John Coman <John.Coman@
22/12/2014 11:05

To "seanadreformwg@taoiseach.gov.ie" <seanadreformwg@taoiseach.gov

cc

Subject FW: Submission on General Scheme of the Seanad Electoral (University Members) (Amendment) Bill 2014

History: This message has been replied to.

1 attachment

140410 Seanad Submission as submitted.docx

Attn. Ms Mary Timmons, Protocol and General Division, Department of the Taoiseach.

Dear Mary

I refer to the press release of 18th December 2014 regarding the Working Group on Seanad Reform Consultation Process and the invitation for submissions.

I attach the submission made by Trinity College Dublin, the University of Dublin to the Department of the Environment, Community and Local Government in relation to the Seanad Electoral (University Members) (Amendment) Bill 2014, which we would like to be considered by the Working Group.

We would of course be happy to provide any further clarification required.

I would appreciate if you would acknowledge receipt.

Regards

John Coman
Secretary to the College
West Theatre
Trinity College
Dublin 2

Tel: +353 (0)
Fax +353 (0)

Oifig Rúnaí an Choláiste
An Téatar Thiar
Coláiste na Tríonóide
Baile Átha Cliath 2

Tel / Teil: +353

General Scheme of the Seanad Electoral (University Members) (Amendment) Bill 2014

Submission to the Department of the Environment, Community and Local Government prepared on behalf of the Board of Trinity College, the University of Dublin, April 2014.

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1. Introduction

This submission is a response to the invitation from the Minister for the Environment, Community and Local Government for views on the General Scheme of the Seanad Electoral (University Members) (Amendment) Bill 2014, as published on 14 February 2014. The comments outlined below reflect the views of the Board of Trinity College, having specific regard to the proposed introduction of a single six-member constituency to replace the current two university constituencies; technical provisions for the organisation of elections including the creation and maintenance of a register of electors; revised nomination procedures; and new provisions for the filling of casual vacancies. Trinity's preferences for alternative reform solutions are also outlined.

The University of Dublin is the oldest constituency on the island, dating back to 1607. Over the past four hundred years Trinity has elected members to the Irish House of Commons prior to 1800, then to the British House of Commons, and after independence to Dáil Éireann. Since 1938 Trinity has elected 22 members to the Seanad and all their biographies can be found on our website.[1] By way of example, and leaving aside the significant contributions of those present or former Trinity Senators who are still active in political life, it is worth reflecting on the significant contributions of former Senators such as Mary Robinson, T.C. Kingsmill Moore, Joseph Warwick Bigger, William Bedell Stanford, Owen Sheehy-Skeffington, Trevor West, Noel Browne, and Mary Henry. Their contributions are outlined in Appendix 1. Trinity Senators are elected by a wide democratic franchise which includes graduates living outside of Ireland; they represent a crucial bridge with thousands of graduates in Northern Ireland, as well as important links with the Great Britain, Europe and the world.

To date Trinity has been actively involved in the public debates on the reform of Seanad Éireann. In 2003, when the sub-committee of the Seanad Committee on Procedure and Privileges sought submissions prior to making recommendations for the reform of the Seanad, Trinity made a written submission on considering representation in Seanad Éireann. More recently, following the passing of legislation by Dáil Éireann and by Seanad Éireann in July 2013, which provided for the abolition of the Seanad, Trinity held a public forum, in advance of the referendum which was held on 4 October 2013.

Trinity supports the idea of reforming the way the Seanad is elected and welcomes the Government's intention to legislate for the 1979 referendum. Both sides in the recent referendum campaign - those who supported abolition and those who opposed it - shared a belief that the current system should be changed. Trinity has grave concerns with the general principle behind the currently proposed reform whereby only third-level graduates should have a direct vote in Seanad elections as this does not address the larger questions

[1] www.tcd.ie/about/senators

about fairness and accountability which were raised by both sides during the recent referendum. Trinity agrees with those who call for a fairer and more democratic way of electing all 60 senators, rather than just focusing on the six university seats, which have historically elected some of the best and most active parliamentarians in the Irish State. Widening the franchise for the university seats to all graduates is but one part of the solution.

The university seats have never been the problem for Seanad Éireann; rather, the university Senators have been among the Seanad's greatest strengths. By general consent, the university Senators have made a contribution out of all proportion to their numbers. Trinity therefore proposes that there should be a major review of the method of electing all 60 senators, with the university seats considered as part of that review.

