may arise from section 3(1) of the 2003 Act. Specifically, the 2003 Act provides that ‘every organ of the State shall perform its functions in a manner compatible with the State’s obligations under the Convention provisions’ subject to any statutory provision or rule of law. It is certainly arguable, although not as yet determined, that schools governed by the Education Act 1998 are ‘organs of the State’ for the purpose of the 2003 Act because they are bodies through which certain legislative and executive powers of the State are exercised. Organs of the State have a direct and

enforceable statutory duty under section 3(1) of the 2003 Act to undertake their functions in a manner compatible with the State's obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)."

Justice Whelan stated in the Burke case that:-

"38. The European Convention on Human Rights Act 2003 provides:

"2. (1) In interpreting and applying any statutory provision or rule of law, a court shall, in so far as possible, subject to the rules of law relating to such interpretation and application, do so in a manner compatible with the State's obligations under the Convention provisions.

Thus in interpreting the obligations of the Board pursuant to the Education Act of 1998 (as amended) regard must be had to the terms of the Convention."

[https://www.courts.ie/acc/alfresco/3b5ec827-4bbb-4e81-9c68-baf204a4dec0/2023_IECA_52%20Whelan%20%20J\).pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/3b5ec827-4bbb-4e81-9c68-baf204a4dec0/2023_IECA_52%20Whelan%20%20J).pdf/pdf#view=fitH)

It seems to us that the courts are now clear on this issue and there is no confusion; publicly funded schools are 'organs of the state' for the purposes of the European Convention on Human Rights Act.

If a court or a tribunal such as the WRC are obliged to take regard of the European Convention when interpreting the obligations of Boards of Management then the Code should refer specifically to them as well .

Many parents (service users) have no choice where they send their to school. The state 'provide for' the education of children in publicly funded schools with a Patron body (mainly religious). Many Parents don't want to send their children to Catholic schools and they object on conscience grounds to the ethos of these schools.

It would be inconceivable, if a service user in an ETB school could use the code at a court or the WRC and a service user in a school under various Patron bodies could not use the code, as these schools are not viewed as a 'public body' under the Irish Human Rights and Equality Act 2014 but are viewed as an 'organs of the state' for the purposes of the European Convention on Human Rights Act 2003.

This could be seen as religious discrimination, forbidden by Article 44.2.3 and Article 40.1 and also Article 2 of Protocol 1 in conjunction with Article 14 of the European Convention. In addition there is the UN Convention on Civil and Political Rights and the UN Convention on the Rights of the Child.

5. The purpose of the draft code is to reflect the relevant law. The draft code outlines the scope and effect of the Duty referring to the obligations under Section 42 (1) and Section 42 (2). ". Do you have any comments on the explanation of these provisions in the draft code?

See above at 4. Boards of Management of publicly funded schools are 'public bodies' and the code should apply to them.

6. The draft code includes guidance on the development of performance measures, operational standards and written preventative strategies and appropriate processes and procedures to record, and demonstrate, compliance with the Duty. Do you have any comments on the guidance in the draft code?

If publicly funded schools are not referred to specifically alongside Education and Training Boards it will create confusion for publicly funded schools under various Patron bodies because they may believe that the Code does not apply to them and they simply will ignore guidance on the development of performance measures etc.

7. Are there aspects of implementation of the Duty which are not fully covered in the draft code? If so, please specify what extra information should be included.

Failure to clarify that the Code applies to all publicly funded schools leaves service users/parents in a difficult position and especially when they are not legal experts and in many cases must represent themselves at the WRC as they cannot afford a solicitor. School Boards of Management always turn up at the WRC with legal assistance.

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