2. Alternative proposals for election of Senators by graduates

If there is no willingness for the extensive reform as outlined above (i.e. review of the method of electing all 60 Senators), then Trinity proposes that a way be found to retain its three seats while also enfranchising graduates whose degrees are neither from the University of Dublin nor from the National University of Ireland. Two schemes whereby this could be achieved within the Constitution is outlined below.

2a. Retention the three University of Dublin and the three National University of Ireland seats with additional graduate-elected seats

(i) A New Third-Level Graduates Association, as provided under Article 19

This is the complete text of Article 19:

> ***'Provision may be made by law for the direct election by any functional or vocational group or association or council of so many members of Seanad Éireann as may be fixed by such law in substitution for an equal number of the members to be elected from the corresponding panels of candidates constituted under Article 18 of this Constitution.'***

Three, or better, four seats currently elected from panels could be switched to graduate representation: specifically, to represent graduates of all institutions outside the NUI and Trinity. A possibility here would be to use Article 19 of the Constitution, which provides for "the direct election by any functional or vocational group or association or council" of any number of Senators, with the number to be elected from panels correspondingly decreased. This provision has not been used to date, but if joining the electoral register for the third constituency (i.e. the non-Trinity and non-NUI constituency) had the effect of simultaneously joining, or was achieved by joining, a 'New Third-Level Graduates Association', then that certainly seems feasible within the Constitution as it stands. Indeed, it could be regarded as precisely the kind of situation for which

Article 19 was designed. The legislation would then provide for four Senators to be elected by the New Third-Level Graduates Association, as provided under Article 19.

This leaves the question of where these four seats should come from. They could not come from the Cultural and Educational panel as it currently stands, because at present that panel returns only five Senators, which is the constitutional minimum (Article 18.7.2). They might thus be taken from the four other panels[2], which could each be reduced in size. The Cultural and Educational panel might be increased from the current five seats to nine seats, with four of these being elected by the new Association, with corresponding decreases in other panels.

This scheme, whereby graduates of the new third-level institutions would be represented through the creation of an additional four-member constituency rather than by creating one six-member constituency to represent all graduates, would also have the significant advantage of solving the registration problem for six of the ten university seats, in that the experience and expertise of both Trinity and the NUI in this area would continue to be deployed. Trinity and the NUI would continue to organise the election of their own Senators as at present. Moreover, their experience and advice could be used to assist the new institutions in building a register. Under most other schemes, such as returning all university Senators from one six-seat constituency, the building of a register would have to start almost from scratch.

(ii) Amendment of the provision for the nomination of Senators by the Taoiseach

Another alternative would be to adjust the provision for the nomination of Senators by An Taoiseach. While the Constitution prescribes that the Taoiseach nominates 11 Senators (Article 18.3), it could be stipulated by law that four of these nominees will be those individuals selected by the voters of the New Third-Level Graduates Association. A recommendation that the 11 Taoiseach's nominees be used to give representation to specific groups, such as Irish people living abroad or residents of Northern Ireland, has been made in a number of past Oireachtas reviews of the role and composition of the Seanad. This would considerably increase public participation in the election of Senators.

If the number of university seats is to be confined to six, Trinity would favour the creation of three new two-seat constituencies to embrace graduates from other third level institutions.

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[2] Four panels representing vocational interests namely Agriculture (11 seats), Labour (11 seats), Industry and Commerce (9 seats) and Public Administration (7 seats)

2b. Three two-seat constituencies

One such example, based on academic and historical linkages and geographical proximity, could be as follows:

- **2 seat constituency** consisting of the following members: the constituent universities of the National University of Ireland (NUI), the recognised colleges of the NUI and the colleges of the NUI constituent universities. This constituency would include National University of Ireland, Maynooth; National University of Ireland, Galway; University College Cork; University College Dublin; Institute of Public Administration; Milltown Institute; National College of Art and Design; Royal College of Surgeons in Ireland; Shannon College of Hotel Management; and St Angela's College, Sligo. Most graduates of institutions in this constituency (which closely mirrors the existing NUI constituency) hold degrees of the National University of Ireland.

- **2 seat constituency** consisting of the following Dublin-based members: Trinity College, the University of Dublin; Dublin City University; Dublin Institute of Technology; Institute of Technology, Tallaght; Institute of Technology, Blanchardstown; Dún Laoghaire Institute of Art, Design and Technology; St Patrick's College, Drumcondra; Mater Dei Institute of Education; Church of Ireland College of Education; Royal Irish Academy of Music; Marino Institute of Education. In addition to being geographically close, many of these institutions have existing strong academic linkages. St Patrick's College, Drumcondra and Mater Dei Institute of Education are colleges of Dublin City University, which awards degrees to their graduates. Dublin Institute of Technology, Institute of Technology, Tallaght and Institute of Technology, Blanchardstown have expressed their interest in merging and in applying for Technological University status. Marino Institute of Education and the Royal Irish Academy of Music are associated colleges of Trinity College Dublin and the University of Dublin awards degrees to their degree-level graduates. (Note: University of Dublin degrees have either in the past or currently are awarded to degree-level students on certain courses of Dublin Institute of Technology, Royal Irish Academy of Music, Marino Institute of Education and Church of Ireland College of Education).

2 seat constituency consisting of the following members: University of Limerick and Mary Immaculate College, Limerick, whose students receive University of Limerick awards, Waterford Institute of Technology and Institute of Technology, Carlow, who have announced their interest in merging and in applying for Technological University status; Cork Institute of Technology and Institute of Technology Tralee, who have expressed their interest in merging and in applying for Technological University status; all other Institutes of Technology, including Athlone Institute of Technology, Dundalk Institute of Technology,

Galway-Mayo Institute of Technology, Institute of Technology, Sligo, Letterkenny Institute of Technology, Limerick Institute of Technology and other institutions of higher education in the State as envisaged in the Bill.

This would see the combined graduate electorate divided into three two-seat constituencies with approximate numbers as follows:

	2 Seat Constituency (NUI, etc.)	**2 Seat Constituency (TCD, DCU, DIT, etc.)**	**2 Seat Constituency (UL, IOTs, etc.)**
Numbers on current Seanad Éireann Electoral Registers	97,734	53,583	n/a
Full-time UG enrolments (across all years) in higher education, 2012-13**	60,511	45,751	58,538

Table 1.

* *Please note that figures are approximate for demonstration purposes only.*

**Source: *University Representation in Seanad Éireann: A Background Note*, Prof John Coakley, 2013.

The University of Dublin holds 146,116 graduate records with 53,583 graduates opting to register to vote in the Seanad elections. It is reasonable to assume that the number of graduates of other institutions opting to register would be no greater than that proportion.

The proposed smaller, two seat constituencies would allow for greater identification of the elected Senators with their electorate and would facilitate a wider range of candidates to participate fully in the election process.

It should be noted that greater clarity is required regarding the awarding bodies to be provided for under the term 'institutions of higher education in the State' in the Bill and it is anticipated that this clarity may arise through the deliberations of the technical working group which has been established by the Minister for the Environment, Community and Local Government.

It is also acknowledged that three two-seat constituencies will have implications for the appointment of a Returning Officer as outlined in Head 6 of the Bill, and it is suggested that a Returning Officer could, by agreement or on a rotation basis, be appointed from amongst the institutional members of each constituency. Trinity College Dublin would be willing to continue to provide a Returning Officer for the first election held under this system, if that were agreed by the Government and by the other institutions in the relevant constituency.

3. Proposed introduction of a single six-seat graduate constituency to replace the current two three-seat university constituencies

Trinity regards this as the least satisfactory option. However, as referenced above, the extension of the franchise to include graduates from third level educational institutions that heretofore did not form part of the university constituencies is welcomed. Provision was made for this by referendum in 1979 resulting in an amendment to Section 18 of the Constitution, but not implemented.

However, as per the earlier submission in 2003, Trinity advises against the creation of such a single large constituency for the following reasons:

- the democratic and representational relationship between the graduates of particular institutions and their Senators would be considerably weakened.
- the size of the proposed Seanad "Institutions of higher education constituency", with potentially almost 750,000 citizens entitled to register based on the last Census,[3] would be such that only a limited number of candidates with very considerable resources would be in a position to canvass it effectively for election purposes. The sheer size and scale of the electorate, spread throughout all counties in Ireland and with large numbers abroad, would also make it difficult to provide genuine representation on an ongoing basis. Such a constituency would not favour the election of diverse candidates, which has been a strong and beneficial feature of university representation up to now. It is noted that, unlike elections to Dáil Éireann, there is no restriction on the amount of money which individual candidates are permitted to spend on the election campaign. Also unlike elections to Dáil Éireann, there is no provision for candidates achieving at least one quarter of a quota to receive a contribution from the State towards their expenses. The combination of these provisions will make it more likely that candidates with considerable budgets and resources, or candidates supported by a political party will be at an advantage when it comes to promoting their campaigns through publicity, advertising and other means.
- on a practical level, the number of candidates may prove confusing for voters faced with a ballot paper with more than 45 candidates. In the last election, 19 candidates were on the University of Dublin ballot paper and 26 were on the NUI ballot paper. In a single constituency, featuring graduates from more than 80 institutions, there is every likelihood that there would be significantly more candidates than those combined figures, something that could be prevented only by imposing prohibitively high and potentially discriminatory candidacy requirements.

[3] *Census of Ireland 2011*, Central Statistics Office.

In addition to this, Trinity is conscious of the practical difficulties of administering the election process for such a large constituency as would be created by the formation of a single six-seat constituency.

4. Technical provisions for the organisation of elections including the creation and maintenance of a register of electors

The franchise of the university seats is broad. The current combined electorate on the two electoral registers is in excess of 150,000 (NUI 97,734 and the University of Dublin 53,583). The proposed amendment could see, as outlined in the note drafted by Prof John Coakley, a potential number of eligible graduates of approximately 740,000. However, it should be noted that this figure is not an accurate reflection of the potential electorate as it includes non-Irish citizens living in Ireland, those with awards made by higher education institutions outside of Ireland and excludes those living in Northern Ireland and abroad.

The compilation and maintenance of one composite register for a single six-seat constituency would be a very onerous task, with graduates of more than 80 institutions involved. Perhaps the most feasible way of achieving this is for each institution, individual awarding body (or group of bodies) to create and/or maintain their own register which then can be compiled to form combined final registers for publication and use at the time of election for whatever number of constituencies is legislated for. The task of verifying the identity and qualifications of graduates, some of whom graduated decades ago, is potentially a major task best undertaken by individual institutions. It is also suggested that graduates are more likely to take up the option of joining the electoral register if that exercise is conducted by the institution from where they graduated and with which they would have a stronger connection, rather than by another body.

Clearly drafted legislative provisions will be needed to ensure that the objective of extending the franchise is achieved in a fair, transparent and even-handed manner. In relation to Head 3 (Franchise), we believe that it is crucial to provide a clear threshold definition for a "major award" which entitles a holder to a vote, based on a list maintained and updated by the National Qualifications Authority of Ireland. Legislative clarity will also be needed concerning how this term would be applied to extend the franchise to holders of awards of equivalent standing previously made in relation to programmes which are no longer operational and thus not currently recognised by the National Qualifications Framework. Without this, the scheme will not be functionally operational.

The operation of the proposed registration authority and register of electors (Head 4) is currently lacking in detail upon which to comment at the present time. If a single registration authority was to be established in a respect of a single constituency, this would require considerable resources to establish and maintain the register. However, if two or three multi-seat constituencies were to be established, the role and resources of the

central registration authority could be considerably reduced by means of the work done by individual institutions, or groups of institutions, to maintain their own registers. They could then feed into a central register whose reduced purpose would be to combine the data to ensure the avoidance of duplication of entries in the various constituencies.

In whatever form the proposed reform takes in relation electoral registers, it will be important to ensure that the handling of personal data complies with the Data Protection Acts 1988-2003 if any data sharing arrangement is contemplated. The basis for sharing personal data and the conditions in which it may operate would ideally be expressly dealt with in the Bill rather than leaving the matter to be dealt with under the general framework of data protection law.

It is also important that due regard is paid to those graduates who, over the decades, have already taken measures to ensure that their details are accurately captured on the Seanad Éireann electoral registers. With this in mind the University of Dublin would agree to continue maintaining the register of its graduates which then can be utilised as appropriate by the registration authority or authorities, as designated by the Minister.

It is noted that no graduate is to have more than one vote in the election (Head 3(2)) and while the requirement for this amendment is acknowledged, careful consideration needs to be given as to how this would be achieved, bearing in mind that there are: graduates with multiple awards from different institutions; name changes e.g. single/married names, different versions of the same name, names in English/Irish; and graduates with different addresses, including some still recorded at their parent's address.

Further discussion regarding the running of an election is also required and again it is envisaged that the findings of the technical working group will advise on this. Administration efficiencies, format of ballot papers and conduct of the count all require significant consideration. Following on from this, the issue of cost, in particular, cannot be ignored and our records show that the combined staff, postal, legal and administrative costs, etc. of the election process for the University of Dublin Constituency in the 2011 election was €63,000 based on an electorate of 54,614, a figure which will significantly increase with the expansion of the franchise. The Constitution (Article 18.5) provides that the election must be conducted by secret postal ballot, which also has an impact on the costs involved.

5. Revised nomination procedures and new provisions for the filling of casual vacancies

The proposed method of nomination of candidates raises some significant issues such as:

- the amendment to include the requirement for the assentors to produce prescribed photographic identification;

- the requirement for each candidate's nomination to be assented by 40 graduates.

Issues relating to the practicalities of the above are a concern as both amendments represent a significant departure from current practice, which already can prove difficult to administer. In practice, the existing nomination system which requires assent by ten graduates proves to be demanding as the names and details of qualifications provided for the ten assentors often does not match to the official graduate records. In those cases, further details have to be sought from assentors, often right up to the close of nominations. If the number of assentors is to be increased to 40, the difficulties are likely to multiply and in reality, some candidates may find their nominations will be refused due to those difficulties. The new requirement for each assentor to produce prescribed photographic identification is likely to make for further difficulties e.g. if the version of the person's name in the photographic identification differs from that on the electoral register.

Trinity notes that a deposit of €900 is proposed as an alternative to the 40 assentor system, however, the rationale in making this more onerous than the deposit required for an election to Dáil Éireann (€500), is unclear.

Trinity welcomes the amendment providing for an alternative arrangement for the filling of casual vacancies based on the 'replacement candidates list' system that operates for European Parliament elections in Ireland. This proposal is presumably based on the work and cost associated with conducting a by-election among such a large electorate.

6. Concluding remarks

In summary, while supportive of reforming the way the Seanad is elected, Trinity is of the view that a single six-member expanded constituency to replace the current two constituencies will be extremely difficult to administer, will have significant financial implications and will discourage some eligible candidates from running for election while also weakening the relationship between elected Senators and their constituency. As noted above, the proposal as outlined in the General Scheme does not address the issues of accountability and equity, nor does it appropriately reflect the desire for full reform as expressed in the referendum campaign.

Trinity appreciates the opportunity to engage in this debate and looks forward to working co-operatively with the technical working group and the Department of Environment, Community and Local Government, to achieve effective and satisfactory reform of the Seanad Éireann electoral process.

Dr Patrick Prendergast,
Provost,
7 April 2014.

Appendix 1: contributions of selected former University of Dublin Senators

- **Mary Robinson** campaigned in the Seanad on a range of liberal issues which were controversial in their day - including the right of women to sit on juries, the ban on married women from continuing in the civil service, the right to the legal availability of contraception, and gay rights.
- **T.C. Kingsmill Moore** was a human rights champion during his time in the Seanad, and has been described as "one of the greatest judges that the state has ever produced".
- **Joseph Warwick Bigger** pioneered the clean-milk campaign, greatly improving standards in milk supply throughout Ireland.
- **William Bedell Stanford** proposed a government commission to consider the promotion of social, economic and cultural co-operation between North and South. Serving in the Seanad for twenty-one years, he represented Ireland in parliamentary conferences in Vienna (1956) and Warsaw (1959), and also promoted good relations between Ireland and Greece.
- **Owen Sheehy-Skeffington** was renowned for his honesty, integrity, and moral courage. He was a brilliant orator, a fearless champion of civil and human rights, and was dubbed 'the man of the Senate' by *The Irish Times*.
- **Trevor West** worked tirelessly to bridge the divide between north and south and helped bring the two communities together. He was credited with playing 'a significant part in creating a situation where the dominance of the bomb and bullet has been replaced by a working parliament' (*Sunday Independent*, 18 November 2012).
- **Noel Browne** spearheaded the eradication of TB, and in the Seanad spoke eloquently on a range of issues including the role of the Catholic Church, contraception, divorce, and therapeutic abortion, earning a description as 'the apostle of urgently needed social change'.
- **Mary Henry** successfully campaigned to introduce dental and optical benefits for the wives of insured workers and developed new medical legislation, including the Medical Practitioners Act (2007) and the Mental Health Act (2001). Her Private Member's Bill on Child Sex Tourism was incorporated into a Government Bill aimed at stopping this practice.